

Client Alert

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Consumer Affairs Agency issues its first stealth marketing-related Order for Action

The Consumer Affairs Agency announced on 7 June 2024 that it had issued an Order for Action¹ to a medical corporation in Tokyo for violating Article 5, Item 3 of the Act Against Unjustifiable Premiums and Misleading Representations² (the "Act") for engaging in "stealth marketing."³ The corporation had been providing its customers with discounts in exchange for favorable reviews on its website. This is the first time that the Consumer Affairs Agency has issued a stealth marketing-related Order for Action.

Concerns have arisen in Japan recently in connection with endorsements of products and services by influencers on social networking sites, etc. These individuals often claim to be giving their own opinions about products and services when they have in fact been paid to do so by companies. However, Japan had no laws or regulations regulating stealth marketing until recently. In response, the Japanese Cabinet Office on 1 October 2023 issued Notification No. 19 of 2023 pursuant to Article 5, Item 3 of the Act. Under this Notification, "representations made by an entrepreneur regarding transactions for its goods and services which would be difficult for ordinary consumers to recognize as such representations," were made subject to regulation as stealth marketing.

According to the Consumer Affairs Agency, in October 2023, a clinic run by a medical corporation offered a 550 yen discount to patients in exchange for posting a favorable review for the clinic on the "Google Maps" internet mapping service. The Consumer Affairs Agency determined that these favorable reviews constituted representations made by the medical corporation which would be difficult for ordinary consumers to recognize as such based on their overall content.

In the event of a violation of Article 5 of the Act, the Prime Minister may issue an Order for Action to the violator under Article 7, Paragraph 1 of the Act. Under Article 36 of the Act, failure to comply with an Order for Action is punishable by imprisonment for not more than two years or by a fine of not more than three million yen.

In light of these new stealth marketing regulations, businesses are advised to refrain from attempts to control the content of reviews posted by ordinary consumers. Caution should be exercised when soliciting reviews from consumers. In particular, businesses that engage influencers to promote their products via the internet and social networking services or that use advertising methods that make use of reviews from ordinary consumers should confirm that these marketing methods do not have the potential to mislead ordinary consumers.

¹ For details regarding Orders for Action, please refer to Article 7, Paragraph 1, Section 2 of the Act.

² An official translation of the Act can be found at the following URL:
https://www.japaneselawtranslation.go.jp/ja/laws/view/2888#je_ch2sc2at1

³ The Consumer Affairs Agency defines "stealth marketing" as "an advertising message formulated in a manner to conceal its nature as an advertising message."