

Guidelines Related to "Sellers" in Internet Auctions

1. Concept

Business operators who sell goods through Mail Order Sales as per the Act on Specified Commercial Transactions (hereinafter referred to as "Specified Commercial Transactions Act") have obligations such as the indication of matters to be indicated in advertisements (Article 11 of the same Act), and the prohibition of misleading advertising (Article 12). Even if sales are conducted via internet auction, if a person repeatedly and continuously conducts sales with the intention of making a profit, the person is considered to be a business operator regardless of whether he or she is a corporation or an individual, and such sales are subject to the Specified Commercial Transactions Act.

2. Explanation

The sales of goods for which an offer is received on the Internet, as well as sales via internet auction, fall under Mail Order Sales under the Specified Commercial Transactions Act. Therefore, business operators who sell goods, etc., via internet auction have obligations such as the indication of matters to be indicated in advertising and the prohibition of misleading advertising under the Specified Commercial Transactions Act, and will be subject to the administrative disposition or penalties if they violate said obligations.

In the Specified Commercial Transactions Act, a seller means a person engaging in sales as a business, and "engaging as a business" means that transactions are performed repeatedly and continuously with the intention of making a profit. The existence of such intention will be objectively judged. For example, a person who makes purchase of goods for the purpose of resale is judged to have an intention of making a profit.

"Intention of making a profit" and "repeatedly and continuously" are comprehensively judged, also taking into account transactions performed at places other than internet auction sites. That is, for example, if the business operator who conducts business at a place other than internet auction sites (regardless of whether it is on the Internet or at a physical store) lists goods that it deals in on an auction site, the business operator in principle is considered to be a seller regardless of the quantity or amount of the listed goods. For example, if an individual business operator makes a one-off listing on an

internet auction site of the goods that he or she deals in at his or her physical store, it falls under the transaction by a seller.

Also, if a person lists the following goods on an internet auction site, such person is normally considered to be a seller, regardless of the type of the transaction he or she conducts at a place other than internet auction sites.

As internet auctions are a system in which an individual who was just a consumer is easily able to become a seller, it is important to pay attention to the fact that an individual will become subject to the Specified Commercial Transactions Act if he or she is considered to be a seller.

Although it is necessary to take account of the fact that there are individuals who sell many unnecessary goods or collections of their hobbies on internet auction sites¹, in the following cases, for example, the individuals are considered to be a seller who repeatedly and continuously performs a transaction with the intention of making a profit, except for some cases with special reasons. However, following these limits does not necessarily mean that the individual is not a seller. Although it depends on the type of the goods, it should be noted that, in general, a person is highly likely to be considered to be a seller if he or she lists several brand-new goods of the same manufacturer, model number, etc.

① Cases where 200 or more goods in the last one month, or 100 or more goods at a single point in time, are newly listed

However, this does not apply when hobby collections such as trading cards, figures, used music CDs, and idol photo books are listed for the purpose of disposal or exchange.

② Cases where the total amount of successful bids in the previous month is equal to or greater than 1 million yen

However, if the listed goods are expensive products whose unit prices exceed 1 million yen, e.g., automobiles, paintings, antique goods, or pianos, such cases are comprehensively judged also taking into account the listing situation such as type or quantity of other goods that are also listed.

③ Cases where the total amount of successful bids is 10 million yen or more in the past

one year

(2) Specific categories and goods

When we look at the actual transactions on internet auction sites focusing on specific categories or the characteristics of goods, we can fine-tune our judgment. Some examples of cases where a person is normally considered to be a seller are shown below, mainly for goods which tend to cause consumer problems.

Cases where 5 or more of the same good are listed at a single point in time from ① (Household appliances, etc.) of "Table related to Categories or Goods with Many Consumer Problems" (hereinafter referred to as "the Table") shown below

"The same goods" in this case means goods of the same type such as cameras, personal computers, or televisions, etc., and their manufacturers, functions, model numbers, etc., do not always need to be the same.

Cases where 3 or more of the same good are listed at a single point of time from Table ② (Parts, etc., of automobiles or motorcycles)

"The same goods" in this case means goods of the same type such as wheels, bumpers, or emblems, etc., and their manufacturers or product names do not always need to be the same. Incidentally, a good which is sold as a set of several items such as wheels should be counted by the set.

Cases where 3 or more of the same good are listed at a single point in time from Table ③ (CDs, DVDs, and software for PCs)

"The same goods" in this case means goods of the same manufacturer, product name, or contents, etc.

Cases where 20 or more of the goods that fall under Table ④ (So-called brand-name goods) are listed at a single point in time

Cases where 20 or more of the goods that fall under Table ⑤ (Ink cartridges) are listed at a single point in time

1 These interpretation guidelines are made taking into consideration the characteristics of internet auctions, and thus these guidelines obviously should not apply to other types of transactions set forth in the Specified Commercial Transactions Act.

Cases where 20 or more of the goods that fall under Table ⑥ (Health foods) are listed at a single point in time

Cases where 20 or more of the goods that fall under Table ⑦ (Tickets, etc.) are listed at a single point in time

The above does not cover all of the goods listed on internet auction sites; these are just examples of cases where a person is normally considered to be a seller, shown mainly for goods which tend to cause consumer disputes. It should be noted that each individual case, including cases that are not exemplified above, will be objectively judged as to whether the person who makes the listing is considered to be a seller. For example, even if the number of listings at a single point of time is less than the number listed above, **a person who repeatedly makes listings with the frequency exceeding the frequency of disposal and without purchase for the purpose of resale** is highly likely to be considered to be a seller; not falling under any of the above cases does not always mean that the person who makes the listing is not a seller.

Incidentally, as a prerequisite for the above, operators of internet auction sites are required to prevent one and the same person from obtaining several IDs (for using the auction site), through the management of the person's bank account numbers, credit card numbers, e-mail addresses, contract information of cellular phones, etc. ²

2 If a person who makes a listing is considered to be a seller based on this argument, the government, relevant agencies, and operators are required to enlighten such person on the indication of obligations under the Specified Commercial Transactions Act.

Table related to Categories or Goods with Many Consumer Problems

① Household appliances, etc.

Photography equipment

- Radio receivers, television receivers, electric refrigerators, air conditioners, other home electric appliances, lighting appliances, circuit breakers, and voltage regulators
- Telephones, intercoms, facsimile machines, portable emergency radio equipment, and ham radio equipment
- Electronic desk calculators and computers, as well as their parts and accessories

② Parts, etc., of automobiles and motorcycles

Among the items below; parts and accessories

- Automobiles and motorcycles (including mopeds), as well as their parts and accessories

③ CDs, DVDs, and software for PCs

- Electromagnetic recording media, records for record players, and any media on which sound, image, or programming is recorded by electromagnetic or optical methods

④ So-called brand-name goods

Among the items below, those which carry a registered trade mark (those registered with the Japan Patent Office) and whose imitations are frequently listed

- Watches

- Clothes

- Ties, scarves, purses, bags, umbrellas, walking sticks, sunglasses (except for those used for correcting eyesight), and other personal belongings, rings, necklaces, cuff links, and other accessories, smoking supplies, and makeup sets.

⑤ Ink cartridges

Among the items below, ink cartridges for printers

- Mechanical pencils, fountain pens, ballpoint pens, ink stands, rulers, and other similar stationery goods, seals and inkpads, albums, and painting tools

⑥ Health foods

- Processed goods made of animals and plants (limited to those that are not offered for general consumption) that are ingested by humans (excluding medicines (meaning pharmaceuticals specified in Article 2, paragraph (1) of the Pharmaceutical Law (Act No. 145 of 1960)))

⑦ Tickets, etc.

- Rights to use leisure facilities or sports facilities [Appended Table 1-1]
- Rights to watch, view or listen to movies, theatrical performances, music, sports, photographs, paintings, sculptures, or other arts and crafts works [Appended Table 1-2]

* The number within [] indicates the number of designated rights specified in Appended Table 1 of Order for Enforcement of the Act on Specified Commercial Transactions.