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Legal Updates of Japan　April 1, 2012

Anti-Monopoly Law

1.　Merger of Nippon Steel and Sumitomo Metal Industry

The Japan Fair Trade Commission (the "JFTC") approved the merger of Nippon Steel and Sumitomo Metal Industry on December 14, 2011. Both companies plan to conclude a merger agreement in April, 2012 and complete the merger in October, 2012.

The merger will create the second largest crude steel manufacturer following Arcelor Mittal. The JFTC started its first examination of the merger at the end of May 2011 and its second examination at the end of June 2011. The length of the examination was about six months which is said to be uncharacteristically short. This examination typically takes one year.

For a pre-merger notification under the Japanese Anti-Monopoly Law, there is a 30 calendar day "no-close" waiting period, commencing with the JFTC's formal acceptance of the notification. If the JFTC takes no action over the course of the 30 day period, the transaction can close. The JFTC may shorten this 30 day period. If the JFTC requests additional information, including a report or materials necessary for examination within such 30 day period, the examination will continue until whichever is later, 120 days after the acceptance of the notification or 90 days after the acceptance of such report.

2.　Cartel by Wire-Harness Makers

The JFTC imposed an administrative fine (called surcharges) on Yazaki Corporation, Sumitomo Electric Industry and Fujikura in the total amount of approx. 13 billion yen on suspicion of their collusion on wire-harnesses for use in automobiles.

The JFTC imposed an administrative fine in the amount of approximately 9.7 billion yen on Yazaki Corporation, which was the largest administrative fine that the JFTC has imposed on a single company. Under the current

Anti-monopoly Law, the amount of an administrative fine is fixed at 10% (in case of manufacturers) of the domestic annual sales of goods in question over the period of the violation (up to 3 years).

Furukawa Electric Industry, which took part in the cartel but alerted the JFTC to the collusion, escaped the imposition of an administrative fine under the JFTC leniency policy. However, as the U.S. Department of Justice and the EU Commission initiated the cartel investigations, Furukawa Electric Industry has agreed to plead guilty for its role in the cartel and to pay the U.S. Department of Justice US$200 million (approx. 15 billion yen). Three executives of Furukawa, who are Japanese nationals, have also agreed to plead guilty and to serve prison time in the United States.

3. Cease and Desist Order and Surcharge Payment Order against Toys "R" Us Japan

On December 13, 2011, the JFTC issued a cease and desist order and an administrative fine (or surcharge) in the amount of 369.08 million yen on Toys "R" Us Japan for abusing its superior bargaining position in relation to its suppliers. Notably, the JFTC held that Toys "R" Us Japan unjustly required its suppliers to accept unsold goods and to discount prices payable by it. The Japanese Anti-Monopoly Law prohibits an abuse of bargaining position against trade partners.

4. Cease and Desist Order against Adidas Japan

On March 2, 2012, the JFTC issued a cease and desist order against Adidas Japan after it found that Adidas Japan had instructed its retailers to sell toning shoes "EASYONE" at the price designated by it. The Japanese Anti-Monopoly Law prohibits sellers from designating the resale prices of their goods to be sold by their buyers.

<u>IP Law</u>

1. Registration of Patent License

A licensee of a patent may not assert its license against an assignee of a patent and must cease use of a patent upon the assignee's demand, unless the patent is registered with the Japan Patent Office, albeit a licensee may file a claim against the licensor (the assignor of a patent) for its damages caused by a breach of contract. However, a patent license will be valid and effective against any assignee of a patent without registration under the amended Patent Law, which will become effective from April 1, 2012.

2. Protection of Publicity Right

On February 2, 2012, the Supreme Court confirmed that use of names and likeness of celebrities are protected under publicity rights. Notably, the court held that celebrities shall have the publicity right to exclusively use, for example, their images, in order to attract customers for the sale of goods and shall be entitled to claim damages for infringement of their right of publicity, provided that an unauthorized use of their images may be permitted if it is not used to attract customers. ("*Pink Lady*" case).

3. Trademark Infringement by Rakuten

Rakuten, a major online shopping mall operator, displayed certain goods bearing the logo “chupa chups“. Perfetti Van Melle S.p.A., who administers the “chupa chups” candy trademark, filed a lawsuit against Rakuten for alleged trademark infringement. The Tokyo District Court dismissed the suit, holding that Rakuten only provided e-commerce services for sellers to sell such goods online and did not sell the goods bearing the infringing trademark. However, the Intellectual Property High Court rendered a decision on February 14, 2012, stating that even if goods which possibly bear an infringing trademark is placed for online sale, Rakuten would be liable for trademark infringement if it neglected to delete the goods bearing the infringing trademark from its website within a reasonable time.