

Fair Labelling and Advertising Act

Enacted by law No. 5814, Feb. 5, 1999

Chapter 1 General Provisions

Article 1 Purpose

The purpose of this Act is to prevent unfair labelling and advertising that may deceive or mislead consumers and to facilitate provision of fair and useful information to consumers, thereby establishing a fair trade order and protecting consumers.

Article 2 Definitions

For the purpose of this Act -

1. the term "labeling" means a container or package (including attachment and contents) of the goods or services (hereinafter "products") on which the enterprises or trade associations put a notice of the following information; or Chinese characters or figures featured on the signboards that are installed in the shops and containers or package that characterize the given products:

- a. information regarding the enterprise and the trade association along with that of other enterprises and trade associations;
- b. information regarding the contents, terms of trade, and others in relation with the product by the enterprise and the trade association along with that of others.

2. The term "Advertising" means enterprises or trade associations' letting known to or informing consumers of the product-related information set forth in the items of Subparagraph 1 through newspapers, broadcasting, magazines and other means as prescribed under the Presidential Decree.

3. The term "Enterprise" means those as defined in Article 2, Paragraph 1 of the Monopoly Regulation and Fair Trade Act (hereinafter, the "MRFTA").

4. The term "Trade Association" means those as defined in Article 2, Paragraph 4 of the Monopoly Regulation and Fair Trade Act.

5. The term "Consumer" means those who use goods and services provided by enterprises or trade associations (hereinafter "enterprises").

Chapter 2 Prohibition of Unfair labeling and Advertising

Article 3. Prohibition of Unfair labeling and Advertising

(1) Enterprises, etc. shall not post labels or advertisements as set forth in the following subparagraphs that may deceive or mislead consumers, thus impairing fair trade order, nor shall they force other enterprises to do so:

1. false or exaggerating labeling and advertising;
2. deceptive labeling and advertising;
3. unduly comparative labeling and advertising;
4. slanderous labeling and advertising.

(2) The specifics of the aforementioned Subparagraphs of Paragraph 1 shall be determined by the Presidential Decree.

Article 4 Designation of Critical Information to Be Included in Labeling and Advertising

(1) In case where the failure to include, in the labeling and advertising, product-related information that the Fair Trade Commission (FTC) deems critical to protect consumers and maintain fair trade order may give rise to the following situations, the FTC, after due consideration of the nature of the product and area of trade, may designate by notice such matters to be included in labelling or advertising: Provided, however, that information stipulated to be labelled and advertised in other Decrees shall be excluded.

1. Situation where consumer interests are frequently damaged and remedy of such damage is difficult;
2. Situation where consumers remain unaware of the critical defects or functional limitations of products, and such unawareness has a decisive impact on consumers' purchase decision;
3. other situations where fair trade order is significantly undermined.

(2) The FTC, in placing a notice pursuant to Paragraph 1, shall consult with the heads of relevant agencies and listen to the testimonies at a hearing of the concerned trade association, consumer group, etc. that is officially registered pursuant to Article 19, Paragraph 1 of the Consumer Protection Act (hereinafter referred to as "Consumer Group").

(3) Enterprises, in posting labels or advertisements, shall include the critical information notified by the FTC pursuant to aforementioned paragraph 1.

Article 5 Substantiation of Labels and Advertisements

(1) Enterprises shall be able to substantiate matters related with facts included in their labels and advertisements.

(2) The FTC may request in writing enterprises to submit related documents when it is deemed necessary to have substantiation pursuant to Paragraph 1 for fear of possible violation of Article 3-1 by enterprises, etc.

(3) The requested enterprises pursuant to paragraph 2 shall submit the

documents for verification in no less than 30 days after receiving the request: Provided, however, that the FTC may extend the submission deadline if it is deemed justifiable.

(4) When the FTC deems it necessary to keep consumers from getting false ideas about the product or to protect fair trade order, it may allow the general public the access to the documents submitted by requested enterprises, etc. in accordance with paragraph 3 or make such public by due methods: Provided, however, that if such documents contain business confidentiality of the given enterprises, etc., thus their disclosure to the public being feared to damage business of enterprises, etc., this shall not apply.

Article 6 Prohibition of Trade Associations' Restricting labeling and Advertising Activities by Members

(1) Unless set forth otherwise in the Decree, trade associations shall not restrict labeling and advertising of their members: Provided, however, that if the FTC deems it necessary to protect consumer interests or maintain fair trade order, this shall not apply.

(2) The FTC, when permitting trade associations to restrict labeling and advertising activities pursuant to the proviso of paragraph 1, shall seek prior consultation with the heads of related agencies.

(3) The FTC may issue the following corrective measures against violations of paragraph 1:

1. Cease and desist order;
2. Alteration of the articles of incorporation and by-laws which set forth such violations;
3. Other necessary measures to correct the violations.

Article 7 Corrective Measures

(1) In the case where any enterprise, etc. posts undue labels or advertisements in violation of Article 3, paragraph 1, the FTC shall take the following corrective measures against such enterprises, etc.

1. Cease and desist order;
2. Public notification on the fact of law violation;
3. Corrective advertisements;
4. Other measures necessary to correct the violations.

(2) Specifics regarding public notification of the violation and corrective advertisements pursuant to subparagraphs 2 and 3 of paragraph 1 shall be determined by the Presidential Decree.

Article 8 Temporary Cease and Desist Order

(1) The FTC may issue a temporary cease and desist order against enterprises, etc. whose labels or advertisements are-

1. suspected to be in clear violation of Article 3, paragraph 1; or,
2. likely to cause irreparable injury to consumers or rival enterprises, and thus preventive measures are in urgent need.

(2) Consumer groups and other organizations set forth in the Presidential Decree may file a petition with the FTC in writing to issue a temporary cease order against labels and advertisements which are deemed to fall under any subparagraph of paragraph 1.

(3) Any person who is unsatisfied with an order issued pursuant to paragraph 1 may raise an objection to the FTC within 7 days upon receiving the order.

(4) Upon receiving such objection, the FTC shall promptly notify the fact to the Seoul High Court, and the Court shall put this to trial in accordance with the Non-Contentious Case Litigation Procedure Act.

(5) In a trial pursuant to paragraph 4, Article 15 of the Non-Contentious Case Litigation Procedure Act shall not apply.

Article 9 Surcharge

(1) The FTC may impose upon enterprises in violation of Article 3, paragraph 1 surcharges not exceeding 2% of their turnover as set forth in the Presidential Decree (meaning operational profits as for the enterprises set forth in the Presidential Decree. Hereinafter, the same shall apply): Provided, however, that where the violating party does not have sales turnover or is in a difficult situation to settle sales turnover and at the same time it is an enterprise or trade association set forth in the Presidential Decree, the FTC may impose surcharges not exceeding 500 million Won.

(2) The FTC may impose surcharges not exceeding 500 million Won upon trade associations that restricted labeling and advertising of their member enterprises in violation of Article 6, paragraph 1.

(3) In assessing surcharges pursuant to paragraphs 1 and 2, the FTC shall take into account -

1. the nature and degree of the violation;
2. the duration and number of the violation; and
3. the extent of gains arising from the violation.

(4) When the corporation violating Article 3, paragraph 1 is a party to merger, the FTC shall impose and collect surcharges against the violation upon the corporation that is remaining or newly incorporated after merger.

(5) The criteria for assessing surcharges pursuant to paragraphs 1 and 2 shall be determined by the Presidential Decree.

Chapter 3 Claim for Damages

Article 10 Liability of Damages Claim

(1) Any enterprise, etc. shall be liable to damages claims by consumers whose interests were injured by their unfair labeling and advertising in violation of Article 3, paragraph 1.

(2) Any enterprise, etc. liable to damages pursuant to paragraph 1 shall not be cleared of the liability for reasons of lack of will or negligence.

Article 11 Restriction on Damages Claim in Civil Action

(1) When corrective measures are issued against the violations of Article 3, paragraph 1, the right to damage claim pursuant to Article 10 shall not be raised in a civil action unless corrective measures of Article 7 are finalized: Provided, however, that this shall not restrict a lawsuit claiming damages pursuant to Article 750 of the Civil Code.

(2) The right to damages claim as referred to under paragraph 1 shall expire three years after the day of its exercise.

Chapter 4 Supplementary Provisions

Article 12 Obligation of Confidentiality

Any former and current FTC commissioners and staff who is or has been engaged in duties pursuant to this Act shall not disclose or use for any other purpose than for enforcement the confidential information that they come across while undertaking their duties.

Article 13 Consultations on the Enactment of Acts Prohibiting or Restricting Labeling or Advertising

The head of relevant agencies shall seek prior consultations with the FTC when he/she intends to enact or revise acts that may prohibit or restrict enterprises from posting labels and advertisements.

Article 14 Voluntary Establishment of a Code of Labeling and Advertising

(1) Enterprises may voluntarily establish a code of labeling and advertising to prevent activities that breach Article 3, paragraph 1.

(2) Enterprises may file a request with the FTC to review whether their Codes

pursuant to paragraph 1 are in violation of Article 3, paragraph 1.

(3) The FTC, upon receiving the request as referred to under paragraph 2, shall notify the results of the review to the requesting party in no less than sixty days.

Article 15 Cooperation by the Heads of Relevant Agencies, etc.

(1) The FTC, when it is deemed necessary for the enforcement of this Act, may seek consultations with heads of relevant agencies, or organizations.

(2) The FTC, when it deems it necessary for the enforcement of this Act, may request heads of relevant agencies or organizations to initiate necessary investigations or to transmit necessary materials.

(3) The FTC, when it deems it necessary for effective implementation of measures pursuant to Article 6, paragraph 3 or Article 7, paragraph 1, may seek cooperation from heads of relevant agencies and organizations.

(4) The FTC, when it has reasons to believe that finance and insurance companies violated the provisions of Article 3, paragraph 1 and that investigation on its own authority is necessary, shall notify the Financial Supervisory Commission ("FSC") of the fact, without initiating investigation, and have the FSC handle the case.

(5) The FSC, upon receiving the notification from the FTC pursuant to paragraph 4, shall carry out the investigation in earnest and notify the FTC of the result thereof.

Article 16 Application of Monopoly Regulation and Fair Trade Act

(1) The provisions of Article 42 or 45 and 52 of the Monopoly Regulation and Fair Trade Act ("MRFTA") may apply with necessary modifications to any activity of the FTC in accordance with this Act and the provisions of Articles 53, 53-2, 54, 55 and 55-2 of the MRFTA shall apply *mutatis mutantis* to granting exclusive jurisdiction and handling cases in association to filing of objection, filing of a suit, and raising of dissatisfaction as to the remedies given by the FTC (except "temporary cease and desist order" pursuant to Article 8, paragraph 1).

(2) The provisions of Article 49 of the MRFTA may apply with necessary modifications to the recognition and reporting of violations of the MRFTA and in the meantime, the provisions of Article 50 and 51 may apply to investigation and hearing of the FTC and its remedies upon violations.

(3) The provisions of Article 55-4 and 55-5 may apply with necessary modification to the extension of the period and collection of surcharge set forth in the Act and the provisions of Article 71 may apply with necessary modification to filing a complaint against unlawful activities as defined in the following Article 17.

Chapter 5 Penal Provisions

Article 17 Penal Provisions

Any party or person shall be subject to imprisonment of 2 years or less and to a fine of 150 million Won or less if he/she -

1. posts false or undue labels or advertisements, or forces other enterprises to do so in violation of Article 3, Paragraph 1; or
2. fails to comply with remedies pursuant to Article 6, Paragraph 3 or Article 7, Paragraph 1.

Article 18 Penal Provisions

Any party or person in violation of Article 12 shall be subject to imprisonment of 2 years or less and to a fine of 5 million Won or less.

Article 19 Concurrent Punishment

If the representative of a corporation (including associations without status of corporation) or the agent, employee, or any other person working either for a corporation or for an individual is in violation of Article 17 in connection with the said corporation or individual's business, the corporation and the individual as well as actual violators shall be subject to monetary penalty.

Article 20 Fines for Negligence

(1) Any enterprise falling under any of the following categories shall be subject to a fine for negligence of 100 million Won or less, and an executive, employee, or any person related to a corporation or a trade association meeting any of the followings shall be subject to a fine of 10 million Won or less:

1. failing to provide designated product-related information in labels or advertisements in violation of Article 4, Paragraph 3;
2. failing to submit documents for substantiation in violation of Article 5, Paragraph 3;
3. failing to comply with the temporary cease and desist order in violation of Article 8, Paragraph 1 of the Act;
4. failing to attend the hearings without any justifiable reason in violation of Article 50, Paragraph 1, Subparagraph 1 of the MRFTA in modified application of Article 16, Paragraph 2 of the Act;
5. Either failing to file a report nor submit requested documents or filing a false report or submitting false documents in violation of Article 50, Paragraph 1, Subparagraph 3 or Paragraph 3 of the MRFTA in modified application of

Article 16, Paragraph 2 of the Act; or
6. Refusing, obstructing, or avoiding investigations in violation of Article 50, Paragraph 2 of the MRFTA in modified application of Article 16, Paragraph 2 of the Act.

(2) Any party failing to comply with the FTC's order to maintain order pursuant to Article 43-2 of the MRFTA in modified application of Article 16, Paragraph 1 of the Act shall be subject to a fine of 1 million Won or less.

(3) Fines pursuant to paragraphs 1 and 2 shall be imposed and collected by the FTC by such methods as set forth in the Presidential Decree.

(4) Any party unsatisfied with a fine pursuant to paragraph 3 may file an objection to the FTC within 30 days of receiving the imposition thereof.

(5) Upon receiving a duly raised objection pursuant to paragraph 4, the FTC shall notify the competent court thereof without delay and the court shall initiate a trial on surcharges pursuant to the Non-Contentious Case Litigation Act.

(6) If any party fails to pay a fine without raising any objection within the set period of time as defined in paragraph 4, the FTC shall collect the fines in accordance with the ways of collecting overdue national taxes.

Addendum

Article 1 Effective Date

This Act shall take effect on July 1, 1999.

Article 2 Interim Measures Regarding Corrective Orders, Fines and other Penalties

With respect to the violations of Article 23, Paragraph 1, Subparagraph 6 or Article 26, Paragraph 1 Subparagraph 5 of the previous MRFTA that were committed prior to the enforcement of the Act, the FTC shall apply previous provisions relating to corrective orders, fines and other penalties.

Article 3 Interim Measures Regarding Fair Competition Code

Enterprises' codes of fair competition regarding labeling or advertising which were reviewed by the FTC in accordance to Article 23, Paragraph 4 of the previous MRFTA prior to the enactment of the Act shall be deemed to have already been reviewed pursuant to Article 14.

Article 4 Amendment of Other Related Acts

(1) Following amendments shall be made to the MRFTA.

Article 23, Paragraph 1, Subparagraph 6 of the MRFTA shall be deleted and Subparagraph 4 of the same Article altered from "luring of consumers by unfair methods and labeling and advertisements that are false or may either deceive or mislead consumers" to "unfair luring of consumers".

The phrase in Article 24 of the MRFTA, "...delete the pertinent provisions from the contract, publish a corrective notice of an offensive advertisement..." shall read "...delete the pertinent provisions from the contract,..."

Article 26, Paragraph 1, Subparagraph 5 shall be deleted.

The phrase of Article 27 of the MRFTA, "...to suspend the act, correct the advertisement..." shall be altered to "...to suspend the act..."

(2) Following amendments shall be made to the Unfair Competition Prevention Law.

Phrase in Article 27 of the Unfair Competition Prevention Law has been altered from "...Monopoly Regulation and Fair Trade Act..." to "...Monopoly Regulation and Fair Trade Act , the Fair Labeling and Advertising Act..."

Article 5 Relations with Other Statutes

If other statutes have been citing the previous MRFTA or parts thereof before the enactment of this Act and if the cited parts are pertinent to provisions of this Act, the FTC shall deem that the statutes are citing this Act or parts hereof.