



NO 087

# TAIWAN FTC NEWSLETTER

2019.6

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## Cheng Jen Culture and Creativity Violated Fair Trade Act by Posting False Advertisements to Recruit Franchisees

The FTC decided at the 1408<sup>th</sup> Commissioners' Meeting on Oct. 31, 2018 that Cheng Jen Culture and Creativity Co., Ltd. (hereinafter referred to as Cheng Jen Culture & Creativity) had violated Article 21 (1) of the Fair Trade Act by posting the wording "products guaranteed made in Taiwan" and "all MIT" in the "itaste" franchise brochure when recruiting franchisees for the "itaste" chain because the claim was a false and misleading representation with regard to place of origin of product and could also affect transaction decisions. Therefore, the FTC imposed an administrative fine of NT\$50,000 on Cheng Jen Culture & Creativity.

The wording "products guaranteed made in Taiwan" and "all MIT" posted in the "itaste" franchise brochure for potential franchisees gave the impression that all the products being sold by the "itaste" chain were made in Taiwan. However, the FTC's investigation indicated that not all the products being marketed by Cheng Jen Culture & Creativity were made in Taiwan. In addition, the product prices could vary with different places of origin and thus appeared attractive to trading counterparts. In other words, the inconsistency between the claim and the fact was able to cause trading counterparts to have wrong perceptions or make wrong decisions. It was indeed a false and misleading representation in violation of Article 21 (1) of the Fair Trade Act.



## Company R Violated the Fair Trade Act by Imposing Resale Price Restrictions on Retailers without Justification

### Case background

Company R was a wholesale business handling impact resistant cases, power banks, cellophane coverings and cords for cell phones. The FTC received a complaint from a private citizen accusing Company R of announcing on its Facebook fan page that retailers not selling its products at suggested prices and engaging in price competition without adhering to the concept of maintaining market prices would have their supply cut off. The company also published records of its conversations with retailers that it actually refused to provide further supplies to. The complainant thought the conduct was in violation of the regulation against the imposition of resale price restrictions set forth in Article 19 of the Fair Trade Act; therefore, the FTC launched an investigation.

### Imposition of resale price restrictions

The findings of the FTC's investigation showed that Company R did not sign any product supply contracts with its retailers. The retailers purchased the products outright and the items on which Company R imposed resale price restrictions were either products for which the company had acquired exclusive regional agency or its own brands. During the investigation, Company R admitted that it had requested retailers to maintain prices at certain rates and obtained their promise before establishing cooperation relationships. However, the company never took the initiative to check the prices charged by retailers. It only discovered that certain retailers were selling products not according to suggested rates after other retailers found out and complained to the company about those certain retailers marketing the products

online. As a consequence, Company R normally advised such retailers to make price adjustments first. Disconnection of supply was the last resort after retailers failed to comply, despite being requested to make price adjustments several times. In reality, several retailers ended up having their supply disconnected after selling products at lower prices and never making price adjustments after being requested to do so several times.

The restrictions referred to in Article 19 of the Fair Trade Act were not limited to restrictions stipulated in the contract. Other practices not specified in the contract but able to make downstream businesses stick to suggested resale prices were also included. In other words, although Company R did not sign with retailers contracts that included provisions regarding the imposition of penalties for not selling products at suggested prices, the company did adopt the measure of disconnecting supply to force retailers to sell products at suggested prices. In other words, the company already restricted the resale prices of retailers.

### Imposition of resale price restrictions without justification

Company R contested that its imposition of resale price restrictions could help retailers maintain a reasonable profit. In turn, retailers would provide consumers with additional services and upgrade service quality. In other words, retailers would be encouraged to improve their presale service efficiency or quality.

Nonetheless, the FTC thought there were no major functional differences between the cell phone impact

resistant cases, power banks, cellophane coverings and cords marketed by Company R and other similar products. Consumers were clear about their needs and also aware of how to use such products. Retailers at the most only needed to provide brief product descriptions or related information. Moreover, it often happened that no presale service was required before transactions were completed. At the same time, consumers could also shop on online platforms where no presale services or explanations were required and retailers therefore had no reasons, incentives or pressure to improve their service quality after gaining a bigger profit as a result of the resale price restrictions imposed. Even if the contestation of Company R was justifiable, the company was unable to provide concrete explanations and evidence for the FTC to understand which services retailers

were supposed to improve. Hence, the resale price restriction imposition adopted by Company R could not be considered justifiable as described in Article 25 of the Enforcement Rules of the Fair Trade Act. Without a doubt, Company R had violated Article 19 (1) of the Fair Trade Act.

### **Conclusion**

The factors to be considered by the FTC in assessing the justifiability of imposing resale price restrictions are specified in Article 25 of the Enforcement Rules of the Fair Trade Act. If an enterprise only provides abstract explanations to justify its resale price restriction imposition without presenting any reasonable and acceptable explanations and verifiable evidence, the FTC finds it hard to accept such explanations. 

## Shangfeng Enterprises Violated Fair Trade Act by Adopting Deceptive Measures to Market Water Purifiers

The FTC decided at the 1410<sup>th</sup> Commissioners' Meeting on Nov. 14, 2018 that Shangfeng Enterprises had violated Article 25 of the Fair Trade Act by using the pretext of holding raffles to obtain the personal information of participants and concealed the intention to market products and important transaction information to mislead consumers to purchase water purifier products and accessories. The practice was deceptive and obviously unfair conduct able to affect trading order; therefore, the FTC cited the first section of Article 42 of the Fair Trade Act, ordered the company to immediately cease the unlawful act and imposed on it an administrative fine of NT\$50,000.

Between Aug. 2017 when Shangfeng Enterprises was founded and Jun. 2018 when it suspended operation, the company held two raffle activities in cooperation with different stores. At both events, the same promotional posters and raffle tickets were used. The posters indicated that there were four approaches to draw out winners, including the weekly draw, the special offer draw, the value-added draw and the installation draw. Shangfeng Enterprises admitted that the prizes for the weekly draw and the value-added draw were the same. The only difference was in the approaches to drawing the winners (the winners were drawn once a week for four weeks or drawn in one go), and the collaborating stores could only choose one of the two approaches. The main purpose of the raffle activities was to promote water purifiers and consumers were requested to fill out the raffle tickets, so that the company could obtain their personal

information. Apparently, Shangfeng Enterprises took advantage of people's mentality of feeling happy to be lucky to acquire their personal information in order to call them on the phone to push the products it really intended to sell.

Shangfeng Enterprises admitted that it was selling water purifiers and the products used for prizes were donated by the supplier. The company claimed on the posters and raffle tickets that each water purifier was worth NT\$25,800. However, the FTC's investigation revealed that the company's purchase cost was far lower. Obviously, the company overestimated the value of the product to cause consumers to have wrong expectations and develop the mentality of feeling happy to be lucky. Moreover, each winner had to pay NT\$3,999, which the company referred to as the special offer price during the events. It was clear that Shangfeng Enterprises used low-value products given as raffle prizes to serve as bait and took advantage of the consumers' mentality of feeling happy to be lucky but concealed its real intention, which was to sell water purifiers.

The filters of the water purifiers had to be replaced regularly to achieve the purpose of water purification. Hence, the cost of a water purifier was usually not the only consideration of consumers when they shopped for water purifiers. They would also take into account the cost of filter replacement. Since filters were not marketed during the raffle activities, the company did not reveal the filter prices. As a result, it increased the uncertainty about filter replacement. Meanwhile,

consumers had no way of comparing filter prices and were at a disadvantage due to information asymmetry. Therefore, the overall marketing approach adopted by Shangfeng Enterprises was deceptive and obviously unfair conduct able to affect trading order in violation

of Article 25 of the Fair Trade Act. For this reason, the FTC cited the first section of Article 42 of the same act and imposed an administrative fine of NT\$50,000 on the company. 

## Merger of US-based KKR and Three Other Companies Not Prohibited

The FTC decided at the 1409<sup>th</sup> Commissioners' Meeting on Nov. 9, 2018 to cite Article 13 (1) of the Fair Trade Act and approve the merger of US-based KKR & Co., Inc. (hereinafter referred to as KKR), Carlton (Luxembourg) Holdings S.à.r.l (hereinafter referred to as LuxCo), Kairong Co., Ltd. (hereinafter referred to as Kairong Co.) and LCY Chemical Corp. (hereinafter referred to as LCY Chemicals).

In this merger, LuxCo, a subsidiary of KKR, would acquire all the shares of LCY Chemicals through Kairong Co. After the merger, KKR would become the largest shareholder and gain control of LCY Chemicals, which would be jointly owned and managed by KKR and Karlton Investment Limited (yet to be established). The condition met the merger patterns described in Subparagraphs 2, 4 and 5 of Article 10 (1) of the Fair Trade Act. In addition, the thermoplastic elastomer (TPE), isopropanol, pentaerythritol and paraformaldehyde produced by LCY Chemicals all accounted for over one quarter of the market in 2017. Therefore, the merger had to be filed with the FTC in accordance with the regulation set forth in Subparagraph 2 of Article 11 (1) of the Fair Trade Act.

Prior to the merger, KKR was an investment company offering investors across the globe various types of asset funds and other investment products to invest in. LCY Chemicals was a petrochemical manufacturer producing rubber, solvents and high-performance plastics. The merging parties did not have any horizontal or vertical trading relations; hence, it would be a conglomerate merger. After the merger, no changes would occur to the structure of the original product markets and competition would not be affected. Moreover, there were no restrictions from related laws and regulations, capital thresholds, sources of raw materials or tariff barriers on the manufacturing of the products involved. In other words, the merger would not lead to any competition restraint in the relevant product markets.

After reviewing the case, the FTC concluded that the merger would not result in any significant competition restraint and the overall economic benefit would outweigh the disadvantages from competition restraints. Therefore, the FTC cited Article 13 (1) of the Fair Trade Act and did not prohibit the merger. 

## Vitalive Biotech in Violation of Multi-level Marketing Supervision Act

The FTC decided at the 1403<sup>rd</sup> Commissioners' Meeting on Oct. 3, 2018 that Vitalive Biotechnology Co., Ltd. (hereinafter referred to as Vitalive Biotech) had violated Article 16 (2) of the Multi-level Marketing Supervision Act by recruiting people with limited capacity for civil conduct as participants without acquiring the written consent of their legal representatives in advance and attaching it to the contract. The company also violated Articles 20 (2) and 21 (2) of the same act for not processing participant contract cancellation or termination and returned products in accordance with related regulations. The FTC imposed on the company administrative fines of NT\$100,000 for the first violation and NT\$900,000 for the second violation. The fines totaled NT\$1 million.

Vitalive Biotech filed its multi-level marketing operation with the FTC in Oct. 2017 and began to market Ocean Oligopeptide as a food product. When inspecting the office of Vitalive Biotech in Jan. 2018, the FTC's staff members found that the company had

recruited people with limited capacity for civil conduct without acquiring the written consent of their legal representatives and attaching it to the contract. The practice was in violation of Article 16 (2) of the Multi-level Marketing Supervision Act.

Meanwhile, the FTC also discovered that Vitalive Biotech either had not refunded participants within 30 days after their contract cancellation or termination within 30 days after contract signature or had deducted membership fees and administrative procedure fees from the funds returned to participants. However, as membership and administrative procedure fees were not statutory fees to be deducted, the company had therefore violated Article 20 (2) of the Multi-level Marketing Supervision Act. At the same time, by failing to return funds within 30 days to participants canceling or terminating contracts within 30 days after contract signature, Vitalive Biotech also violated Article 21 (2) of the Multi-level Marketing Supervision Act. 

## Club Sparkle Taiwan Violated Multi-level Marketing Supervision Act for Failing to File with the FTC before Starting Operation

The FTC decided at the 1424<sup>th</sup> Commissioners' Meeting on Feb. 20, 2019 that Club Sparkle Taiwan Co., Ltd. (hereinafter referred to as Club Sparkle Taiwan) had violated Article 6 (1) of the Multi-level Marketing Supervision Act for failing to file with the FTC before starting operation. The FTC imposed an administrative fine of NT\$300,000 on the company and also ordered it to immediately cease the unlawful act after receiving the disposition.

The FTC received complaints from private citizens about the unlawful act and initiated an investigation. The findings indicated that Club Sparkle Taiwan had started to provide backup service in Jan. 2018 after signing a cooperation agreement with Club Sparkle Japan and also began to rent venues in Hualien, Taipei, Hsinchu and Taichung to hold

"Sparkle Academy" activities to find recruits to join the marketing schemes or organizations of Club Sparkle Japan to promote and sell "TrueLifeCoin Package Options" such as the "Star Portfolio". The products included high-energy micro-minerals, multi-function moisturizing creams and other food and skincare products. Participants recommending others to join the company's schemes and organizations and purchasing products could be awarded recommendations and marketing bonuses which by nature were commissions given at various levels and team-based remuneration. However, the company did not file with the FTC before starting operation and the conduct was in violation of Article 6 (1) of the Multi-level Marketing Supervision Act. 

## Statistics on Cases Involving Unfair Competition Practices

Due to fierce competition, enterprises often use advertisements to provide consumers with false information to stimulate purchases. Some even spread untruthful information to hurt the business reputations of others and attract customers. Therefore, the FTC has to impose regulations against such unfair competition practices to protect trading order and consumer interests as well as maintain fair competition.

Statistics show that the FTC processed 10,309 cases either after receiving complaints or initiating ex officio investigations and closed 10,391 cases (including unclosed cases from previous years) between 2014 and the end of Apr. 2019 (hereinafter referred to as the five recent years). After cases not belonging to the jurisdiction of the FTC, cases in which the review was suspended due to procedural inconsistency and cases involving repeated filing of complaints were deducted, there remained 1,908 cases associated with the regulations enforced by the FTC. Analyzed by type of conduct (cases involving more than one violation were calculated repeatedly), the 1,071 unfair competition cases (56.13%) formed the largest group, followed by the 537 competition restriction cases (28.14%) (Table 1).

Table 1 Cases Involving the Jurisdiction of the FTC in the Five Recent Years – by Type of Violation

Unit: case; %

Type of Violation	2014	2015	2016	2017	2018	Jan.- Apr.2019	Total	Ratio to Total Number of Cases %
Competition Restriction	122	110	99	107	78	21	537	28.14
Unfair Competition	270	208	244	165	140	44	1,071	56.13
Illegal Multi-level Marketing	60	95	49	55	47	17	323	16.93
Others	3	2	2	3	6	-	16	0.84

Note: Some cases involved two or more offenses; therefore, the numbers of dispositions issued and businesses sanctioned exceed the total number of cases or 1,908.

If judged by type of violation (cases involving more than one violation were calculated repeatedly), the 734 cases (68.53%) involving false or misleading advertising practices made up the biggest part of the 1,071 unfair competition cases in the five recent years, and the 323 deceptive or obviously unfair conduct cases (30.16%) came second. Meanwhile, when judged by rate of sanction imposition, the 43.87% of false or misleading advertising practices cases was the highest among the 394 unfair competition cases in which sanctions were administered (accounting for 35.79% of the unfair competition cases), followed by the 24.15% of deceptive or obviously unfair conduct cases (Table 2).

Table 2 Cases Involving Unfair Competition in the Five Recent Years – by Handling Result

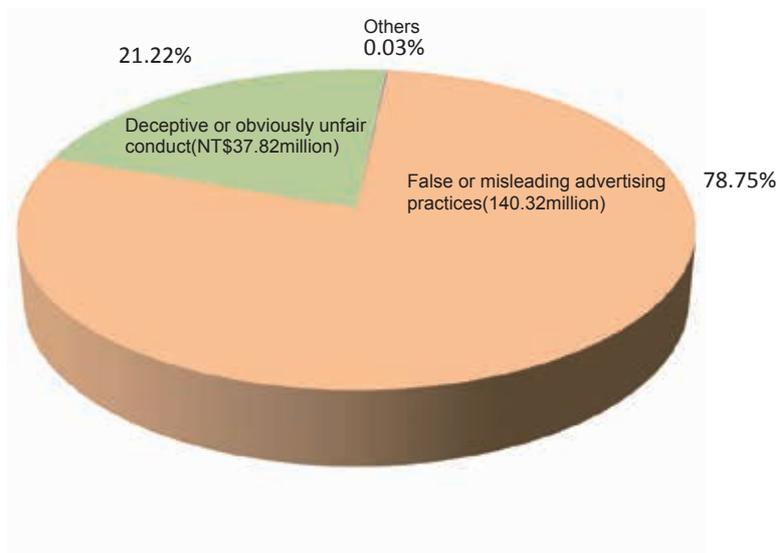
Unit: case; business

Type of Violation	Total	Sanctioning			No Sanction Given	Administrative Disposal
		No. of Cases	No. of Dispositions Issued	No. of Businesses Sanctioned		
Total	1,071	394	406	539	671	6
False or misleading advertising practices	734	322	334	462	411	1
Counterfeiting the business symbols of others	14	-	-	-	14	-
Giving inappropriate gifts or prizes	12	1	1	1	11	-
Sabotaging the business reputation of others	25	-	-	-	25	-
Deceptive or obviously unfair conduct	323	78	78	84	239	6

Note: Some cases involved two or more offenses; therefore, the numbers of dispositions issued and businesses sanctioned exceed the total number of cases.

In the five recent years, the FTC issued 406 dispositions against unfair competition practices and sanctioned 539 businesses. The fines totaled NT\$178.19 million. When classified by type of violation, NT\$140.32 (78.75%) was imposed for false or misleading advertising practices, followed by NT\$37.82 million (21.22%) imposed for deceptive or obviously unfair conduct. If observed according to the average fine imposed on each enterprise, the average amount imposed for unfair competition was NT\$330,000. The NT\$450,000 imposed for deceptive or obviously unfair conduct was the highest, followed by the NT\$300,000 imposed for false or misleading advertising practices (Fig. 1).

Fig. 1 Fines Imposed for Unfair Competition in the Five Recent Years – by Type of Violation



## FTC Activities in March and April 2019

- ▲ On Mar. 8, the FTC held a workshop on “Advocacy of Competition and Prohibition of Joint Increases in Gravel and Premixed Concrete Prices” at the Southern Taiwan Joint Services Center of the Executive Yuan.
- ▲ On Mar. 11, the teachers and students of the Graduate Institute of Intellectual Property of National Taipei University of Technology and Osaka Institute of Technology of Japan attended the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the FTC.
- ▲ On Mar. 15 to 18, the FTC promoted the Fair Trade Act at the Taipei International Bakery Show.
- ▲ On Mar. 20, the FTC co-hosted a presentation on “Fair Trade Commission Disposal Directions (Policy Statements) on the Sales of Elementary and Junior High School Textbooks” with the Department of Education of Pingtung County Government.
- ▲ On Mar. 21, the FTC held a workshop on the “Fair Trade Commission Disposal Directions (Guidelines) on Online Advertisements” in Taipei City.
- ▲ On Mar. 21, the teachers and students of the Department of Economics of Soochow University attended the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the FTC.
- ▲ On Apr. 12, the teachers and students of the Department of Economics of Chinese Culture University attended the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the FTC.
- ▲ On Apr. 19, the FTC held a presentation on the “Fair Trade Commission Regulations on Multi-level Marketing” at the Puli Town Office in Nantou County.
- ▲ On Apr. 19, the FTC held the “2019 Special Topic Speech on the Fair Trade Act-Domestic Antitrust Law Enforcement and Future Directions under International Tendencies” in Taichung City.
- ▲ On Apr. 26, the FTC held a presentation on the “Presentation on the Fair Trade Commission Disposal Directions (Guidelines) on the Business Practices of Franchisors” in Taipei City.
- ▲ On Apr. 30, the FTC conducted the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Department of Finance of National Pingtung University.



1. The teachers and students of the Graduate Institute of Intellectual Property of National Taipei University of Technology and Osaka Institute of Technology of Japan attending the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the FTC
2. The FTC promoting the Fair Trade Act at the Taipei International Bakery Show



3. The FTC co-hosting a presentation on "Fair Trade Commission Disposal Directions (Policy Statements) on the Sales of Elementary and Junior High School Textbooks" with the Department of Education of Pingtung County Government
4. The FTC holding a workshop on the "Fair Trade Commission Disposal Directions (Guidelines) on Online Advertisements" in Taipei City
5. The FTC holding a presentation on the "Fair Trade Commission Regulations on Multi-level Marketing" at the Puli Town Office in Nantou County
6. The FTC conducting the " Fair Trade Act and Multi-level Marketing Supervision Act Training Camp" at the Department of Finance of National Pingtung University

## FTC International Exchanges in March and April 2019

- ▶ On Feb. 28 to Mar. 5, the FTC attended the “Competition Law Workshop on Competition Rules in the Transport Sector” held by the OECD-Korea Policy Centre in Busan, Korea.
- ▶ On Mar. 1 to 5, the FTC attended the APEC “Competition Policy and Law Group Meeting” and “the First Meeting of the Economic Committee” in Santiago, Chile.
- ▶ On Mar. 6, the FTC attended a teleconference held by the ICN Cartel Working Group.
- ▶ On Mar. 21, the FTC attended a teleconference held by the ICN Agency Effectiveness Working Group.



The FTC attending “the Competition Law Workshop on Competition Rules in the Transport Sector” held by the OECD-Korea Policy Centre in Busan, Korea

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