Hearing Decision against Daiichikosho Co., Ltd.
(Interference with a Competitor's Transactions by an Online Karaoke Service Provider)
(Tentative Translation)

February 18, 2009
Japan Fair Trade Commission

On December 5, 2003, the Japan Fair Trade Commission decided to commence hearing procedures against the respondent Daiichikosho Co., Ltd. (hereinafter the "Respondent"), and had hearing examiners carry out the hearing procedures. On February 16, 2009, the hearing decision was announced to the Respondent, pursuant to the provisions of paragraph 1, Article 54 of the Antimonopoly Act prior to amendment by Law No. 35 of 2005.

1. Outline of the Respondent

Name of entrepreneur	Address
Daiichikosho Co., Ltd.	5-5-26 Kita-shinagawa, Shinagawa-ku, Tokyo

2. Progress

October 31, 2003: Recommendation was made (Recommendation No. 28 of 2003)
December 5, 2003: Decision to commence hearing procedures
February 3, 2004: First hearing

July 12, 2007: 22nd hearing (completion of the hearing procedures)
November 4, 2008: Forwarding of draft decision
November 17, 2008: Filing of objections to the draft decision and offering of direct statement
January 15, 2009: Hearing on the direct statement
February 16, 2009: Hearing Decision

3. Outline of decision

1) Outline of the violation

Since around the end of November 2001, the Respondent had prevented Nippon Crown Co., Ltd. (hereinafter "Crown") and Tokuma Japan Communications Co., Ltd. (hereinafter "Tokuma") from approving the use of songs under management (Note) of Crown and Tokuma by Xing Inc. (hereinafter "Xing"), and had Crown and Tokuma notify wholesalers of online karaoke equipment that Xing is not allowed to use the Songs under Management or the Songs under Management cannot be used on online equipment of Xing (hereinafter "Violation of the Case").

Note: Refers to lyrics and melodies recorded on records commercialized and sold in Japan prior to enforcement (January 1, 1971) of the Copyright Act (Act No. 48 of 1970), among lyrics and melodies of which the right of exclusive recording was given to record companies by the lyric writers or composers, pursuant to contracts related to licensing of songs referred to as "Exclusive Contracts" between the lyric writers or composers and the record company. Hereinafter, songs under management of Crown and Tokuma are referred to as the "Songs under Management."

2) Outline of the principal text of decision

a. The Violation of the Case committed by the Respondent violates the provisions of Article 19 of the Antimonopoly Act, and is recognized as having already ceased.
b. No special measure is ordered to the Respondent in relation to the Violation of the Case committed by the Respondent.

3) Points at issue in the case
a. Importance of songs under management for online karaoke equipment (Issue 1)
b. Whether there are effects on transactions of online karaoke equipment (Issue 2)
c. Unfairness of competitive measures (Issue 3)
d. Application of Article 21 of the Antimonopoly Act (Issue 4)
e. Need for cease and desist measures (Issue 5)

4) Outline of judgment on points at issue
a. On Issue 1 - Importance of songs under management for online karaoke equipment

The importance of songs under management for online karaoke is recognized as these songs are indispensable for online karaoke service providers since many middle-aged customers of “snack” (hostess bars) and bars, which are referred to as the night market, enjoy singing them on karaoke. Furthermore, the Songs under Management are popular among those available on online karaoke, and the actual numbers and ranks of performance of these songs have been considerably high. Therefore, these songs are recognized as important.

b. On Issue 2 - Whether there are effects on transactions of online karaoke equipment

The Respondent became to be ranked first in the industry in the numbers of online karaoke equipments installed by March 1996 at the latest, and has retained that position since then. The influence of the Respondent in transactions field of online karaoke equipment is noteworthy.

The Respondent determined a policy to thoroughly attack business activities of Xing, and made the policy known among sales staffs of the Respondent, along with the decision to prevent Crown and Tokuma from approving use of the Songs under Management by Xing and to notify related parties that the Songs under Management cannot be used on Xing online karaoke equipment. As can be seen, the Respondent conducted business activities under corporate policy, and the Violation of the Case are not incidental or sporadic but rather were committed organizationally by the company.

Based on these facts, the Violation of the Case are highly likely to seriously affect the transactions of Xing online karaoke equipment, because these acts were committed by the Respondent, which is an influential entity in the online karaoke business, organizationally pursuant to corporate policy, and also taking into consideration the importance of the Songs under Management, it can be easily surmised a good number of wholesalers and others would terminate handling or use of Xing online karaoke equipment because of the concern over inability to use the Songs under Management on such equipment.

c. On Issue 3 - Unfairness of competitive measures

As a countermeasure or as revenge to the filing of the lawsuit by Xing and Brother Industries, Ltd. (hereinafter “Brother Industries”), the parent company of Xing, in relation to infringement of patent rights, the Respondent utilized the importance of songs under management of Crown and Tokuma with the sole purpose of thoroughly attacking the business activities of Xing, made Crown and Tokuma suddenly reject renewal of the licensing agreements that had been concluded peacefully and continuously with Xing, and notified wholesalers and others that songs under management of Crown and Tokuma are no longer usable on Xing online karaoke equipment. The said rejection of renewal and the said

notification were done successively for the purpose indicated above. The series of actions by the Respondent is recognized as unfair measures from the standpoints of assurance of fair and free competition as the Respondent prevented Xing from using songs under management of Crown and Tokuma and caused wholesalers and others to avoid handling and use of Xing online karaoke equipment, instead of competing on prices and quality with the competitor Xing.

d. On Issue 4 - Application of Article 21 of the Antimonopoly Act

The action by the Respondent to cause Crown and Tokuma to suddenly reject the renewal of licensing agreements for the Songs under Management that had been concluded peacefully and continuously with Xing was done under the policy of the Respondent to thoroughly attack the business activities of Xing, and also was done successively with the above notification by the Respondent to wholesalers and others, and as described in item b. above, these actions could seriously affect the transactions of Xing online karaoke equipment. As such, the actions are against the intentions and objectives of the intellectual property rights system, and are not recognized as exercising of rights under the Copyright Act.

Therefore, the said actions to cause rejection of renewal do not fall in the category of cases stipulated in Article 21 of the Antimonopoly Act, to which the provisions of Antimonopoly Act do not apply.

e. On Issue 5 - Need for cease and desist measures

Crown and Tokuma began negotiating with Xing from around July 2002 concerning the licensing of the Songs under Management, and as a result Tokuma and Xing concluded a licensing agreement for the Songs under Management around June 2003, and Crown and Xing concluded an agreement around March 2007.

Moreover, after around 2002, the Respondent is not found to have notified wholesalers and others that the Songs under Management cannot be used on Xing online karaoke equipment. In addition, the Violation of the Case was done as a result of the collapse of negotiations for reconciliation between the Respondent and Xing-Brother Industries concerning the patent lawsuit between the parties, but the court's decision to dismiss claims by Xing and Brother Industries in relation to the patent lawsuit was finalized and related patents were judged as invalid. There is no other evidence to indicate the possibility of patent dispute arising between the Respondent and Xing-Brother Industries.

Based on these facts, the Respondent is not recognized as likely to commit acts similar to the Violation of the Case.