

# HAYABUSA ASUKA

## LAW OFFICES

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### INTRODUCTION TO OUR IP PRACTICES

Hayabusa Asuka Law Office has provided representation services for the management and registration of trademark rights and design rights on behalf of fashion-brand clients since the establishment of our office.

Trademark rights and design rights are the fundamental rights for protection of the future value of brands when clients release new products or services.

Also, trademark rights and design rights function as a check on whether or not there are any potential disputes (in the sense that they serve as a kind of “guidance” that the subject logos and designs do not infringe existing rights held by other entities).

The application for registration of trademark rights and design rights tends to be conducted prior to the launch of products and services since the registration procedure of trademark rights and design rights generally takes 6 months. Therefore, when the registration fails, it is not rare that the logos and designs may have to be changed drastically.

Hayabusa Asuka Law Office not only provides strong representation services for management and registration, but also pre-research services including research and reports before the application on whether similar rights have already been registered. Therefore, since we apply for rights having a truly high possibility of successful registration, Hayabusa Asuka Law Offices has achieved a high success rate of registration.

Also, we can utilize our substantial litigation experience in such registration procedures. We have had several successful experiences in which we were able to accomplish

registration by utilizing opinion letters, appeal procedures in the Patent Office, and litigation procedures in the Intellectual Property High Court, even once the Patent Office had denied such registration at the first stage.



Furthermore, Hayabusa Asuka Law Offices also provides valuable services for international applications based on the Madrid Protocol by utilizing international legal networks. For example, in a case where there is commencement of the sale of new products and services in 5 countries concurrently, we will be able to apply for registration of these trademarks rights in the 5 countries simultaneously, and if by chance such application is denied, we will connect to local law firms and deal with the problems in question immediately. This service has received a good response from our clients, especially those conducting internet businesses.

Our IP department is able to cover all phases of IP including registration and management of IP rights, support for its utilization by license agreement/contract, handling disputes if infringement occurs, as well as support for our clients' overall IP strategy.

We would be very pleased to support you when you are considering a launch of new products and services in the future.

## JAPAN APPROVES A BILL TO JOIN THE HAGUE CONVENTION

### ➤ **Background Information**

On May 22, 2013 unanimous approval by the upper house of Japan's parliament was given to a bill which will allow Japan to join the 1980 Hague Convention on the Civil Aspects of International Child Abduction ("the Convention"). The lower house had previously given its approval to the bill. It is not expected that the bill, which still needs to be ratified, will begin to take effect before the end of March 2014. In the meantime, related bills must be passed through the Diet, including the bill containing the proposed Implementing Act that was submitted this past March.

The preamble of the Convention sums up its objective as follows:

*“...to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access.”*

The complete text of the Convention can be found at:

[http://www.hcch.net/index\\_en.php?act=conventions.text&cid=24](http://www.hcch.net/index_en.php?act=conventions.text&cid=24)

➤ **Basic Rule of the Convention**

Generally speaking, where there is “wrongful removal/retention” of a child to/in one member country, such country must return the child to the member country that is his/her place of “habitual residence,” if a request is made for such return within one year of the wrongful removal/retention.

Article 2 of the Convention provides that,

*“The removal or the retention of a child is to be considered wrongful where -*

- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and*
- b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.*

➤ **Exceptions to the General Rule**

The Convention contains a number of exceptions to the above-noted general rule, including: 1) if it can be demonstrated that the child is now settled in his/her new environment; 2) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; 3) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation; 4) if it is determined that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of the child’s views; or 5) if the return would not be permitted by the fundamental principles of the requested country relating to the protection of human rights and fundamental freedoms.

➤ **Commentary**

Japan will be the last G8 nation to join the Convention. The decision to join appears to have been prompted by a number of highly publicized cases where foreign spouses in broken international marriages were denied access to their children. In some of these cases, a Japanese mother returned to Japan with her children from her husband's native country without her husband's consent and without allowing her husband any access, even though he had obtained a custody order from a court in his native country. The Convention would require that Japan make efforts to return such children to their home country in accordance with court orders in prescribed circumstances, or through mediation or reconciliation procedures.

Concern about the mother/children escaping domestic violence has often been cited as one of the reasons for the resistance to joining the Convention. In addition, there has been concern about the possibility of the children themselves objecting to living in a country other than Japan, but being returned anyway as a result of being deemed not to be mature enough to make such decisions.

Meanwhile, many who support Japan's joining of the Convention remain concerned about whether this step will lead to any real impact, especially considering that Japan's laws concerning divorce and children's custody are very different from other countries (especially western ones). For example, Japanese law does not recognize joint custody. In fact, Takao Tanese, a law professor at Chuo University, points out that, even once Japan officially joins the Convention, there are "numerous loopholes in Japanese family law that could be cited to prevent the return of children to their original country of residence, including the suspicion – without any burden of proof – that the children could be exposed to harm or that the mother's welfare could be affected."

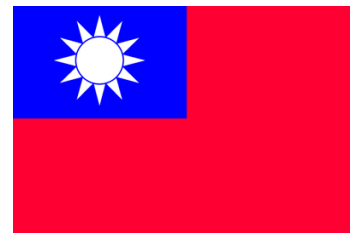
➤ **Conclusion**

Overall, this step by Japan's parliament appears to indicate an intention to attempt to solve the problem of international child abduction. However, joining the Convention is only the first step in a long process. Whether or not this step will eventually lead to a meaningful impact will likely depend on how the Implementing Act is enforced by the courts/police and whether amendments and/or re-legislation of some of Japan's current family laws result are made and enforced.

**FOCUS ON ASIA PACIFIC RIM -TAIWAN**

Since establishing our office, we have regularly assisted commercial transactions which involve Taiwanese corporations. Upon providing legal services for such transactions, the enforceability of judgments is sometimes one of the issues to be considered, especially when reviewing a dispute clause in the agreement.

Despite the fact that Japan and Taiwan have not had official diplomatic relations, the exchange taking place among the citizens of the countries is very close. However, due to the lack of official diplomatic relations, issues concerning service of a summons could be an obstacle to enforcing a judgment



both in Japan and Taiwan. For most of the cases where a suit is filed across borders, service should be performed in accordance with international judicial assistance between the two countries. Otherwise, the judgments rendered might not be enforced due to reasons relating to unlawful service. In this regard, as Japan and Taiwan do not have an official diplomatic relationship, the issue of how to perform service lawfully is still left as an open question except in the case where a defendant responds to an action voluntarily. Generally speaking, when a defendant responds to an action, lawful service is deemed to have been performed, and therefore, there is a chance that a judgment related thereto would be enforced either in Japan or Taiwan. In fact, cases exist in which a Japanese judgment was enforced in Taiwan. Also from the standpoint of reciprocity, it appears that a Taiwanese judgment can be enforced in Japan (although there has not been a precedent case in Japan).

On the other hand, arbitration is considered a more stable way to resolve disputes. Although Taiwan has not ratified the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards - the "New York" Convention, Taiwan enacted a law which provides similar rules to the UNCITRAL model. In fact, a case exists in which a Japanese arbitral award was enforced in Taiwan. Although there has not been a precedent case in Japan yet, Japanese arbitration law defines similar conditions as those stipulated in the UNCITRAL model, and therefore, it is expected that the Taiwanese arbitral award can be enforced in Japan.

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**EDITORS' NOTE**

As you probably already know, Tokyo has been chosen to host the 2020 Summer Olympics. It was quite early in the morning in Japan when International Olympic Committee president Jacques Rogge announced this great news, but this topic of course received non-stop coverage throughout the preceding night by all the major media.



We hope to be able to meet with all of you in Tokyo during the 2020 Summer Olympics!

- The Newsletter Team

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