

Act against Unjustifiable Premiums and Misleading Representations

(Act No. 134 of May 15, 1962)

(Purpose)

Article 1 The purpose of this Act is, in order to prevent inducement of customers by means of unjustifiable premiums and misleading representations in connection with transactions of goods and services, by establishing special provisions of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947), to ensure fair competition, and thereby to protect the interests of general consumers.

(Definitions)

Article 2 (1) The term "premiums" as used in this Act means any article, money or other kinds of economic gain which are given as means of inducement of customers, irrespective of whether a direct or indirect method is employed, or whether or not a lottery method is used, by an entrepreneur to another party in connection with a transaction involving goods or services which he supplies (including transactions relating to real estate; the same shall apply hereinafter), and which are designated by the Fair Trade Commission as such.

(2) The term "representations" as used in this Act means advertisement or any other representations which an entrepreneur makes as means of inducement of customers, with respect to the substance of the goods or services which he supplies or the trade terms or any other matter concerning the transaction, and which are designated by the Fair Trade Commission as such.

(Limitation or prohibition of premiums)

Article 3 The Fair Trade Commission may, when it finds it necessary to prevent unjust inducement of customers, restrict the maximum value of a premium or the total amount of premiums, the kind of premiums or method of offering of a premium or any other matter relating thereto, or may prohibit the offering of a premium.

(Prohibition of misleading representations)

Article 4 (1) No entrepreneur shall make such representation as provided for in any one of the following items in connection with transactions of goods or services which he supplies:

- (i) Any representation by which the quality, standard or any other matter relating to the substance of goods or services are shown to general consumers to be much better than the actual one or much better than that of other entrepreneurs who are in a competitive relationship with the entrepreneur concerned contrary to the fact and thereby which tends to induce customers unjustly and to impede fair competition;
 - (ii) Any representation by which price or any other trade terms of goods or services will be misunderstood by general consumers to be much more favorable to the general consumers than the actual one or than those of other entrepreneurs who are in a competitive relationship with the entrepreneur concerned, and thereby which tends to induce customers unjustly and to impede fair competition; or
 - (iii) In addition to what are listed in the preceding two items, any representation by which any matter relating to transactions of goods or services is likely to be misunderstood by general consumers and which is designated by the Fair Trade Commission as such, finding it likely to induce customers unjustly and to impede fair competition.
- (2) The Fair Trade Commission may, where it finds it necessary in order to evaluate whether any representation falls under item (i) of the preceding paragraph, designate a period and require the entrepreneur concerned to submit data as reasonable grounds for the representation he has made. In such cases, if the entrepreneur fails to submit the data, the representation concerned shall be deemed to fall under the said item for the purpose of applying the provisions of Article 6 (1) and (2).

(Public hearing and public notice)

- Article 5 (1) When the Fair Trade Commission takes action to effect designation under the provisions of Article 2 (Definitions) or item (iii) of paragraph 1 of the preceding Article (Prohibition of misleading representations), or to restrict or prohibit under the provisions of Article 3 (Limitation or prohibition of premiums), or to change or abolish them, it shall hold a public hearing in accordance with the Rules of the Fair Trade Commission and shall hear the opinion of the related entrepreneur and the public.
- (2) Designation, restriction, prohibition as well as amendment and abolition thereof prescribed in the preceding paragraph shall be made by public notice.

(Cease and desist order)

- Article 6 (1) The Fair Trade Commission may, in the event there is a violation of the restriction or prohibition under the provisions of Article 3 (Limitation or

prohibition of premiums) or the provisions of Article 4 (1) (Prohibition of misleading representations), order the entrepreneur concerned to cease the said act, or to take the measures necessary to prevent the reoccurrence of the said violation, or to take any other necessary measures including public notice of the matters relating to the implementation of such measures. Such an order (hereinafter referred to as a "cease and desist order") may be issued even when the said violation has already ceased to exist.

- (2) Violation as provided for in the preceding Paragraph shall be deemed as violation of Article 19 (Prohibition of unfair trade practices) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (in the case where trade associations induce entrepreneurs to employ such acts as falls under the said violation, such acts as falls under unfair trade practices as provided for in the Article 8 (1) (v) of the said Act (Prohibition of unfair trade practices by trade associations)), and a cease and desist order under this Act shall be deemed as a cease and desist order under the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade, for the purpose of applying the provisions of Article 8-2 (Elimination measures against trade associations), Article 20 (Elimination measures against unfair trade practices), Article 25 (Absolute liability), Article 26 (Restriction on exercise of the right to claim for damages in court, prescription) and provisions of Section 2 (Procedures) of Chapter VIII (Excluding Article 46, Article 49 (3) through (5) inclusive, Article 50, Article 51, Article 53, Article 55 (2), (5) and (6), Article 59 (2), Article 65, Article 67, Article 69 (3), Article 70-2 (4), Article 70-9 through 70-11 inclusive, and Article 70-12 (1)). In this case, in Article 49 (1), the term "the written cease and desist order" shall be replaced with "the written (cease and desist) order"; and the term "the measures necessary to eliminate the violation or to ensure that the violation is eliminated" shall be replaced with "the matters necessary to cease such an act, or to prevent the resurgence of the said act, or to take any other matters including public notice of the matters relating to the implementation of such measures"; in paragraph (2) of the said Article, the term "the written cease and desist order" shall be replaced with "a written cease and desist order"; in Paragraph (6) of the said Article, the term "the written cease and desist order" shall be replaced with "the cease and desist order," and the term "sixty days" shall be replaced with "thirty days"; in Article 70-15 the term "the written cease and desist order" shall be replaced with "the cease and desist order"; and in Article 70-21, the term "Chapter III" shall be replaced with "Chapter III (Excluding Article 13 (1) and Section 3).
- (3) For the purpose of application of the provisions of Article 90 (iii) (Violation against final and binding cease and desist order), Article 92 (Concurrent punishment), Article 95 (1) (ii), (2) (ii) and (3) (Double punishment), Article 95-2

(Punishment of representatives of juridical persons who have failed to prevent violation) and Article 95-3 (Punishment of directors, etc. of trade associations who have failed to prevent violation) (each of the provisions are limited to the segments pertaining to Article 90 (iii) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade), and Article 97 (Civil fine for violation of cease and desist order) a cease and desist order under this Act shall be deemed as cease and desist order under the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade.

(Instruction by prefectural governors)

Article 7 A prefectural governor may, when he finds a violation of the restriction or prohibition prescribed in the provisions of Article 3 (Limitation or prohibition of premiums) or Article 4 (1) (Prohibition of misleading representations), instruct the entrepreneur concerned to cease and desist such violation, or to take the measures necessary to prevent the reoccurrence of such violation, or to take any other necessary measure including public notice of the matters relating to the implementation of such measures. Such an instruction may be issued even when the said violation has already ceased to exist.

(Request for measures to the FTC)

Article 8 (1) A prefectural governor may, in a case where the entrepreneur concerned does not comply with the instruction issued under the provisions of the preceding Article (Instruction by prefectural governors), or in a case when a prefectural governor finds it necessary in order to put an end to any violation as prescribed in the said Article, or to prevent the reoccurrence of such violation as prescribed in the said Article, request the Fair Trade Commission to take appropriate measures in accordance with the provisions of this Act.

(2) The Fair Trade Commission shall, when requested under the provisions of the preceding paragraph, notify the said prefectural governor of the measures which the Fair Trade Commission has taken with respect to the said violation.

(Collection of reports and inspection, etc.)

Article 9 (1) A prefectural governor may, when he finds it necessary for an instruction under the provisions of Article 7 (Instruction by prefectural governors) or a request under the provisions of paragraph (1) of the preceding Article (Request for measures to the FTC), ask the entrepreneur concerned or other entrepreneurs who have a business relationship with the entrepreneur concerned to report on the premiums or the representations, or may have his/her officials enter offices or other places of business of the entrepreneur concerned, or of other entrepreneurs who have a business relationship with the entrepreneur

concerned, to inspect books and documents and other materials, or to ask questions of the persons concerned.

- (2) The officials who conduct an inspection or ask questions pursuant to the provisions of the preceding paragraph shall carry their identification cards and produce them to the relevant persons.
- (3) The authority under the provisions of paragraph (1) shall not be construed as granted for the criminal investigation.

(Technical advice, recommendations, and requests to submit material)

Article 10 (1) The Fair Trade Commission may give a prefectural governor appropriate technical advice or recommendations as to his/her administrative operation and other related matters conducted pursuant to the provisions of the preceding three articles (Instruction by prefectural governors, Request for measures to the FTC and Collection of reports and inspection, etc.), or request the material necessary in order to give the advice or recommendations or to provide information regarding his appropriate administrative operation.

- (2) A prefectural governor may request from the Fair Trade Commission its technical advice, recommendations, or provision of information necessary for the management and the execution of his/her administrative operation conducted pursuant to the provisions of the preceding three articles (Instruction by prefectural governors, Request for measures to the FTC, and Collection of reports and inspection, etc.).

(Request for Rectification)

Article 11 (1) The Fair Trade Commission, where it finds that an administrative operation by a prefectural governor pursuant to the provisions of the Articles 7 through 9 (Instruction by prefectural governors, Request for measures to the FTC and Collection of reports and inspection, etc.) violates the relevant laws and regulations or that it is significantly inappropriate and clearly prejudicial to the public interest, may request him to take necessary measures in order to rectify the violation or to improve his/her administrative operation.

- (2) The prefectural governor, when requested under the preceding paragraph, shall take the measures necessary to rectify the violations or to improve his/her administrative operation.

(Fair Competition Code)

Article 12 (1) An entrepreneur or a trade association may, upon obtaining authorization from the Fair Trade Commission pursuant to the Rules of the Fair Trade Commission, with respect to the matters relevant to premiums or representations, conclude or establish an agreement or a rule, aiming at

prevention of unjust inducement of customers and securing fair competition. The same shall apply in the event alterations thereof are attempted.

- (2) The Fair Trade Commission, unless it finds that an agreement or a rule under the preceding paragraph (hereinafter referred to as "fair competition code") meets the criteria set out in each of the following items, shall not grant authorization under the preceding paragraph:
 - (i) That it is appropriate to prevent unjust inducement of customers and to maintain fair competition;
 - (ii) That it is not likely to impede unreasonably the interests of general consumers or the related entrepreneur;
 - (iii) That it is not unjustly discriminatory; and
 - (iv) That it does not restrict unreasonably the participation in or withdrawal from the fair competition code.
- (3) The Fair Trade Commission, when it finds that the fair competition code as authorized under paragraph 1 no longer meets each item of the preceding paragraph, shall revoke the said authorization.
- (4) The Fair Trade Commission, in cases where it has taken a measure under the provisions of paragraph 1 or the preceding paragraph, shall make public notice thereof pursuant to the provision of the Rules of the Fair Trade Commission.
- (5) The provisions of Article 7 (Elimination measures) (1) and (2) (including cases applicable mutatis mutandis under Article 8-2 (Elimination measures against trade associations) (2) and Article 20 (Elimination measures against unfair trade practices) (2)), Article 8-2 (1) and (3), Article 20 (1), Article 70-13 (Urgent temporary suspension order or change or rescission thereof by court) (1) and Article 74 (Accusation and report on non-prosecution) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade shall not be applied to the fair competition code that has been authorized under paragraph (1), and to such acts of entrepreneurs or a trade association as have been done in accordance therewith.
- (6) Any person who wishes to file a complaint about a measure taken by the Fair Trade Commission under the provisions of paragraph (1) or (3) may appeal to the Fair Trade Commission within thirty days from the day on which the public notice has been made under the provisions of paragraph 4. In this case the Fair Trade Commission shall dismiss the said appeal, or shall rescind or alter the said measure by a decision after completing hearing procedures.

(Exemption from the Administrative Appeal Act)

Article 13 (1) With respect to measures taken by the Fair Trade Commission pursuant to the provisions of this Act, an appeal under the Administrative Appeal Act (Act No. 160 of 1962) cannot be made.

(2) Under paragraph 6 (Appeals against authorizations of the fair competition code) of the preceding Article, a person may only bring a complaint against a decision handed down by the Fair Trade Commission.

(Penal provisions)

Article 14 (1) Where any witness or expert witness under oath pursuant to the provisions of Article 154 (Swear by witness) or Article 166 (Swear by expert witness) of the Code of Criminal Procedure (Act No. 131 of 1948) which are applied mutatis mutandis in Article 62 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade after deemed replacement as applied under the provision of Article 6 (2) of this Act, made a false statement or expert opinion, he or she shall be punished by imprisonment with work for not less than three months but not more than ten years.

(2) Where a person having committed a crime set forth in the preceding paragraph confesses his or her crime prior to the completion of the hearing procedures and before the revelation of such crime, the punishment for such crime may be commuted or waived.

Article 15 A person who falls under any of the following items shall be punished by imprisonment with work for not more than one year or by a fine of not more than three million yen:

(i) Any person concerned with a case or any witness who, in violation of the measures made against him/her under the provisions of Article 47 (1)(i) (Order by the Commission to persons concerned with a case to appear) or (2) (Measures taken by the investigator) or Article 56 (1) (Measures taken by the hearing examiner) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Article 6 (2) of this Act, has failed to appear or to make a statement, or made a false statement, or failed to submit a report, or submitted a false report;

(ii) Any expert witness who, in violation of the measures made against him or her under the provisions of Article 47 (1)(ii) (Order by the Commission to give expert opinions) or (2) or Article 56 (1) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Article 6 (2) of this Act, has failed to appear or to give an expert opinion, or submitted a false expert opinion;

(iii) Any holder of the materials who, in violation of the measures made against him or her under the provisions of Article 47 (1)(iii) (Order by the Commission to submit materials) or (2) or Article 56 (1) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Article 6 (2) of this Act, has failed to submit the materials; or

(iv) Any person who has refused, obstructed, or evaded the inspection as provided for in Article 47 (1)(iv) (Inspection by the Commission) or (2) or Article 56 (1) of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Article 6 (2) of this Act.

Article 16 Any person who has failed to submit a report or submitted a false report, or refused, obstructed or evaded inspection, or failed to answer or made false answers to the questions, as provided in Article 9 (1) (Collection of reports and inspection, etc.), shall be punished by a fine of not more than five hundred thousand yen.

Article 17 Any witness or expert witness who has refused to swear, in violation of the order issued to him or her under the provisions of Article 154 (Swear by witness) or Article 166 (Swear by expert witness) of the Code of Criminal Procedure which are applied mutatis mutandis in Article 62 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade after deemed replacement as applied under the provision of Article 6 (2) of this Act, shall be punished by a fine of not more than two hundred thousand yen.

Article 18 (1) When a representative of a juridical person, or an agent, an employee, or any other worker in the service of a juridical person or of an individual has, with regard to the business or property of the said juridical person or individual, committed a violation stipulated in Article 15 or Article 16, not only the offender shall be punished but also the said juridical person or the said individual shall be punished by the fine as prescribed in the respective articles.

(2) Where a representative, a manager, an agent, an employee, or any other worker in a service of an organization without judicial personality has, with regard to the business or property of the said organization, committed a violation stipulated in Article 15 or 16, not only the offender shall be punished but also the said organization shall be punished by a fine as prescribed in the respective articles.

(3) In the case of the preceding paragraph, the representative or manager shall represent said organization in respect of procedural action and the provisions of the Code of Criminal Procedure which are applicable to procedural actions where a juridical person is the accused or the suspect shall apply mutatis mutandis.