

Unfair Competition	Date	August 8, 2024	Court	Intellectual Property High Court, First Division
	Case number	2024 (Ne) 10014		
- A case in which the court held that a so-called review post published on a crowdsourcing website, Lancers, constitutes neither the unfair competition referred to in Article 2, paragraph (1), item (xx) (a misleading act) of the Unfair Competition Prevention Act nor that in item (xxi) of that paragraph (an act of harming reputation), and also denied the establishment of an act of a general tort.				

Case type: Deletion of a Post, etc.

Result: Reversal of prior instance judgment

References: Article 2, paragraph (1), items (xx) and (xxi) of the Unfair Competition Prevention Act, and Articles 709 and 710 of the Civil Code

Judgment of the prior instance: Tokyo District Court, 2022 (Wa) 13396, rendered on January 17, 2024

Summary of the Judgment

1. In this case, X alleges against Y that Y's post on the internet (the "Post") constitutes the unfair competition referred to in Article 2, paragraph (1), items (xx) and (xxi) of the Unfair Competition Prevention Act or a tort, and seeks deletion of the Post and payment of one million yen in damages, with delay damages accrued thereon.

2. The court of prior instance upheld X's claims to the extent of seeking deletion of the Post and payment of 500,000 yen in damages, with delay damages accrued thereon, on the grounds that a part of the Post constitutes the unfair competition referred to in Article 2, paragraph (1), item (xxi) of the Unfair Competition Prevention Act. Dissatisfied with the judgment, Y filed an appeal.

3. This court, holding as outlined below, revoked the part of the judgment in prior instance that was ruled against Y, and dismissed X's claims with regard to that part.

(1) Regarding whether the Post falls under Article 2, paragraph (1), item (xxi) of the Unfair Competition Prevention Act

The part of the Post which says, "They didn't answer our questions clearly, and questions and replies went on repeatedly. When another staff member in charge from our company asked a question, they replied by asking, 'What kind of authority do you have?' and when the staff member answered, 'I'm in charge of the system,' they said, 'Why do I need to answer your questions?' They didn't give us any answers after all." is found to indicate the facts outlined as follows: [i] "No matter how many times they

repeated questions and replies, X did not give clear answers to the questions from Y's staff members in charge"; [ii] "While repeating questions and replies, X asked about the other party's authority"; and [iii] "X refused to provide answers without giving reasonable grounds."

In light of the contents of X's statements, etc. in the work for which X received an order from Y, the facts in [i] through [iii] above are not found to be false allegations.

(2) Regarding whether the Post constitutes a general tort

The Post partly includes indications of facts that lower X's social reputation. As Lancers (the "Website") is a matching website for contracts for work on the internet, and posts on the Website will be used as a reference by parties that seek to make contract offers, conclude contracts, or follow other contract procedures through the Website to learn about the other party's work and other relevant information. Therefore, the contents of posts relate to the public interest, while their purpose is found to have a public nature, and the Post is of no exception. In light of the facts of this case, the facts indicated by the Post are true in respect to their important parts.

In addition, the parts of the Post that constitute opinions or reviews are not found to deviate from the acceptable range.