



Enforcement Decree of the Fair Labeling and Advertising Act

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(Only the Korean text is/are authentic)

Korea Fair Trade Commission

Enforcement Decree of the Fair Labeling and Advertising Act

[Enforced 3-12-2009]

[Presidential Decree No. 21349, Partially Amended 3-19-2009]

Chapter 1 General Provisions

Article 1 (Purpose) The purpose of this Decree is to prescribe matters delegated by the Fair Labeling and Advertising Act and other necessary matters for the enforcement of the Act.<Amended 3-29-2006>

Article 2 (Methods of Advertising)

“Other methods specified by a presidential decree” in Article 2-(2) of the Fair Labeling and Advertising Act (hereafter referred to as “Act”) shall mean the use of the following media and methods. <Amended 3-29-2006, 3-12-2009>

1. leaflets, pamphlets, samples or admission tickets
2. the Internet or computers
3. posters, signboards, neon signs, advertising balloons or electronic bulletin boards
4. video recordings, musical records, books, periodicals, movies or theatrical plays
5. other products
6. other media or methods comparable to those listed in subparagraph (1) or (5)

Article 3 (Unfair Labeling and Advertising Practices)

(1) “False or exaggerated labeling or advertising” mentioned in Article 3-(1)-1 of the Act shall mean labeling or advertising practices which misrepresent or exaggerate facts.

(2) “Deceptive labeling or advertising” mentioned in Article 3-(1)-2 of the Act shall mean labeling or advertising practices which conceal or understate facts.

(3) “Unfair comparative labeling or advertising” mentioned in Article 3-(1)-3 of the Act shall mean a practice in which a business operator or trade association (hereafter referred to as “Business Operator, etc.”) labels or advertises himself/herself/itself or his/her/its product or service (hereafter referred to as “Product, etc.”) as superior to another Business Operator, etc. or another Business Operator’s Product, etc. without specifying the subject of, and criteria for, comparison or presenting objective facts in support of such comparisons.

(4) “Slandering labeling or advertising” mentioned in Article 3-(1)-4 of the Act shall mean a practice in which a Business Operator, etc. slanders another Business Operator, etc. or another Business Operator, etc.’s Product, etc. by labeling or advertising groundless or selectively disadvantageous facts about them.

(5) Criteria for determining unfair labeling or advertising practices and their categories under paragraph (1) or (4) may be specified and made public by the Fair Trade Commission. In such cases, the Fair Trade Commission shall undergo consultation with the heads of relevant central government agencies prior to making such decisions.

Article 3.2 (Formation and Operation of Critical Information Provision Consultative Committee)

(1) The chairperson of the Critical Information Provision Consultative Committee (hereafter referred to as “Consultative Committee”) established under Article 4.2 of the Act shall represent the Consultative Committee and oversee its activities.

(2) The Consultative Committee shall have one secretary who will attend to the Committee's activities under the direction of the Chairperson. The secretary shall be appointed from among the staff of the Fair Trade Commission.

(3) The term of office of the members of the Consultative Committee appointed by the Fair Trade Commission under Article 4.2-(3)-2 and -3 shall be 2 years, renewable.

(4) A meeting of the Consultative Committee shall be instituted by the presence of a majority of the Committee members including the chairperson.

(5) Details concerning the formation and operation of the Consultative Committee other than specified in this Decree shall be determined by the chairperson in consultation with other Committee members.

[This Article Newly Added 3-29-2006]

Article 4 (Methods of Substantiation, etc.)

(1) When a Business Operator, etc. wants to perform tests or surveys in order to substantiate the facts included in his/her labels or advertisements pursuant to Article 5-(1) of the Act, he/she shall abide by the following requirements.

1. A tests or survey used to substantiate facts shall employ objective and verifiable methods which are academically proven or broadly recognized in an industry.

2. A tests or survey shall be conducted by a testing or survey agency either recognized by law or managed independently of the Business Operator, etc. commissioning the test or survey; provided that this provision shall not apply when it is accepted that using such a testing or survey agency is impractical or inappropriate.

(2) The "testing or research agency ...managed independently" in paragraph (1)-2 shall mean any agency except the following ones. <Amended 3-29-2006>

1. a testing or survey agency managed by the Business Operator, etc. or a subsidiary of his/her business (a subsidiary as defined by Article 2-(3) of the Monopoly Regulation and Fair Trade Act)

2. a testing or survey agency which is legally a part of the business group (a business group as defined by Article 3 of the Enforcement Decree of the Monopoly Regulation and Fair Trade Act) to which the Business Operator, etc. belongs but which is technically separated from the business group under Article 3.2-(1)-2 of the Monopoly Regulation and Fair Trade Act

(3) The Fair Trade Commission may, pursuant to Article 5 of the Act, determine and give public notice of necessary details concerning requests for submission of substantiating data, examination of submitted data and determination of subsequent actions to be taken <Newly Added 3-29-2006>

Article 5 (Substantiating Data)

In substantiating data to the Fair Trade Commission pursuant to Article 5-(3) of the Act, a Business Operator, etc. shall first write a statement containing the following details and attach documents supporting the details.

1. substantiating method used

2. name of the testing or survey agency, the name, address and telephone number of the agency's representative (applicable only when a test or survey has been conducted)

3. substantiating facts or results of a test or survey

4. a list of items, if any, that need to be kept confidential, and reasons for such confidentiality

Article 6 (Disclosure of Substantiating Data)

(1) In disclosing a Business Operator, etc.'s substantiating data for public viewing under Article 5-(4) of the Act, the Fair Trade Commission may present them in a selective and condensed form in order to highlight the information most vital to consumer's purchase choices.

(2) The “business secrets” in the conditional clause of Article 5-(4) of the Act mean the kind of business secrets defined by Article 2-(2) of the Unfair Competition Prevention and Trade Secret Protection Act.<Amended 3-29-2006>

Article 7 (Procedures for Recognizing Trade Association’s Regulatory Actions on Labeling and Advertising)

(1) If a Trade Association wishes to have its regulatory actions against a member Business Operator, etc.’s labeling or advertising practices recognized by the Fair Trade Union under the conditional clause of Article 6-(1) of the Act, it shall submit an application to the Fair Trade Commission, detailing the actions and reasons for them.

(2) Upon receiving an application for recognition under paragraph (1), the Fair Trade Commission shall notify the applicant of its decision on the matter within 60 days of receiving the application.

Article 8 (Procedures for Giving Public Notice, etc.)

(1) When ordering a Business Operator, etc., pursuant to Article 7-(1)-2 or -3 of the Act, to give public notice of that fact that he/she has been ordered to take corrective actions or to run an advertisement correcting misrepresented facts, the Fair Trade Commission shall specify such a public notice or advertisement in terms of content, frequency, size and medium by taking the following into consideration. <Amended 3-29-2006>

1. facts and seriousness of violation
2. duration and frequency of violation

(2) When ordering a Business Operator, etc. to give public notice of that fact that he/she has been ordered to take corrective action or to run an advertisement correcting misrepresented facts, the Fair Trade Commission may require the Business Operator, etc. to consult with the Commission about the wording of such a public notice or advertisement. <Amended 3-29-2006>

Article 9 (Agencies and Organizations Entitled to Request Temporary Injunctions)

“Other agencies or organizations specified by a presidential decree” in Article 8-(2) of the Act shall mean the following.<Amended 3-29-2006, 3-27-2007>

1. the Information and Telecommunications Ethics Commission established under Article 53.2-(1) of the Telecommunications Business Act
2. the Korea Publication Ethics Commission established under Article 16 of the Publishing and Printing Promotion Act
3. the Korea Consumer Agency established under Article 33 of the Framework Act on Consumers
4. the Korea Press Ethics Committee and the Korea Advertising Review Board established under Article 32 of the Civil Act
5. other agencies or organizations established by law to review labeling and advertising by Business Operators, etc

Article 10 (Procedures for Requesting Temporary Injunctions)

When a consumer organization or one of the agencies or organizations prescribed in Article 9 requests the Fair Trade Commission for a temporary injunction under Article 8-(2) of the Act, it shall submit a written request stating the following information.

1. the name of the consumer organization, agency or organization making the request, and the name, address and telephone number of its representative
2. the name of the Business Provider, etc. responsible for the label or advertisement against which an injunction is sought
3. the content of the label or advertisement

4. reasons for requesting the temporary injunction

Article 11 (Protesting a Temporary Injunction Order)

A Business Operator, etc. who wants to protest a temporary injunction order under Article 8-(3) of the Act shall submit to the Fair Trade Commission a petition stating the subject matter, protesting details and reasons for the protest, which shall be attached with necessary supporting documentation.

Article 12 (Calculation of Monetary Penalties)

(1) "Sales revenues as defined by a presidential decree" in Article 9-(1) of the Act shall mean the Business Operator, etc.'s average sales revenue for the 3 years immediately preceding the current year; provided that if the Business Operator, etc. has not been in business for 3 years or more, the sales revenue shall be the amount calculated by converting the total sales revenues recorded from the starting day of business to the end of the year immediately before the current year into an yearly figure, and that if the Business Operator, etc. has begun business in the current year, sales revenue shall be the amount calculated by converting the total sales revenue recorded from the starting day of business to the day on which the offense was officially recorded into an annual figure.

(2) Other matters relating to monetary penalties prescribed in paragraph (1) such as the criteria and methods for determining sales revenues as the basis for assessing monetary penalties shall be determined by the Fair Trade Commission.

Article 13 (Scope of Business Operators, etc. Recording Operating Revenues on Financial Statements)

"Business Operators, etc. specified by a presidential decree" in Article 9-(1) of the Act shall mean those recording the sum of received payments for Products, etc. as operating revenues on their financial statements.

Article 14 (Absence of Sales Revenues, etc.)

"Business Operators, etc. or Trade Associations specified by a presidential decree" in the conditional clause of Article 9-(1) of the Act shall mean any of the following.

1. one who has no recorded operating revenues either because he/she has not begun business or has suspended business
2. one who has not submitted data for assessing sales revenues or who has submitted false data
3. other cases in which it is considered difficult to assess sales revenues on an objective basis

Article 15 (Criteria for Imposition of Monetary Penalties)

(1) The criteria for assessing monetary penalties under Article 9-(1) and -(2) of the Act shall be as listed in the table attached hereto.

(2) A monetary penalty assessed pursuant to paragraph (1) may be increased or decreased by considering the information listed in the subparagraphs of Article 9-(3) of the Act.

(3) Detailed criteria for imposing monetary penalties other than those prescribed in this Decree shall be determined and made public by the Fair Trade Commission.

Article 16 (Levy of Monetary Penalties and Surcharges)

(1) The Fair Trade Commission, in imposing a monetary penalty on a Business Operator, etc. under Article 9 of the Act, shall provide him/her with a written notification of the category of the violation committed and the subsequent amount of monetary penalty to be paid.

(2) A Business Operator, etc. shall pay the amount of a monetary penalty imposed on him/her under paragraph (1) to a collecting agency designated by the Fair Trade Commission within 60 days from receiving the notification; provided that if an act of God or other unavoidable circumstances have

prevented a Business Operator, etc. from paying a monetary penalty within the prescribed time limit, he/she shall pay the amount within 30 days after the cause of delay ceased to exist.

Article 16.2 (Reporting of Voluntary Review Organizations, etc.)

(1) If a Business Operator, etc. wants to report a Voluntary Review Organization established under Article 14.2 of the Act to the Fair Trade Commission, he/she shall file the report in writing or in electronic form, stating the following details.

1. the name of the reporting person (or, in the case of a corporation, the names of the corporation and its representative, or in the case of a group, the names of the group and its representative)

2. the address, telephone number and email address of the reporting person

3. the range of investigative activities

4. criteria for investigation

5. legal grounds for the establishment of the Voluntary Review Organization

(2) The organizations specified in subparagraph 1, 2, 4 and 5 of Article 9 shall be considered as having registered with the Fair Trade Commission pursuant to paragraph (1).

[This Article Newly Added 3-29-2006]

Article 17 Deleted <3.12-2009>

Article 18 Deleted <3.12-2009>

Addendum <No. 21349, 3-12-2009>

This Decree shall come into force on the day of its promulgation.