

## Defense Against an Injunction by Copyright Infringement

The Japanese trademark holder and distributor of a kind of floating neck collars for infants brought the second of two litigations against a defendant distributor of essentially the same floating neck collars in Japan, after the first claim (described above) appeared unwinnable. This time, the plaintiff distributor sought an injunction on distribution of the collars' manuals, based on a claim of copyright infringement, among other remedies.

An injunction can be sustained for copyright infringement if the defendant copied a creative work without permission of the rights holder. In this case, the plaintiff distributor claimed that our client's distribution of their infant collar manual's explanatory text and illustrations violated rights of reproduction and transfer, as well as moral rights.

After successfully defending this client against the plaintiff distributor's previous action, KLO was engaged to represent the defendant distributor again. Our best option was an argument that a product manual lacks the creativity required to be a copyrightable work. There were effectively no prior cases on the creativity element of manuals, and so the case required significant research on the general concept of creativity under Japanese law.

In the end, KLO successfully argued that explanatory text on a manual involves no creativity, and the court rejected the plaintiff's second attempt at an injunction on the sale of our client's products.

Locations in which this case decision was published or cited:

- Japanese Court Website: [http://www.courts.go.jp/app/hanrei\\_jp/detail7?id=86083](http://www.courts.go.jp/app/hanrei_jp/detail7?id=86083)