

SAMPLE MEMORANDUM

TO: Executives for Division of Consumer Protection

DATE: May 14, 2013

Issues Presented

1. What kinds of measures can the Consumer Affairs Agency use for dealing with the "Konjac jelly" under the existing laws?
2. Among the possible measures, what is our target in limited time?

Summary of the Facts

We recently got news that 22 people's death could be linked with eating "Konjac jelly"¹. Konjac jelly is a popular food. Konjac is a binding ingredient for the jellies but unfortunately, konjac's benefit can also make it stick to the throat, causing a constriction of the airways and choking². With some media coverage, which were strongly against our agency, and administrative instructions by Ministry of Agriculture, Forestry and Fisheries, two industry associations had already made a press release about future preventive actions including adding warning signs on the packages for children and the elders³. Even after such positive actions by the industries, we could see more accidents related with eating Konjac jelly.

Discussions

The first issue is finding our basis to tackle with the accidents. Under the present existing statutes and regulations, we can, at least, do assessment of risk, disseminate relative information, and ask more preventive actions against the accidents but no express authority to make manufactures change designs and/or warnings in Konjac jelly via meaningful sanctions. Please let me explain to you about their applicability to our solving works.

Article 4 of the Act for Establishing Consumer Affairs Agency and the Consumer Affairs Advisory Committee, Act No. 48 of Law, June 5, 2009 shows our functions with helpful statutory authorities. In my understanding, two of them are most important. One is the Consumer Safety Act, Act No.50 of June 5, 2009⁴. According to art. 23 of the act, the Secretary-General of the Consumer Affairs Agency has delegated authorities from the Prime Minister. They includes Consolidation and Analysis (art. 13), Consumer Alert (art. 15), Recommendations and Orders to Enterprises (art. 17), Order for Recall, etc. (art. 19) and we can use the Consumer Affairs Advisory Committee for advice (art. 20). The other powerful statute for us is the Food Safety Basic Act, Act No. 48 of 2003 but it is managed by Cabinet Office, Government of Japan⁵. So, I have to remind you that we can mainly rely on Consumer Safety Act but have no express authorities under the present laws to regulate design and warning in konjac jelly directly.

The second issue must be depend on our strategy. I personally think we should consider two steps approach by having some waiting period before going to legislative process with all possible actions under Consumer Safety Act. I mean we need about 6 month-1 year for analysis and recommendation to industries, wait for additional surveillance to the accidents for three years (preliminary time setting), and we will prepare for new legislations in case we think it necessary and proper to do based on our statistics, public opinions, and political pressures.

Lastly but not least, please consider seriously about our goal. We aim to build a society where consumers and ordinary citizens play a leading role by promoting consumer interest, assuring reasonable consumer choice, and managing administration related with quality information of consumer goods⁶. At present, we cannot easily conclude direct regulatory affairs in design and warning are preferable for promoting consumer interest but seek more effective tools as soon as possible.

¹ See, e.g., National Consumer Affairs Center of Japan, The lists of related accidents of Konjac jelly, Nov. 7, 2008, available at <http://www.kokusen.go.jp/news/data/sn-20081107.html>

² See, e.g., Food navigator.com, Konjac jellies recalled from US market, Jan. 18, 2002, available at <http://www.foodnavigator.com/Legislation/Konjac-jellies-recalled-from-US-market>

³ See National Consumer Affairs Center of Japan, The lists of related accidents of Konjac jelly, Nov. 2007, available at http://www.kokusen.go.jp/news/data/n-20070705_1.html#gyokai

⁴ Our main supporting act is the Consumer Safety Act. See Consumer Affairs Agency, Jurisdiction of Consumer Affairs Agency, available at http://www.caa.go.jp/en/pdf/090901_consumersafetyact.pdf

⁵ Cabinet Office, Laws, available at <http://www.cao.go.jp/en/laws.html>

⁶ See The Act for Establishing Consumer Affairs Agency and the Consumer Affairs Advisory Committee, art. 3, Act No. 48 of Law, June 5, 2009. See also Consumer Affairs Agency, For a Society with security, safety, and comfortable living, 2010 ed. available at <http://www.caa.go.jp/en/pdf/caa.pdf>