Original lawsuit: 2023 (reiwa 5) (wa) No. 1890 Claim for Compensation for Damages

Motion for a Judge Recusal

21 March 2025

With regard to the lawsuit referred to in the headnote, the Claimant files the following motion for a judge recusal against Judge Kazuo Kikui.

Chapter 1 The purpose of filing the motion

The Claimant requests the court to make the decision that there are grounds for a recusal against Judge Kazuo Kikui.

Chapter 2 The reasons for filing the motion

1. There is a risk of an unfair trial.

With regard to Judge Kazuo Kikui (hereinafter called 'Judge Kikui'), there is a risk of an unfair trial for the following reasons (Article 24 (1) of the Code of Civil Procedure) [Claimant Note: Article 24(1) states that if there are circumstances involving a judge which could prejudice the impartiality of a judicial decision, a party may challenge that judge.]

(1) Insights into the Antimonopoly Act

The Japan Fair Trade Commission (hereinafter called 'JFTC') explains that a case is likely to be found to be impeding fair competition [2] 'when the party having a superior bargaining position imposes a disadvantage only on

a specific transacting party, but the degree of disadvantage is high, or such act, if left unaddressed, is likely to be carried out to other transacting parties'. The JFTC illustrated this with a speech bubble saying, 'Why does this only happen to us?...'

The Antimonopoly Act provides not only for enforcement by the JFTC but also a civil procedure claiming for a remedy by a 'private individual', which includes the victim of a violation. Enforcement by a private individual (private enforcement) enables them to seek two specific functions: (1) liability without negligence and (2) an injunction. Regarding the latter (Antimonopoly Act Article 24), a lawyer explained that this is a civil procedure enabling anyone who was or may be severely damaged by a violation to seek an injunction of the violation in the court [Claimant Note: This sentence is taken from Claimant Brief 14 and the source was given as follows in footnote 27 - Iwaki Sogo Law Office, Explanations of the Antimonopoly Act (4), 18 December 2023, '5. Regulation after the incident (5)(Private enforcement: liability without negligence, injunction)', (https://iwakilaw.jp/blog/post-6116. Last visited on 10 June 2024)].

Because 'the target of this is limited to unfair trade practices', the Claimant (the Claimant of the original lawsuit, hereinafter called the 'Claimant') continued to assert in the Complaint and from Brief 1 onwards that preferential treatments, which do not exist in the Selling Policies and Seller Code of Conduct, were being given to Cho[redacted] Heart, the Claimant's competitor, by Amazon. It was subsequently discovered that Cho[redacted] Heart had registered their shop's name with the Amazon Brand Registry.

In the trial (preliminary hearing) on 27 October 2023, the presiding judge made the following remarks to the Claimant.

'I want to ask you, the Claimant, the following – what is the point of claiming discriminatory treatment? What I am trying to say is, regarding the main point in this lawsuit, do you mean your shop has never done anything that could be claimed to constitute policy violations, so these are being claimed without any reason. Correct? Or do you want to say other shops are making policy violations, but these are yet to be claimed? What is the point of you making such a claim? If you committed a policy violation (e.g. IP infringement), and then Amazon accuses you of a policy violation, it cannot be helped. You are not saying it is wrong for policy violations to be claimed only against you when other shops are committing policy violations, are you?' (Claimant's Evidence 1, pp. 69-70).

Few precedents can be found in lawsuits against violations of the Antimonopoly Act. One, however, can be found in the lawsuit of Reiwa 2 (Wa) 12735 - Claim for compensation for damages (hereinafter called the 'Tabelog Lawsuit') which was filed by Kanryumura Co., Ltd. against Kakaku.com, Inc., the company that runs 'Tabelog.com'. Kanryumura

claimed that Kakaku.com secretly operates an algorithm disadvantaging chain restaurants and that running such a system amounts to an unfair trade practice which impedes fair competition and unjustly treats other enterprises in a discriminatory manner (Article 2, paragraph 9, item (vi) of the Antimonopoly Act and paragraph 4 of the General Designation). Thus, Kanryumura sought a court injunction against the use of the algorithm along with financial compensation based on Article 709 (Compensation for Loss or Damage in Torts). In response, the Tokyo District Court judges sought an opinion from the JFTC (Claimant's Exhibit 1, p. 76).

Having read the verdict of the Tokyo High Court [Claimant Note: Both parties were unhappy with the ruling by the judges of the Tokyo District Court and appealed to the Tokyo High Court], the Claimant realised that her claims would not have been deemed 'not worth handling', as happened in the court, if the judgment against her claims had been made by these judicial panels. Therefore, the Claimant protested to Judge Kikui in Claimant's Brief 14 dated 17 June 2024 (Claimant's Exhibit 1, pp. 76-85). The JFTC is currently investigating alleged violations of the Antimonopoly Act against Amazon; however, Judge Kikui will not take the necessary steps to seek advice from them.

(2) Control of legal proceedings by Judge Kikui who is biased in favour of Amazon.

A female judge, who was in charge of the lawsuit against Amazon until the end of March 2024, made the following remark to Amazon at the trial (preliminary hearing) on 27 October 2023: 'The Claimant is claiming

compensation for damage from the loss of the sale and consolidation money. As this is also related to the injunction of the Antimonopoly Act, it should be necessary to consider whether to refute each claim submitted by the Claimant.'

However, Judge Kikui conducted legal proceedings which supported Amazon and made the following remarks to Amazon's lawyers: 'I think it is too much for you. Perhaps you can do your best to try one or two claims, whether you refute them or not', adding that, 'It is still all right if you cannot do this, though.' As a result, the IP infringement claims never ceased, even after the lawsuit began.

As for the Briefs the Claimant had to submit in relation to these incessant acts of torts, which were the reasons for her submitting documents to the court, Judge Kikui complained to the Claimant by saying 'Yet again?' Moreover, he never issued any warning to Amazon and no remark was made regarding Amazon disposing of the evidence, which was a genuine item being claimed as a counterfeit. In fact, the judge even stated the following: 'The Defendant (i.e. Amazon) refutes the claims in the Brief submitted by the Claimant (other trademark violation claims by Amazon are not, in fact, violating any laws) until the end of February. However, if Amazon cannot make any refutation, it is not a problem.' Consequently, the Claimant had to work hard to submit the assertion in order to demonstrate that Amazon's act was an act 'performed by humans which deviates from a naturally occurring competition in the vertical competitive relationship'. This not only needed the injunction order of Article 24 of the Antimonopoly Act to be delivered (eventually) but also the Claimant had to write and submit

further Briefs to the court as Amazon continued to conduct successive acts of torts. As a result of this, the Claimant had to pay a surcharge to her lawyer (Claimant's Evidence 1, p. 72).

Furthermore, Judge Kikui knew from the Claimant's assertions that the IP infringements such as counterfeits and trademark violations alleged by Amazon were baseless, and that the items in question, which were forcibly returned from the warehouse to the Claimant at her expense, had been stockpiled without being opened (Claimant's Brief 6, p. 4 and Claimant's Exhibit 121). Therefore, he could have made his own judgement if he had allowed Amazon to demonstrate the basis for their claims. Moreover, he also knew that defamations consisting of false statements that hurt the Claimant and damaged her reputation would no longer be displayed on the Seller Account after a period of 180 days [Claimant Note: Amazon Sellers Lawyer, Rosenbaum Famularo, P.C., stated the following: 'If the damaging statement is made in writing and published, it is called libel. Amazon sellers have a right not to have false statements made that damage their reputation'], and he refused to listen to the facts of the claims or indeed do anything, knowing that was rather convenient for Amazon. The defamations (false infringement claims), which stopped being displayed after 180 days, meant that determining where the responsibilities lay remained difficult, and Judge Kikui declared there was nothing left for the Claimant to claim. He even suggested in the official document handed to the Claimant for clarification that, 'Because an Intellectual Policy infringement claim will disappear from display after 180 days, you may need to reconsider the injunction based on Article 24 of the Antimonopoly Act'.

In other words, the Claimant was deliberately led to withdraw her claims [Claimant's Exhibit 1, pp. 72-73].

(3) Denied a right to a fair trial

It is the Claimant's choice whether to withdraw Article 24 of the Antimonopoly Act. Nevertheless, the attitude of the presiding judge had clearly changed since the Claimant dismissed her lawyer and shifted to a pro se legal representation. The Claimant is simply a member of the general public who is conducting a pro se legal representation for her lawsuit in Japan [Claimant Note: It was a few decades ago when the Claimant studied a UK law module, and individuals are permitted to represent themselves in legal proceedings, including in court cases in Japan. Representation by a lawyer is not mandatory; it is based on the principle that you know best regarding your case.]. Against this member of the general public, the presiding judge appeared to interrogate the Claimant by saying, 'Which one is intention and which one is negligence!', 'Answer in brief!', 'I can see there is no legal basis for the Claimant's assertions!', and 'You are not answering in a straightforward way!' Eventually, he warned that, 'If there is no answer to my questions from you, it is OK. However, I will treat this case as if no claim existed.' The Claimant, who is neither a lawyer nor a student of law, found this utterly unreasonable and was extremely emotionally distressed.

The judge, who is a government employee and has been given the sacred trust of the people to protect Japanese law, expressed his view that, 'The Claimant's Briefs do not have any legal basis'. He further added that, 'As

expected, there is no way to accept any claims from the Claimant', implying that a lawsuit brought by an amateur who is not a legal expert is not worth addressing in the court.

Article 32 of the Constitution of Japan states that no person shall be denied right of access to the courts. Furthermore, it is not compulsory to employ a lawyer to the courts in the Japanese legal system. However, in this court, the Claimant felt that she was effectively being told that she should only come to the court after studying law. If true, this would effectively deny people their rights (Claimant's Exhibit 1, pp. 74-75).

(4) Unjustifiable order not required by law

Despite understanding that failure to comply with Judge Kikui's order would affect the outcome of the verdict, which would be based on the impression of three judges, the Claimant was forced to write the following argument at the beginning of Claimant's Brief 25 dated 10 October 2024.

> *At the trial (preliminary hearing) held on 26 September 2024, the Claimant was told by Judge Kikui to 'submit 10-page summaries of Claimant's Brief 14 onwards' before the next trial. Thus, at that point, the Claimant had to prepare the following;*
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> 1. *Write objections for Chapter 4 onwards of the Defendant's Brief dated 30 August 2024*
> 2. *Motion to amend the complaint for the additional compensation for damages.*
> 3. *Assert for the items returned in appalling conditions from Amazon's warehouse*

Having taken this into account, it was impossible to complete everything, including the aforementioned judge's request, before the next trial. Therefore, the Claimant asked the judge, "To be able to condense 10 of the Claimant's Briefs into 10-page summaries, are you telling me to cut my sleeping hours?". In response, he said that should be the Claimant's responsibility.

However, individuals are allowed to claim freely in a pro se legal representation and there is no set rule for the pages of a Brief in the Code of Civil Procedure and Rules of Civil Procedure. Although the Claimant compared 84 pages of Briefs available to view online with her own Brief, the Claimant's Brief became lengthy simply because she included multiple references. If Amazon had earnestly treated the Claimant's claims one by one when the lawsuit had started, the Claimant's Brief would not be lengthy as she would not have needed to repeat her claims from Claimant's Brief 14 onwards. Furthermore, Amazon has repeatedly used its superior bargaining position to commit acts of torts against sellers, and referring to these acts in detail constitutes an important part of this lawsuit.

The Claimant thus prepared a variety of documents, including the Claimant's Briefs, by cutting her sleeping hours. Requiring 10-page summaries for Briefs which have already been submitted constituted an additional workload and is an unfair act of discrimination as it unilaterally required an unnecessary amount of work. If the Claimant had submitted '10-page summaries of Claimant's Brief 14 onwards' she would have been placed at a disadvantage in this lawsuit, therefore she had no

choice but to refuse this demand by Judge Kikui. The Claimant will ask the judges to decide whether such a request was necessary when she makes an appeal (Claimant's Exhibit pp. 1-2).

2. Presence of facts which hinder fairness

(1) The Court removed one of the matters of explanation which was requested from Amazon and was written in the document on 18 September 2024 [Reference Material 1].

[Reference Material 1] Matters of explanation by the Court on 18 September 2024, p. 3.

To Amazon: The Defendant instructs the Claimant to register the items of Signare as non-branded items. Does this mean Signare products are not products of a brand on Amazon?

In this lawsuit, the disputes relate to the fact that Amazon prohibited the Claimant, who was selling genuine parallel imported brands as parallel imported items, from using brand names in order to avoid complaints from brand owners registered in the Amazon Brand Registry. At the same time, Amazon instructed the Claimant through its employees (Claimant Note: technical support staff members) to list the brand items as 'non-branded', which was of no benefit to the Claimant as they could not be searched by brand name. Hence, the Claimant reluctantly followed their instructions

and registered the parallel imported brand items as ‘non-branded’ items. Moreover, with regard to the brands which are in dispute in this lawsuit, the Claimant has provided evidence to show how the brand names have changed over time. This makes it clear that the registrations were made at the direction of Amazon employees (Claimant’s Exhibit 2 pp. 25-27, Claimant’s Exhibit 3, p. 5).

The fact which the Court asked Amazon to explain (Claimant Note: Amazon instructed the Claimant to register Signare as ‘non-branded’) was removed by Judge Kikui, which is a matter of hindering fairness. Therefore, the Claimant made a complaint by writing the following assertion in Claimant's Brief 25 on 10 October 2024.

> *When the Claimant tried to register an item of Signare as the brand 'Signare', it could not be registered as an error occurred. The Claimant then exchanged messages with an Amazon employee (Claimant Note: technical support staff member) on their website.*
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> *On 21 June 2022, an Amazon employee replied to the Claimant that (1) Amazon had given authorisation to the Claimant to list the parallel imported items of Signare as the brand: Signare [‘Signare’ in Japanese]. However, an error occurred once again and the Claimant was unable to list the items (Claimant’s Exhibit 11, 4). On 25 June, an Amazon employee instructed the Claimant to register the items for which (2) the Claimant has to put ‘non-branded’ in the ‘name of brand’ column and gave authorisation to register Signare as 'non-branded' (Claimant’s Exhibit 11, 5).*
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> *The communication with the Amazon employee was conducted via*

online message exchanges, which are no longer viewable after a certain period of time, or via telephone calls, which are recorded. Although items the Claimant sells are brand items, the Claimant had no choice but to follow the instruction whereby Amazon employees insist that the Claimant should list her items as non-branded as resolutions for the errors which meant she was unable to list the items [Claimant Note: Following the introduction of the Amazon Brand Registry on Amazon, Amazon employees instructed the Claimant that she was given authorisation to register a parallel imported brand item as a 'non-branded' item rather than the brand name. This was to avoid receiving complaints from brand registered owners on Amazon if the same problem occurred when registering a new product on their website.]. The Claimant, who simply followed Amazon's instructions, did not have the slightest idea that she would be charged with criminal offences (counterfeits without test buy or trademark violations in the form of IP infringements) by Amazon if she registered her parallel imported brand items as 'non-branded' in the 'brand name column'. Therefore, the Claimant left no screenshots or recorded tapes which could serve as proof.

Nevertheless, the reason why the Claimant had only left Signare's correspondence with Amazon's employees was that Amazon's motives for changing from the above mentioned (1) to (2) were extremely unreasonable. If that was the reason, the Claimant wondered what brand could ever be registered as a brand on Amazon and decided to leave the screenshots showing the exchange of messages concerning

Signare on the Amazon website as a reference. At the time when the correspondence with Signare had been taking place, the Claimant had no knowledge of the Amazon Brand Registry which was already up and running.

At the trial (preliminary hearing) on 26 September 2024, the Claimant demanded that Amazon disclose the exchange of messages concerning Signare. In the Amazon employee's reply concerning Signare on 23 June 2022, which was received between the above mentioned (1) and (2), the reason why Amazon would not permit the Claimant to use the brand name 'Signare [Signare in Japanese]' was clearly stated in writing.

Without presenting any evidence, Amazon told the judges that it had not instructed the Claimant to register any brand as 'non-branded'. However, because message exchanges with Amazon are conducted on Amazon's website only, Amazon simply needs to disclose all the message exchanges (called 'Case ID' in Amazon) to the Claimant. With regard to Signare, Amazon instructed her to register the brand as non-branded and the dates of message exchanges have been confirmed. All Amazon has to do is extract the message exchanges for the specified dates from their data.

In response to the Claimant's demand to submit the message exchange, Judge Kikui said, "If you have the evidence, you can submit it. Amazon claims that it has no problem registering Signare as a non-brand, so there is no problem with it as a non-brand". As a result, there is no case requiring an explanation from the Court to Amazon regarding

Signare. The fact that Signare is registered as 'non-branded' on Amazon may not matter to Judge Kikui. However, because Amazon argues that the purpose of registering a brand is to protect and ensure usability on Amazon, the Claimant has suffered substantial damage in that Signare items which were unilaterally returned from Amazon were not subject to customer searches and comparisons and were therefore never purchased. In addition, Amazon asserted that the reason why the Claimant received IP infringement (trademark violation) complaints from Amazon was because the Claimant registered brand items as 'non-branded'. Furthermore, Amazon gave an example of what can be registered as a non-branded item, which does not have a brand name or logo attached (Defendant's Brief (5), p. 9), and asserted that all other items must be registered as brand items. If a judge who is supposed to be charged with impartiality does not view such incoherent arguments as a problem (Claimant Note: Amazon instructed Signare to be listed as 'non-branded' while claiming that all brand products should be registered as brands), rescinds the explanations requested from Amazon by the Court, and excludes Signare – whose trademark has been registered – from the issue to be addressed in the hearing at their own discretion, this amounts to discriminatory treatment which unilaterally disadvantages only the Claimant.

The Claimant also made the complaint by writing the following assertion in Claimant's Brief 26 on 13 November 2024.

One of the matters of explanation which was requested from Amazon by the Court on 18 September states: 'The Defendant instructs the

Claimant to register items of Signare as non-branded items (Claimant's Exhibit 11, 4 and 5). Does this mean products of Signare are not a brand?' However, at the trial (preliminary hearing) on 26 September, Judge Kikui, who commanded the judicial proceedings, told the Claimant that, 'Amazon claims there is no problem in registering Signare as non-branded. So there should be no problem with the brand being registered as non-branded'. Thus, a matter of explanation concerning the fact that the Claimant was instructed to register a brand as 'non-branded'(Claimant's Brief 25, pp. 10-12), an inconvenient fact for Amazon which it should have addressed, was removed from the issues to be disputed [Claimant Note: Judge Kikui presumably only wanted to establish whether Amazon instructed the Claimant to register brands which have been registered as non-branded. Amazon in fact instructed the brands (for which Amazon claims the Claimant committed IP infringements by registering them as non-branded on their website) to register as 'non-branded'. When the Claimant contacted their technical support team, she could not register new items using the brand names. Unfortunately, all the case logs in which Amazon's technical support team told the Claimant to register brands as non-branded, with the exception of Signare's case (the Claimant kept screenshots of the conversations as a reference), became unavailable to view after a certain period of time had passed on Amazon's website. The Claimant considers that this is convenient for Amazon as she cannot now present evidence of the company's technical support team telling her to register items produced by Signare as non-

branded. Amazon lawyers thus sustain their claim that they have never instructed sellers to register brands as non-branded and claim that all brands should be registered as brands, and the Claimant cannot prove otherwise as the case logs have disappeared from Amazon's website. The important fact is that Amazon did instruct the Claimant to register Signare as non-branded.]

The Claimant, who purchased the items of Signare directly from the brand, had no reason to register these items as non-branded as this would have meant they were excluded from a brand search and would not sell. In fact, the items of Signare which the Claimant had been selling on Amazon did not sell at all. Consequently, the Claimant decided to sell them at a cheaper price on her own online store. Subsequently, despite the Claimant having paid a monthly charge of 5390 yen to Amazon which claims that sellers are eligible to qualify as a Buy Box winner (Shopping cart box will be provided), Amazon removed Buy Boxes from the Claimant's items (although the Claimant was the only seller for the 'non-branded' Signare) on the grounds that the prices on Amazon were higher than those on her own store. After being continually charged storage fees, these items were unilaterally returned by Amazon. Incidentally, Signare is a brand registered seller of Amazon UK, which registered Signare in the Amazon Brand Registry and dispatches items directly to Japan (Claimant's Exhibit 286). In Amazon, there is no problem for any other sellers except the Claimant selling the items of Signare under the brand 'Signare'. Only the Claimant who runs her own online store and sells on another

marketplace was forced to sell the items as 'non-branded'. Hence, she was treated in a discriminatory manner and experienced interference in her business from Amazon (Claimant's Exhibit 287) (Claimant's Exhibit 3, pp. 3-4).

Judge Kikui may have felt compelled to address the matters that Amazon should explain in relation to Signare, as the Claimant detailed the above complaint in Claimant's Brief 26 on 13 November 2024. In the memorandum of the trial (preliminary hearing) that took place on 20 November 2024, which was handled after the trial, the following matter was written. [Reference Material 2]

[Reference Material 2]

Memorandum of the trial on 20 November 2024, p. 1

Matter to confirm (until the next trial) Defendant: Confirm whether Signare products are a brand in Amazon

As a consequence, at the trial (preliminary hearing) on 30 January 2025, the Court only received a response from Amazon stating that 'Signare is recognised as a brand on Amazon.', which was already a known fact (from Signare running its brand store on Amazon UK).

Judge Kikui checked each brand for which Amazon claimed IP infringements (trademark violations) against the Claimant to ascertain whether Amazon had instructed the Claimant to register these brands as non-branded; however, Signare was excluded from this process. Further, Amazon verbally claimed, without presenting any evidence, that such facts

do not exist. As a matter of fact, this was simply because the message exchanges between the Claimant and the Amazon employee instructing her to 'register Signare as non-branded' on Amazon's website had already been discarded, or they simply did not submit it as it would have been detrimental to their own interests. With regard to Signare, the Claimant submitted the message exchanges to prove that she was actually instructed by Amazon to register said items as non-branded to the Court and these dates are also confirmed. Because Amazon claims that 'no record was found that Amazon instructed the Claimant to register brands as non-branded after our investigation', the Claimant is demanding that Amazon submit the message exchanges that took place between the Claimant and Signare. However, Judge Kikui persistently refused to consider the Claimant's claim, leaving the Claimant with no choice but to argue that the fairness of this lawsuit is in doubt.

(2) Judge Kikui did not choose to address the issue that the Claimant considers to be the most important in the lawsuit.

In the matters of explanation requested by the Court on 28 September 2025, the Claimant was asked about the following point [Reference Material 3]:

[Reference Material 3] Matters of explanation requested by the Court on 18 September 2025, p.1

Violations of the Seller's Code of Conduct and Selling Policies will result in action being taken, such as suspending the seller from selling an item (Defendant's Exhibit 15, General Condition Chapter 7).

To the Claimant:
Does the Claimant admit that, upon registering a selling account, the Claimant agreed to be bound by various rules and policies in Amazon and started selling items on Amazon (Defendant's Exhibit (2), p. 5)?

The Claimant only agreed to the various rules and policies in place at the time of registering in 2013. Amazon subsequently changed their rules and policies unilaterally and for their own benefit, without widely informing sellers. In fact, the Claimant informed Jasper Cheung, the CEO of Amazon Japan, on several occasions that a Russian seller has been selling Russian Army provisions on Amazon. However, because these items sell well, Cheung continually ignored the Claimant's reports. The Claimant then pointed out that this could present a problem in terms of money laundering. Subsequently, the sentence stating that, 'As of 11 March 2022, Amazon does not accept selling from Russia and registrations from Russia and Belarus', which did not exist in the Programme Policies of the Seller Code of Conduct as of 29 December 2022 (Claimant's Exhibit 93, 3), was added retrospectively. Along with submitting the evidence, the Claimant alleged that Amazon conveniently rewrote the Seller Code of Conduct. However, because the memorandum of the trial (preliminary hearing) result on 26 September 2025 did not mention this issue, which is an inconvenient fact for Amazon, the Claimant had to add this argument to Claimant's Brief 25 on 10 October 2025. Thus, the Claimant has no choice but to state that Judge Kikui disregards the evidence and the facts.

Furthermore, on 9 November 2024, an item which had been kept in the

Amazon warehouse was alleged to be a 'counterfeit without test-buy' (Appendix 1 item 17). Even though the Claimant provided evidence to show that the item is genuine and, on 13 January 2024, asked Amazon by email not to dispose of the item, Amazon did so on 17 March 2024.
The Claimant's lawyer (at the time) claimed that ' unilaterally disposing of an item for which the result of the authenticity test has yet to be determined is considered as a distraction of evidence and such action should be strictly avoided' (p.6), and this statement was included in Claimant's Brief 8 on 13 February 2024. On 11 March 2024, a trial (preliminary hearing) was held, which also confirmed the submission of this document. Nevertheless, Judge Kikui did not instruct Amazon's lawyers that Amazon should not unilaterally try to dispose of the item because its authenticity was yet to be determined.

Although the Claimant described a series of interactions leading up to the disposal of the item in Claimant's Brief 18 on 15 August 2024, the memorandum of the trial (preliminary hearing) states that the disposal of the item was completed solely through interactions between the Claimant and Amazon and that there was no involvement by the Court [Reference Material 4].

The Claimant will discuss the technical support employee of Amazon with whom she exchanged messages later in this Brief. However, the Claimant fears that if the truth has not been written, it will be assumed that nothing can be done, even if the item was disposed of by Amazon.

[Reference Material 4] Memorandum of the trial on 20 November 2024, p.4

Appendix 1, item 17 'MacKenzie-Childs' snow globe

9 November 2023: Warning and listing suspended (Claimant's Exhibit 88 and 89)

(Reason for warning) Complaint from the rights owner as the item is a counterfeit

10 November 2023: From the Claimant to the rights owner

The Claimant informed the rights owner by email that it is a genuine item

9 January 2024: From Amazon to the Claimant

Amazon demanded that the Claimant submit the documents to prove that the item is a genuine product and informed the Claimant that it will dispose of the item currently in storage if no response is forthcoming from the Claimant (Defendant's Exhibit 31)

10 January 2024: From the Claimant to Amazon

The Claimant sent an email to Amazon informing them that it is a genuine item (Xjs18, p. 3, Reference Material 1)

13 January 2024: From Amazon to the Claimant

Amazon sent an email to the Claimant informing her that Amazon will either return or dispose of the item. (Claimant's Exhibit 108)

17 January 2024:	From Amazon to the Claimant Amazon sent an email to the Claimant informing her that Amazon will dispose of the item if there is no response before 15 February (Claimant's Exhibit 113)
10 February 2024:	Amazon Amazon completed the disposal (Claimant's Exhibit 158)
13 February 2024:	From the Claimant to Amazon The Claimant sent an email to Amazon complaining that Amazon had disposed of the item (Xjs18, p. 6, Reference Material 2)
17 March 2024:	From Amazon to the Claimant Amazon sent an email to the Claimant informing her that disposal of the item had been completed (Claimant's Exhibit 154, 155)

It has been proven that the disposal took place on 17 March 2024 (Defendant's Exhibit 65). Judge Kikui did not direct that the evidence should not be disposed of. As a result, the Claimant lost the item in question, which the Claimant can prove is a genuine item and which it was necessary for the Claimant to recover to protect her reputation (due to the defamation arising from being accused of selling a counterfeit item).

When this occurred, the Claimant explored the possibility of pursuing a

case of judicial mismanagement by Judge Kikui regarding the way he conducted the trial. However, the Japanese Code of Civil Procedure rules (according to a judgement by the Supreme Court) state that, as a matter of formality, the direction of a lawsuit should rely on the exchange of arguments claiming and proving between the Claimant and the Defendant, and that the involvement of the judge using explanatory matters should be kept to a minimum. **If a Court actively conducts the direction of the trial, the Supreme Court decision states that this can be a reason for quashing the verdict**. Therefore, the Claimant had no choice but to abandon any claim of judicial mismanagement.

(3) Whilst ensuring the lawsuit was not disclosed to the public, Judge Kikui permitted an anonymous Amazon employee to intervene.

Amazon's lawyers argued that the Claimant should submit appeals regarding the acts of torts by Amazon claiming IP infringements (trademark violations) against the Claimant – which occurred during the lawsuit – by submitting a form to the technical support team on Amazon's website (like other sellers). Incidentally, on the Seller Forum where Amazon sellers exchange their opinions, a seller who ended up repeatedly refunding buyers in full without Amazon receiving the returned items was told by the Criminal Affairs Division of a Police Station that Amazon is entirely to blame in this case. They were given the opportunity to discuss the matter with Jasper Cheung due to its importance and urgency, but published an angry post revealing that Cheung has continually ignored them. This seller derided the Amazon technical support team as 'a call centre if simply

explained' (Claimant's Exhibit 5).

The Claimant made appeals by submitting documents to prove that the items were genuine to the technical support team, as Amazon's lawyers had instructed [Claimant's Note: Almost all the IP infringement (trademark violations) claims made by Amazon were, rather strangely, related to items registered by the Claimant a few years ago, hence the items' catalogues exist. Yet nobody, including the Claimant, had been selling these items at the time these complaints were made by Amazon. Therefore, the Claimant had to search through a pile of old files to retrieve the documents]. However, Amazon had no intention whatsoever of reviewing these appeals. Consequently, the Claimant's Account Health Rating deteriorated as a result Amazon of deducting penalty points for each (false) IP infringement they claimed she had committed, and her Amazon account was eventually suspended. Therefore, the Claimant made a complaint by writing the following in Claimant's Brief 28 on 27 December 2024.

> *In order to establish the crucial fact, which is that the Claimant's Amazon account was suspended due to Amazon's failure to respond to the Claimant's appeal, the Claimant asked an Amazon technical support employee to forward the message to Amazon's lawyers (four lawyers from Morrison Foerster) who introduced the participants on their side of the video screen in the previous trial (preliminary hearing) as 'four lawyers and G[redacted] (at the Legal Department of Amazon)'. However, the employee, who replied as if the AI had translated their words from English to Japanese, replied that the Claimant's message could not be forwarded to the Legal Department*

(Claimant's Exhibit 307).

The lawsuit has been kept undisclosed to the public and, with respect to 'G[redacted]', who was participating in the trial at the office of Amazon's lawyers, Judge Kikui had allowed 'G[redacted]' to participate simply by asking Amazon's lawyers, '(How many) employee(s) are participating?' However, Amazon did not disclose the name of the person nor their role in the company. The Claimant had felt there was something rather strange about this since the beginning of the trial and recently decided to check the names of the participants from Amazon. As if to protect the privacy of 'G[redacted]', 'G[redacted] never appeared on the video screen displaying the Amazon lawyers in their office in Tokyo, which was connected to the courtroom via Microsoft Teams. They revealed the name 'G[redacted]' when I asked who the personnel on the video screen were, but I could not see what 'G[redacted]' looked like even though s/he was participating as a representative of Amazon's legal department.

Though the Claimant does not particularly require any person to sit with her for emotional support at the trial in this lawsuit, she investigated whether anyone could participate in the trial. The Claimant learnt that it is necessary for her to clarify that the person whom she would like to participate in the Court was an important person needed to organise the issues relating to the case. Furthermore, the Claimant obtained information to indicate that the Court may ask for the other party's opinion when making a decision to allow the person to attend the trial, and that said person may not be able to

attend if the other party is opposed to the decision.[1] *That is to say, if the party involved in the lawsuit is a world-famous megacorporation, they are not bound by the same conditions which apply to the general public. Furthermore, although the person attended as the party concerned in this lawsuit, the Claimant could not even contact him/her as the person who is familiar with the case as she did not know the identity of this person (Claimant's Exhibit 6, pp. 9-10).*

In the Revised Code of Civil Procedure, it stipulates that to increase the convenience for the parties involved, court proceedings (preliminary hearings) can be conducted using a video conferencing system on the website, but only if the Court considers it appropriate after hearing the opinions of the parties concerned (Article 87, (2)-1, Revised Code of Civil Procedure). However, the Court does not allow a telephone conferencing system to be used in court proceedings (preliminary hearings) as it is not possible to check the other party through a monitor. Furthermore, when a video conferencing system is conducted, the Court stipulates that it is necessary to check if the (1) person on the line and (2) place of the person on the line are appropriate (Article 30, (2)-1, Revised Code of Civil Procedure). Moreover, Article 82 of the Constitution of Japan stipulates that trials shall be conducted and judgment declared publicly. Therefore, trials (preliminary hearings) conducted using a video conferencing system should be conducted in the same way as trials observed by the general public in open court, in that the judges are present and the judges and all relevant

[1] Nagayama Law Office, Can a third-party can attend in a trial and an arbitration? (https://www.nagareyama-lawoffice.jp/blog/2015/05/post-143-73070.html. Last visited on 17 December 2024)

parties are communicating via video and audio.[2]

Therefore, at the beginning of the trial (Preliminary hearing) on 30 January 2025, the Claimant demanded that Amazon disclose the name of the individual participating as a representative of Amazon in the trial and to show the person on the video screen.

In response, Amazon's lawyers refused to disclose the name of the person participating due to the fact that the Claimant had written 'G[redacted]', the name of the participant, in Claimant's Brief 28 and they notified the Court that they would only disclose the name of the person participating after the preliminary hearing is closed. Thus, a person who would be in a problematic position if their name is made public has been representing Amazon in the trial. The lawsuit filed by the Claimant is not a lawsuit in which the privacy of the parties involved needs to be protected [Claimant Note: The Claimant believes that if the identity of 'G[redacted]', Amazon's representative, cannot be disclosed then Jasper Cheung, the publicly claimed CEO, should participate instead].

The judge had no questions to pose regarding the person's identity and simply asked, 'Is that a person a member of the legal department?' Further, the judge did not request that the person's face be shown on the video nor that their full name be disclosed.

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[2] Tokyo Bar Association News Latter, LIBRA April 2024, Present and the Future of IT Implementation of the Civil Court Proceeding [First Part], Preliminary Hearing, Procedure of Clarifying Issues, Termination of Lawsuit, and Other Settlement Dates, Special Committee Member of Civil Lawsuits Issues, Hiroaki Inamasu (67th qualified lawyer), Vol.12 No.4 2024/4 (https://www.toben.or.jp/message/libra/pdf/2024_04/P02-17.pdf. Last visited on 12 March 2025)

(4) Judge Kikui did not discuss the issues that were listed as matters to be confirmed, scheduled to be discussed in the trial (preliminary hearing), and caused disadvantage to the Claimant.
The Claimant received a memorandum of the trial result which also contained the schedule for discussion in the next trial [Reference Material 5].

[Reference Material 5] Memorandum of the trial on 20 November 2024, p. 6

Chapter 2 Upcoming procedure

1. Matters to be prepared

Claimant (until 20 January 2025)

Answer to the matters of explanation in the memorandum of the trial on 20 November 2024, which were requested from the Claimant by the Court.

Defendant (until 20 January 2025)

(1) Admit or deny and rebut from page 13 onwards of Claimant's Brief 23 and Claimant's Brief 24.

(2) Admit or deny and rebut Items 23 and 24 in Appendix 1.

2. Next trial (preliminary hearing): 30 January 2025, Thursday, 15.00-17.00

Explain the matters mentioned above and argue the claims made in Appendix 2, Items 1 to 4.

Argue the issues in Claimant's Brief 14.

3. Next step

After checking the claims written in Claimant's Brief 14 onwards, the Defendant offers rebuttals.

In the preliminary hearings, Judge Kikui checked the assertions of both parties concerning the claims listed by the Claimant in the lawsuit as Appendix 1, Items 1 to 21, and Appendix 2, Items 1 to 4, based on the matters of explanation issued by the Court on 18 September 2024.
However, the acts of torts by Amazon [Claimant Note: false IP infringements (i.e. trademark violations)] had not ceased; therefore Appendix 1, Items 22, 23, 24, 25, 26, and 27 were added by the Claimant on 7 August, 27 September, 28 November, 20 November, 30 November, and 10 December 2024, respectively.
In the previous preliminary hearings (which took place from 14.00 to 16.00 on 26 September 2024 and from 15.00 to 17.00 on 20 November 2024), hearings were conducted on each item in Appendix 1 in order (i.e. starting from Item 1).
In the 10th preliminary hearing in the Court, which took place from 15.00 to 17.00 on 30 January 2025, the Claimant submitted the Brief (Claimant's Brief 28 on 27 December 2024) by the deadline (20 January 2025) requested by the Court so as to respond in writing to the 'memorandum of the trial (preliminary hearing) result and matters of explanation on 20 November 2025' [Claimant Note: The 11th preliminary hearing was scheduled to take place on 27 March 2025, but was cancelled

when the Claimant filed a judge recusal. It has been rescheduled to take place on 3 October with the same judge (as the Claimant's appeal was rejected)]. Having taken long hours of confrontation against Amazon lawyers into account, the Claimant spent many hours preparing her arguments on Items 1 to 4 of Appendix 2 and anticipating the expected counter-argument from Amazon's lawyers concerning the claims in Claimant's Brief 14.

With regard to the acts of torts listed as Items 1 to 4 of Appendix 2, it became obvious from the Claimant's investigation regarding Item 3 that Amazon gave preferential treatments to sellers who registered their brands in the Amazon Brand Registry. This constitutes the fact that Amazon's act was 'performed by humans which deviates from a naturally occurring competition in the vertical competitive relationship', which is needed for the injunction order of Article 24 of the Antimonopoly Act to be delivered against Amazon. However, the matter of explanation issued by the Court was written in Item 3 of Appendix 2 as 19 emails simply being misdelivered by Amazon. Therefore, a correction should have been made.

Because the memorandum stated in writing that **the Claimant's claims concerning Items 1 to 4 of Appendix 2 are to be confirmed** at the next trial, Judge Kikui should have confirmed both party's assertions. However, Judge Kikui only addressed Item 2 by asking Amazon to explain how the system works 'for setting the upper limit and the lower limit of a selling price'. The judge then asked the Claimant to confirm whether she knew that she could set a selling price for an unclear purpose.

The claim in Item 2 was that when the Claimant lowered the price elsewhere while keeping the price on Amazon the same (2480 yen for a shopper bag, a price which has not changed over the years), Amazon removed the Claimant's items, informing her that 'the price of the item is too high. It cannot be sold unless the price is set at the upper limit of 3 yen and the lower limit of 2 yen', and accused the Claimant of violating their selling policy. Consequently, the Claimant could not sell the items kept in Amazon's warehouse. Rendering the Claimant unable to sell her item unless she sets the price to the upper limit of 3 yen and the lower limit of 2 yen constitutes business interference. This ridiculous price setting was simply applied as an excuse which can be claimed as a system error in the event Amazon is accused of imposing a seller's pricing. In actuality, Amazon does indeed impose a seller's pricing and implies that this can also be applicable if a seller lowers the price elsewhere. The Claimant therefore claims that Amazon interfered with her business, preventing her from conducting her business freely. Thus, such act constitutes a violation of the Antimonopoly Act as it involves the use of a superior bargaining position.

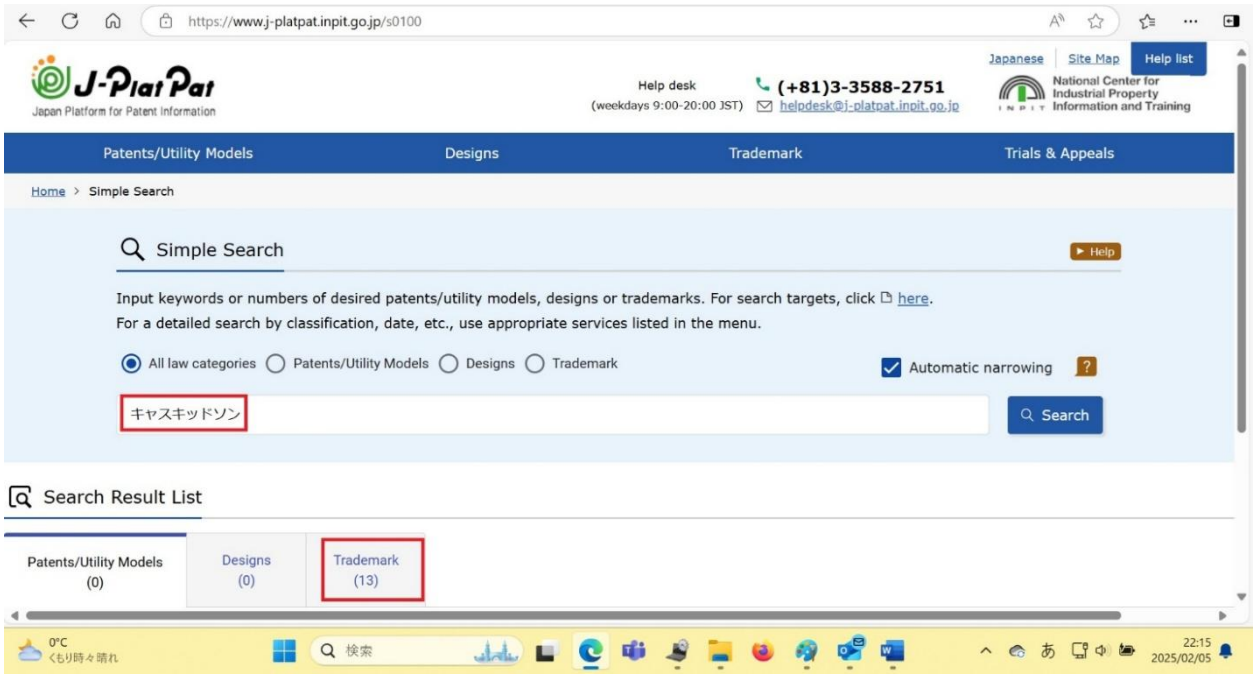
Therefore, Judge Kikui, who confirmed such matters, [Claimant Note: He confirmed how the system works for setting the upper limit and lower limit of a selling price and whether the Claimant knew that she can set these limits. However, the Claimant has not changed the price of the item in question over the years.] became unsure as to how to progress the Claimant's claim and decided to temporarily list this claim as pending.

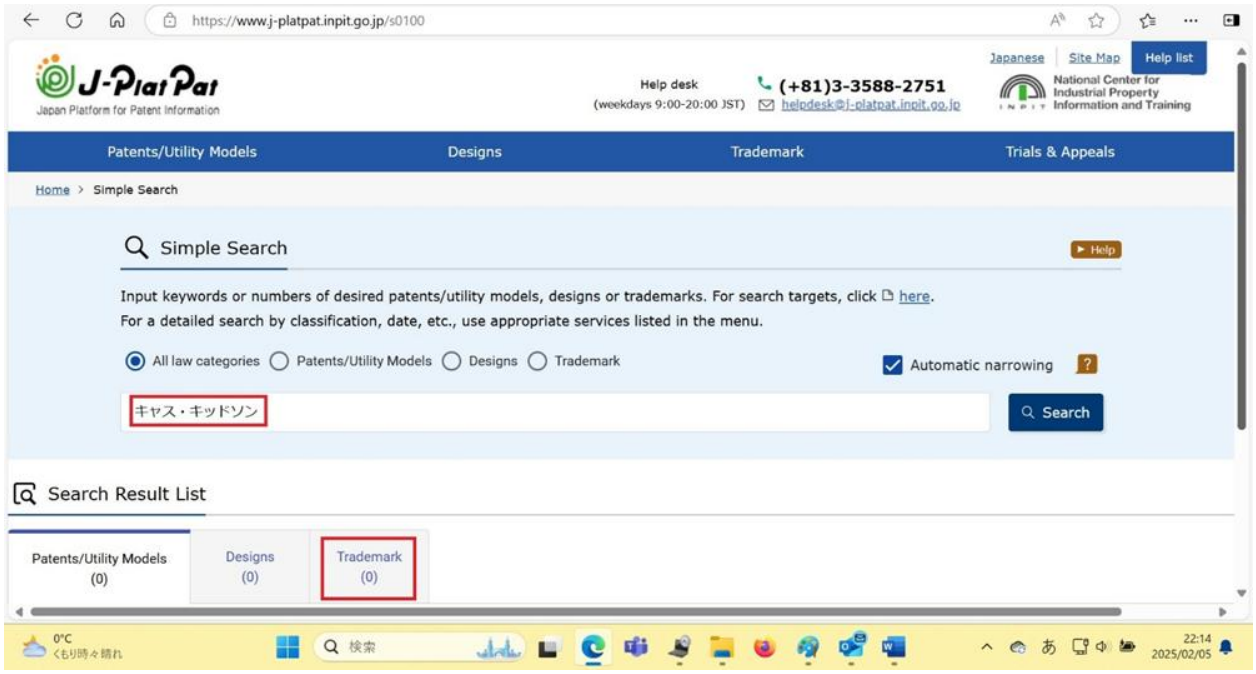
(5) Judge Kikui selected an issue which was not on the list to be argued in the preliminary hearing. Moreover, having imposed his opinion, which the Claimant found difficult to understand, he compelled the Claimant to agree that the obvious fact whereby Amazon themselves committed an IP infringement (trademark violation) would not be discussed in the Court. Judge Kikui did not discuss the matter of explanation from Amazon which was listed to be argued at the preliminary hearing and was unfavourable to Amazon, but did pick up an IP violation by Amazon which was not on the list. Regarding the brand Cath Kidston, which Amazon itself sells as a seller, the judge said to the Claimant, 'You claimed that Amazon registered Cath Kidston as the one with a dot [Claimant Note: Amazon registered "Cath Kidston" as "Cath dot Kidston" in Japanese]. I understand such registration is wrong; however, it is different from your claim that their Brand Registry itself is a problem. What they had registered was wrong is different from saying the rules of their Brand Registry is wrong. The brand name which Amazon had registered was simply wrong and the system Amazon offers businesses to register as brands is different. The way in which a brand can register their brand was wrong. Amazon disregarding the Japanese trademark system is different from the Amazon Brand Registry'.

Judge Kikui conducted a judicial proceeding in support of Amazon by aggressively pressing remarks that more or less meant the same, but were hard for the Claimant to understand. [Claimant Note: The Claimant understood that Judge Kikui had explained how Amazon incorrectly registered the brand, and that this was irrelevant to their Brand Registry.

However, the explanations proffered by Judge Kikui were insufficient to convince the Claimant]. Ultimately, the Claimant was unilaterally forced to accept the judge's ruling that it is okay for the Court not to pursue this issue.

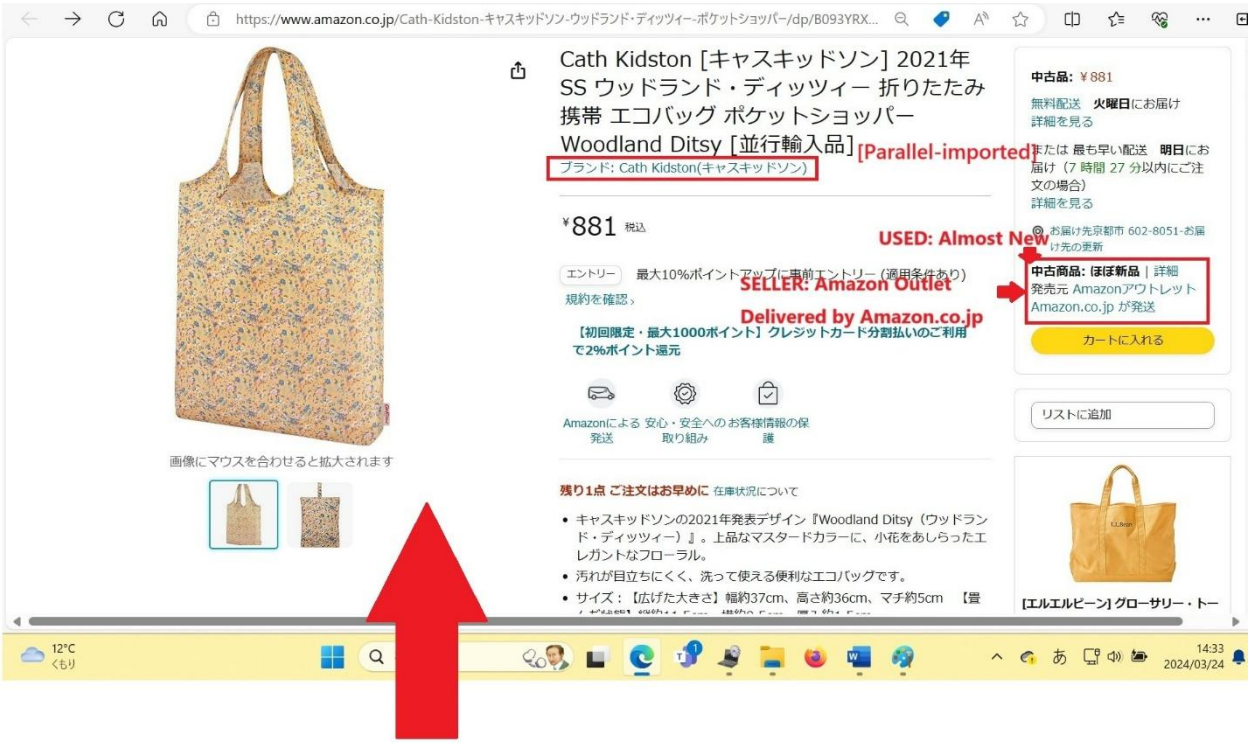
The Claimant was selling genuine items of Cath Kidston, which Amazon had informed her she can register as the 'Brand: Cath Kidston [The Japanese language translated from Cath Kidston registered at the trademark office in Japan]'. Nevertheless, the Claimant received an act of tort in which it was asserted by Amazon that the use of 'Cath Kidston' is an IP infringement (Appendix 1 Item 20). The Claimant asserted that Amazon, a competitor of the brand, itself violates the IP (Trademark) of Cath Kidston by registering Cath Kidston's Brand Name as 'Cath (bullet point) Kidston' in Japanese for their own Cath Kidston brand store. However, the rights owner of Cath Kidston has not been registered as such. In fact, online search results for 'Cath (bullet point) Kidston' in Japanese reveal no trademark found on the J-PlatPat (Japan Platform for Patent Information). Therefore, Amazon itself conducted a trademark violation and infringed the IP rights of Cath Kidston as stipulated in Article 4 (1) (xi) of the Trademark Act, which designates that unregistrable trademarks are those identical to, or even similar to, another person's registered trademark (Claimant's Exhibit 7, pp. 41-42).





Furthermore, the Claimant claimed that, whilst asserting that the use of 'Cath Kidston' on the catalogue created by the Claimant was an IP violation and removing the catalogue in question, Amazon is selling the item (which it is claimed was unsellable and which it purchased from the Claimant) as

'Almost New' under the catalogue of the Claimant being accused of the above-mentioned IP infringement (Claimant's Exhibit 7, pp. 39-41).



Catalogue created by the Claimant, for which Amazon asserts that the use of 'Cath Kidston' is an intellectual property (IP) infringement. Amazon is selling the item (which it claimed was unsellable and which it purchased from the Claimant) as 'Almost New' under the catalogue of the Claimant being assused of the above-mentioned IP infringement.

The Claimant not only demonstrated that Amazon's act was an act 'performed by humans which deviates from a naturally occurring competition in the vertical competitive relationship', which is needed for the injunction order of Article 24 of the Antimonopoly Act to be delivered, but also explained that Amazon removed only the Claimant from their competitors by abusing its position as a platformer (Exclusionary Private Monopolization). The Claimant also asserted that Amazon violated the Act on Securing Quality, Efficacy and Safety of Products Including Pharmaceuticals and Medical Devices (PMD Act) concerning the sale of their Cath Kidston products in this lawsuit (Claimant's Exhibit 7, pp. 36-48).

As stated in [Reference Material 5], Cath Kidston, as referred to in Claimant's Brief 12, was not included in the list to be discussed in the preliminary hearing.

It was not listed as a matter for the Claimant who needed to prepare for the preliminary hearing handed by the Court. Furthermore, it was not a matter of explanation requested by the Court for the Claimant to answer, as written in the memorandum (see 2. Next Trial [Reference Material 5]). This sudden and incomprehensible claim by Judge Kikui (who told the Claimant that she should accept the Court not discussing the issues regarding Cath Kidston) resulted in the superior bargaining position imposed on the Claimant by Amazon being unilaterally limited to two points [Claimant Note: Judge Kikui unilaterally made the Claimant agree that she accepts that the arguments to be discussed on the Amazon Brand Registry in the lawsuit are (1) it free-rides on someone else's trademark and (2) it will provide disbenefits to the Claimant regarding registered brands in Amazon not being disclosed]. Therefore, in Defendant's Brief 10 submitted by Amazon on 14 March 2025, Amazon wrote 'In the first place, it can be said that the Claimant has not fully established her claim of required fact that Amazon has a superior position over the Claimant. Moreover, the Claimant has not established her claim of required fact that significant damage has been caused or is likely to be imposed upon her, as set out in Article 24 of Act on the Prohibition of Private Monopolization and Maintenance of Fair Trade (Antimonopoly Act)' (p. 10).

Amazon also asserted in the Brief that the 'Amazon Brand Registry is a system to protect trademark owners' (despite violating the trademark of

Cath Kidston). Judge Kikui, who should follow Article 76, Item 3 of the Japanese Constitution (All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws) and work as a guardian of the law, did not clarify whether the use of Cath Kidston by Amazon can be applicable to Article 4 Section 1 Number 11 of the Trademark Act (No trademark may be registered if the trademark is identical with, or similar to, another person's registered trademark which has been filed prior to the filing date of an application for registration of that trademark, if such a trademark is used in connection with the designated goods or designated services relating to that registered trademark). Moreover, unilaterally demanding that the Claimant agree to the issue of Cath Kidston not being included (i.e. the judge tried to make the issue irrelevant) would mean that Judge Kikui abandoned his crucial responsibility[3] for protecting the rights of people in Japan, as he should conduct a fair trial based on the laws and the Constitution of Japan.

(6) The preliminary hearing held on 30 January 2025 was scheduled to last for two hours. However, it was closed after one hour and only the Claimant had to leave the Court room.
Because it was scheduled for two hours, the Claimant prepared on the basis of how much could be achieved during this time [Claimant Note: The Claimant prepared counter-arguments for the matters listed as being

[3] Impeachment Court for Judges 02 Japanese Impeachment System (https://www.dangai.go.jp/intro/intro2.html. Last visited on 21 March 2025)

discussed in the preliminary hearing.]. In the preliminary hearing on 30 January 2025, Judge Kikui did not pick up the matters which were schedule to be discussed; instead, he unexpectedly brought up a matter which was not on the list through his incomprehensible argument. In effect, this was the same as the Claimant withdrawing her claim concerning the issue of Cath Kidston [Claimant Note: The Claimant, who is not even an experienced lawyer, was not prepared for the issue, became confused, and had no choice but to accept Judge Kikui's assertions as to what he believed needed to be addressed].

The preparation the Claimant had undergone for the expected two hours was therefore a complete waste of time. If Judge Kikui needed to secure some kind of arrangement only with Amazon's lawyers and anonymous employee(s) claiming to work at the legal department of Amazon, he should not have set the time for the preliminary hearing as two hours. Instead, he should have set the hearing for an hour and they could have continued afterwards if they wished.

(7) The work undertaken by the Claimant, which was associated with retrieving the disbenefits in the lawsuit repeatedly imposed by Judge Kikui, are imposing a considerable burden on her.

Whenever the preliminary hearings were held, the Claimant received some form of disbenefits from Judge Kikui, which include the psychological distress of being told that 'I will treat the case as if no claim from the Claimant exists', removing the matters of explanation (which are inconvenient for Amazon) by the Court, and being demanded to condense

and submit 10 of the Claimant's Briefs into 10-page summaries by cutting her sleeping hours. Each time, the Claimant made a complaint by writing it down in the form of an assertion through the aforementioned Claimant's Briefs. Concerning the above-mentioned (6), the Claimant also made a complaint by writing it down as an assertion in Claimant's Brief 31 on 19 March 2025 (Claimant's Brief 8, pp. 13-17).
If the preliminary hearings had been conducted fairly, the Claimant would not have had to express dissatisfaction by writing her complaints down in the form of assertions in the Claimant's Briefs. These have not only caused the Claimant's Briefs to become unduly lengthy, but also placed economic and psychological burdens on the Claimant.

3. Due to the above-mentioned reasons, the facts regarding Judge Kikui lacking the 'ability or quality required for a fair judgement' exist.

4. The Court does not need to make a decision of summary dismissal.
The law states that 'if the judge recusal which has been done with an obvious reason of delaying the lawsuit, it should be rejected at the decision' (Article 30 of Judge Impeachment Act).
The next preliminary hearing was scheduled to take place on 27 March 2025. Each time, Judge Kikui set the deadline for Amazon to submit their rebuttal at a date that was rather close to the preliminary hearing. Therefore, although the Claimant was supposed to receive the Defendant's Brief (10) on 14 March 2025, which was the deadline, she actually received it on the following afternoon of 15 March when it was

sent by post from an Amazon lawyer. The Claimant then worked for four consecutive days without getting sufficient sleep to finish Claimant's Brief 31, which is a rebuttal against the Defendant's Brief (10), and submitted the Brief and this Motion for a Judge Recusal on 19 and 21 March, respectively. In other words, the Claimant has completed all the rebuttals against Amazon. Therefore, this motion is not being put forward to delay the lawsuit and it is obvious that Article 30 of the Judge Impeachment Act is not applicable.

Chapter 3 Conclusion

For the reasons presented and discussed by the Claimant in this paper, the motion for a judge recusal against Judge Kikui should be accepted.