



NO 080

TAIWAN FTC NEWSLETTER

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FTC International Exchanges in January and February 2018

Supreme Café in Violation of the Fair Trade Act by Not Fully Disclosing Franchise Information

The Fair Trade Commission (hereinafter referred to as the FTC) decided at the 1,339th Commissioners' Meeting on Jul. 5, 2017 that Supreme Café Group (hereinafter referred to as Supreme Café) had violated Article 25 of the Fair Trade Act by not fully disclosing important franchise information in writing to trading counterparts before contract signature when recruiting franchisees to join its Woogo Juice California Smoothies and Flambagel chains. The FTC imposed an administrative fine of NT\$300,000 on the company and also ordered it to cease the unlawful act.

When recruiting franchisees for the Woogo Juice California Smoothies and Flambagel chains, Supreme Café only provided interested parties with the franchise catalogs, franchise contract-signing bonus certificates and franchise-joining letters of intent. The company did not fully disclose in writing important franchise information, including the "expenses required for products and materials to be purchased before operation," "POS software rental fees and expenses required for products and materials to be purchased during operation," "contents and validity of trademark rights franchisees were authorized to use and range of use and restrictions," "numbers and addresses of all the franchisees of the same chain in every county (city) and the ratios of contract cancellation and termination in the previous year," "limitations on franchiser-franchisee relationships (products or materials to be purchased from the franchiser or a designated party only and the corresponding specifications, capital equipment to be purchased from the franchiser or a designated party only and the corresponding

specifications, and the remodeling work to be engineered by contractors designated by the franchiser only and the corresponding specifications during the duration of franchise contract),” and “conditions for franchise contract change, termination and cancellation and handling approaches.” As a result, parties interested in joining the chains were in a disadvantageous position with no access to full franchise information and unable to assess the total capital needed to join the franchise, how long they could use the trademark rights they were authorized to use, the growth and stability of the franchise brands and restrictions on their management. Being the side with the information advantage, Supreme Café did not fully disclose important franchise information in writing before contract signature during the recruitment process. It could have obstructed trading counterparts

from making the right judgment. It was obviously unfair to the trading counterparts and unspecific potential trading counterparts and could also cause competitors to lose the opportunity to establish contracts with potential trading counterparts. It was obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Act.

The FTC would like to remind franchisers to fully disclose franchise conditions and information in writing to trading counterparts when or before signing franchise contracts in order to minimize likely transaction disputes in the future. They should also make sure they abide by the “Fair Trade Commission Disposal Directions (Guidelines) on the Business Practices of Franchisers”. 

Zhu Zhu Technology in Violation of the Fair Trade Act for Using Website Information of Other Businesses as Its Own App Content

The Fair Trade Commission (hereinafter referred to as the FTC) decided at the 1,352nd Commissioners' Meeting on Oct. 2, 2017 that Zhu Zhu Technology Co., Ltd. (hereinafter referred to as Zhu Zhu Technology) had violated Article 25 of the Fair Trade Act by taking rental home information from rental home websites without acquiring their consent and using it as the content of the company's "Zhu Zhu Fast Rental Home Service" app to attract users to download the app and pay for value-added "Rental Home Radar" services and also to sell advertising spots on the company's website. It was obviously unfair conduct able to affect trading order. In addition to ordering Zhu Zhu Technology to immediately cease the unlawful act, the FTC also imposed an administrative fine of NT\$50,000 on the company.

The FTC received complaints accusing Zhu Zhu Technology of taking rental home information from a number of rental home websites without their consent and using it as the content of its Zhu Zhu Fast Rental Home Service app. Through the app's interface, users could check rental home information (including photos, basic data and contact information of posters) and get in touch with the contact persons directly without visiting the websites originally carrying such information. The informers believed such conduct had violated the Fair Trade Act. After launching an investigation, the FTC confirmed that Zhu Zhu Technology had indeed designed and developed the Zhu Zhu Fast Rental Home Service app and made it available on Apple App Store and Google Play Store for users to download to check rental home information. Obviously, Zhu Zhu Technology had taken rental home information from other rental home

websites without acquiring their consent and used it as the content of the company's Zhu Zhu Fast Rental Home Service app to attract users to download and pay for the company's "Rental Home Radar" services, and sell advertising spots to advertising service operators to collect service fees and take a cut of the profit from such advertising.

Rental home websites serve as intermediary platforms between owners and tenants. The value of such a website depends on the number of visits the website can attract. An important consideration for people looking for rental homes to decide which website to visit is whether the website offers a large number of available rental homes for comparison. For this reason, a rental home website manager has to invest a considerable amount of effort to attract enough owners and tenants to join the platform to increase the value of the website. By taking rental home information from other rental home service websites and using it as the content of its Zhu Zhu Fast Rental Home Service app for people to look for rental home information, Zhu Zhu Technology not only reduced the number of visits that would have been paid to such websites and exploited the effort others had invested to set up websites and attract tenants to visit, but also decreased the sources of clientele and commercial value of the advertising spots of some of the other websites that offered advertising spots which were marketable because of the indirect network effect of such platforms. Therefore, the FTC concluded that the practice of Zhu Zhu Technology had been obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Act. 

Shang He Water Purifiers Used Deceptive Approaches to Market Water Purifiers in Violation of the Fair Trade Act

The Fair Trade Commission (hereinafter referred to as the FTC) decided at the 1,346th Commissioners' Meeting on Aug. 23, 2017 that Shang He Water Purifier Co., Ltd. (hereinafter referred to as Shang He Water Purifiers) had violated Article 25 of the Fair Trade Act by holding raffles and notifying people that they had won prizes to obtain their personal information and then concealing important transaction information to mislead consumers into purchasing purifier-related products. The overall marketing approach was deceptive and obviously unfair conduct able to affect trading order. In addition to ordering the company to cease the unlawful act, the FTC also imposed on it an administrative fine of NT\$100,000.

Shang He Water Purifiers started to adopt raffles to market products related to its "Energy Water Resources" water purifiers in 2016. The company also solicited retail stores to collaborate to hold such raffle activities. The raffle tickets only carried the text of "Visit our stores to participate in the raffle and get double gifts." The wording could easily have misled consumers into believing that the activity was held by the stores. Meanwhile, the FTC's investigation revealed that Shang He Water Purifiers and collaborating stores had set a threshold as the condition for winning the 3C electrical appliances to be given away as prizes but never revealed it to the public, and the company also did not deny conducting the raffles in accordance with the established threshold. As a consequence, the prizes actually given out were not entirely consistent with what was indicated in the activity description. Therefore, the

unilateral decision of Shang He Water Purifiers to announce the 3C electrical appliance raffle results, without disclosing the threshold restriction, only when water purifier winners expressed their willingness to have the water purifier installed had deprived consumers of their opportunity to win the 3C prizes.

When purchasing water purifiers, people consider not only the cost of the purifier; they also take the locked-in cost of changing the filter in the future into account. Although Shang He Water Purifiers did tell people the value of the water purifier and the amount to be paid to collect the prizes when calling to notify people of their prize winning, the company's water purifier purchasing cost and the suggested price set by the water purifier maker were very different from the value the company told the prize winners. The erroneous information could have caused people to have wrong expectations about the quality of the water purifier and to be happy about their luck. After installing purifiers for people, the company began to push its filter change packages. It was then that people realized the cost of changing the filter, but they had no way to compare filter prices. They entered into transactions with the company while being in a disadvantageous situation due to information asymmetry. As a result, disputes subsequently occurred.

Shang He Water Purifiers held raffle activities and notified the prize winners in order to attract people with no intention of making purchases. By taking advantage of people's tendency to feel happy about their luck, the company obtained their personal information but concealed important information about

the raffles. As a consequence, the actual raffle results were apparently different from what was indicated in the raffle description. Later, the company lied about the price of the water purifier to mislead people who were in a disadvantageous situation due to information

asymmetry into purchasing products related to the water purifier. The overall marketing approach was deceptive and obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Act. Hence, the FTC sanctioned the company. 

Kang Hsuan Publishing in Violation of Fair Trade Act

The Fair Trade Commission (hereinafter referred to as the FTC) decided at the 1,360th Commissioners' Meeting on Nov. 29, 2017 that Kang Hsuan Educational Publishing Co., Ltd. (hereinafter referred to as Kang Hsuan Publishing) had violated Article 25 of the Fair Trade Act by illegitimately offering junior high school teachers money and objects in Hsinchu County and City when the company held the "Kang Hsuan Happy Christmas Raffle" in December 2016. The FTC imposed an administrative fine of NT\$500,000 on the company.

To prevent textbook publishers from engaging in inappropriate marketing practices, the FTC established the "Fair Trade Commission Disposal Directions (Policy Statements) on the Sales of Elementary and Junior High School Textbooks". As set forth therein, when publishers offer or announce offering money and objects not directly related to teaching, such as teaching aids unnecessary for teaching, to increase the opportunities for their textbooks to be selected, it is culpable conduct against commercial competition ethics. Even if money

or inappropriate objects are offered outside textbook selection periods to accumulate favors, it is also in violation of Article 25 of the Fair Trade Act.

The salespeople of Kang Hsuan Publishing organized the "Kang Hsuan Happy Christmas Raffle" in December 2016, filed with the supervisor for the region and acquired sponsorship from the company to offer Sogo vouchers, City Steak meal coupons, Vieshow Cinemas tickets, Aveda skincare kits, and Seba foot care experience kits as prizes for the junior high school teachers in Hsinchu County and City. For those who failed to win any prizes, candy and teabag sets were provided and the raffling process was broadcasted live on Facebook on Dec. 23, 2016. The prizes were for teachers and school administrators only, had nothing to do with teaching and were worthy of enough monetary value to be given to others as presents. Even if they had been given outside textbook selection periods, the intention would have been to accumulate favors. Therefore, it was conduct able to affect trading order in the textbook market in violation of Article 25 of the Fair Trade Act. 

Jie Shun Construction, Quan Yue Advertising and An Jia International Posted False Housing Project Advertisements in Violation of the Fair Trade Act

The Fair Trade Commission (hereinafter referred to as the FTC) decided at the 1,342nd Commissioners' Meeting on Jul. 26, 2017 that Jie Shun Construction Co., Ltd. (hereinafter referred to as Jie Shun Construction) and its sales agent Quan Yue Advertising Co., Ltd. (hereinafter referred to as Quan Yue Advertising) had violated Article 21 (1) of the Fair Trade Act by posting advertisements carrying the wording "the B1 space to serve as the ground floor guest reception hall...a communal space of multiple functions and the second entrance for your automobile" as well as showing a model home of mezzanine design, and also collaborating with An Jia International Enterprise Co., Ltd. (hereinafter referred to as An Jia International) to jointly use An Jia International as the investor and the builder when marketing the "An Jia MOre+" housing project located in Wanhua District of Taipei City. The conduct was a false and misleading representation able to affect transaction decisions. The FTC imposed administrative fines of NT\$1.8 million on Jie Shun Construction, NT\$900,000 on Quan Yue Advertising and NT\$600,000 on An Jia International.

The housing project was referred to as an "An Jia" project whereas both the Floor Plan A and Floor Plan B displayed in the reception center also carried the wording "Investor and Builder: An Jia International". Floor Plan A also showed the caption of "An Jia International, a creative builder" and the text of "Founded in 1988, An Jia International has gone through good and bad times in the past 24 years..." and "It is our aspiration that every home we build will be a beautiful construction worth remembering in

the contemporary era." A list of works produced by An Jia International since 2004 was also provided. Overall, the floor plans and the advertisements gave consumers the impression that An Jia International was the investor and builder of the housing project. However, the FTC's investigation showed that the actual investor and builder was Jie Shun Construction, yet An Jia International, a better known company, was referred to as the builder and the image of An Jia International was thus associated with the housing project. Moreover, the recent building projects by An Jia International were also listed to increase consumers' confidence in the housing project. Apparently, the claim in the advertisements was inconsistent with reality. It was a false and misleading representation in violation of Article 21 (1) of the Fair Trade Act.

Both the 3D perspective of the "second entrance for your automobile" on Floor Plan A and the advertisement carried the wording "the B1 space to serve as the ground floor guest reception hall... a communal space of multiple functions and the second entrance for your automobile." It gave the impression that the first level in the basement could be used as a "space of multiple functions and the "second entrance" other than the lobby. However, according to the Taipei City Government, if the first level in the basement originally approved to be the "air raid shelter and parking space" was turned into a "lobby" or "multifunction room" or any other public facility, it would constitute an illegal use of the building in violation of Article 77 of the Building Act. Therefore, indicating that the first level of the basement was

to be used for public facilities was inconsistent with reality. It was a false and misleading representation in violation of Article 21 (1) of the Fair Trade Act.

The area around the restroom in the model home was designed as having two levels. Clothes were hung and boxes were placed on the top level. The decoration and furnishing gave the overall impression that a mezzanine could be put in once the project was completed. On the building permit for the housing project, however, it was stated that “any mezzanine put in on any floor would be illegal.” The Taipei City

Government also confirmed that there was no platform over the restroom indicated on the building permit, building use license and as-built drawings for the housing project, and the addition of mezzanines after issuance of the building use license would be subject to related regulations. In other words, the indication in the model home that could have misled consumers into believing that mezzanines could be put in legally was obviously inconsistent with reality. Hence, it was in violation of Article 21 (1) of the Fair Trade Act. 

Jing Zhune in Violation of Multi-Level Marketing Supervision Act

The Fair Trade Commission (hereinafter referred to as the FTC) decided at the 1,362nd Commissioners' Meeting on Dec. 13, 2017 that Jing Zhune Co., Ltd. (hereinafter referred to as Jing Zhune), a multi-level marketing business, had violated Article 7 (1) of the Multi-Level Marketing Supervision Act by failing to file with the FTC before changing its product items, and also violated Article 24 of the same Act by not processing as required by law the withdrawals of participants and the products they returned upon contract termination and Article 21 (2) was applicable mutatis mutandis. The FTC imposed administrative fines of NT\$100,000 for the first offense and NT\$1.5 million for the second offense, the fines totaling NT\$1.6 million, and also ordered the company to immediately cease the unlawful acts.

Jing Zhune registered its multi-level marketing operation with the FTC in Jan. 2012. The product items included the "Beautiful New World Contract" and "You An Rice". On Mar. 28, 2017, the FTC's staff members visited the main office of Jing Zhune for business inspection purposes and discovered that the company happened to be giving a special offer of "Buy 2 bottles of Taiwanofungus camphoratus essence and get one free at NT\$7,600, original price NT\$11,400" and also provided discounts on the prices of 3 other products from Mar. 15 to Apr. 15, 2017. As the price

of a set of products was different from the total unit prices, the products had to be considered different items. Yet, Jing Zhune had not filed the change with the FTC; therefore, the conduct was in violation of Article 7 (1) of the Multi-Level Marketing Supervision Act.

Meanwhile, Jing Zhune gave 30% of the paid amount to refund participants who had withdrawn for the "Beautiful New World Contract" products that they returned upon contract termination. However, the "Beautiful New World Contract" included the "Regal Membership Card," "guaranteed member benefits," "Love Charity Club" status and "free-of-charge home delivery of quality retail products." It was a "service" product and refunding had to be conducted in accordance with Article 24 of the Multi-Level Marketing Supervision Act and Article 21 was applicable mutatis mutandis. That means the company had to refund 90% of the original amount paid by participants for the "Beautiful New World Contract" and only the bonuses or remuneration that the company had paid participants could be deducted. Therefore, by failing to calculate the refund according to law, Jing Zhune had violated Article 24 of the Multi-Level Marketing Supervision Act and Article 21 (2) of the same Act was applicable mutatis mutandis 

Statistics on Complaint Cases

Complaint cases received are cases in which informers present to the FTC personally signed written (including emails, faxes, etc.) or oral statements (which are filed as records or complaints) that describe concrete evidence of activities suspected of being in violation of the Fair Trade Act or the Multi-Level Marketing Supervision Act or personally signed statements transferred from other agencies. Statistics show that between January and February 2018 the FTC processed 241 complaint cases (69% of the total cases) and reviewed 357 cases (including 116 unclosed cases from 2017). From 2013 to the end of February 2018 (hereinafter referred to as the 5 recent years), the FTC processed 7,962 complaint cases in total.

Among the 219 complaint cases closed between January and February 2018, the FTC handed down sanctions in 2 cases and imposed no sanctions in 11 cases. 8,057 complaint cases were closed in the 5 recent years. Among them, sanctions were administered in 296 cases (with 315 dispositions issued), no sanctions were imposed in 820 cases, and administrative disposal was decided in 6 cases. Suspension of review was decided in 6,555 cases because of involvement in criminal cases or civil cases or the jurisdiction of other agencies, or due to procedural inconsistency (Table 1).

Table 1 Statistics on Complaint Cases Processed in the 5 Recent Years

Unit: Case; %

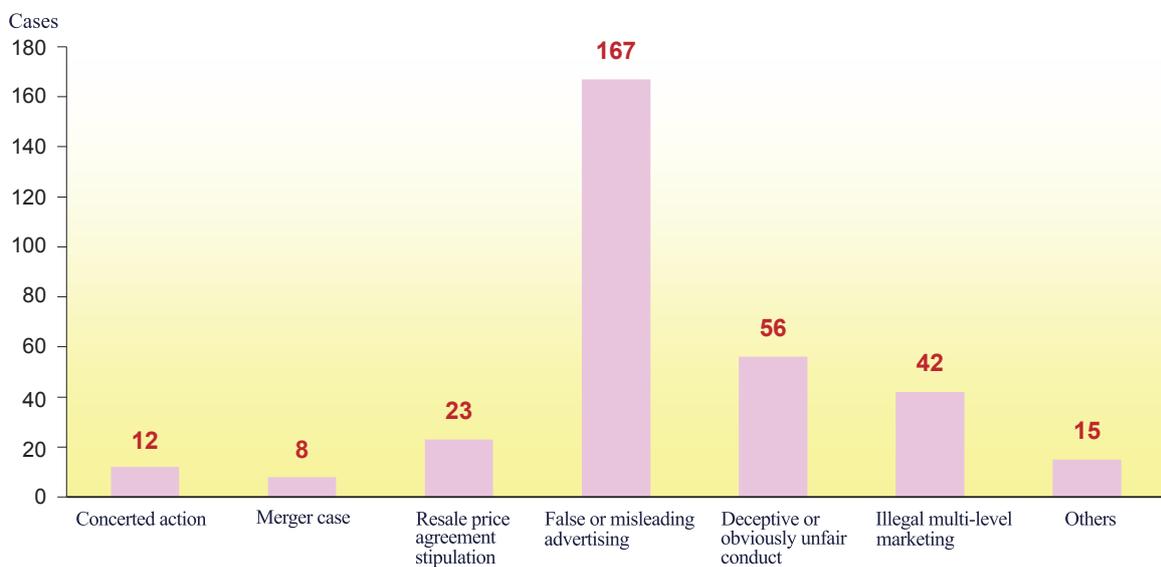
Year	Reported Case		Handling Result						
	Processed Cases	Ratio to Total Number of Cases %	Total	Sanctions Made	No Sanctions Made	Administrative Disposals	Suspension of Review	Termination of Investigation	Combination with Other Cases
Total (2013-Feb. 2018)	7,962	68.1	8,057	296	820	6	6,555	1	379
2013	1,623	71.2	1,643	102	276	1	1,160	-	104
2014	1,538	64.8	1,642	77	199	2	1,275	-	89
2015	1,302	62.3	1,283	37	101	-	1,108	-	37
2016	1,587	68.7	1,543	42	129	2	1,325	1	44
2017	1,671	73.0	1,727	36	104	1	1,484	-	102
Jan.-Feb. 2018	241	69.1	219	2	11	-	203	-	3

Notes:

1. The total number of cases refers to the aggregate of complaint cases, concerted action approval applications, merger notifications, interpretation applications and cases in which the FTC initiated ex officio investigations.
2. "Administrative disposals" refers to administrative measures adopted by the FTC, including issuing industrial warnings (or corrections) or case warnings (or written requests for improvement) and requesting that related competent authorities take necessary action.
3. "Combination with other cases" means that the same informer has repeatedly reported the same violation or different informers have reported the same violation and the complaints thus filed have been combined and processed together.
4. "Termination of investigation": According to Article 28 added as a result of the amendment to the Fair Trade Act made on Feb. 4, 2015, the FTC may decide to terminate the investigation when the enterprise under investigation for violation of the Fair Trade Act has made the commitment as well as actually taken concrete measures to cease and correct its unlawful conduct.

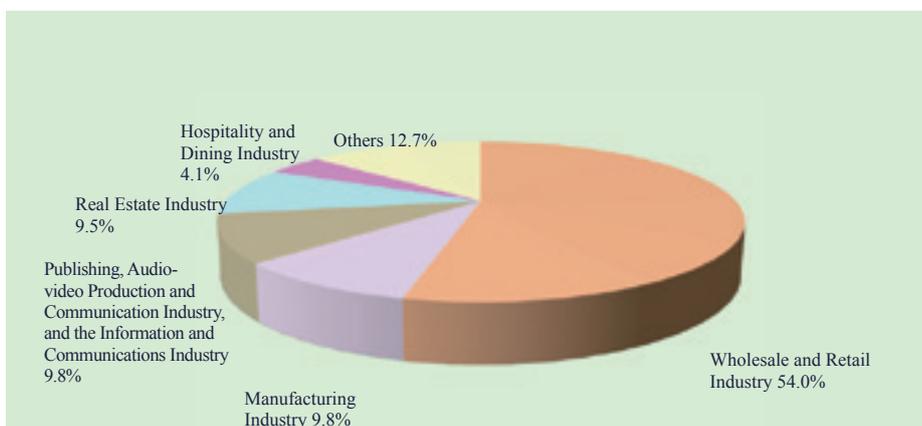
Between January and February 2018, sanctions were handed down in 2 cases, with 2 dispositions issued, 2 businesses sanctioned and the fines totaling NT\$900,000. Judged by the type of violation (cases involving 2 or more articles are calculated repeatedly), among the 315 dispositions issued in the complaint cases filed in the 5 recent years, the 167 cases involving false or misleading advertising formed the largest portion, accounting for about 53%, followed by 56 cases, or around 18%, of deceptive or obviously unfair conduct. If judged according to the fine imposed, the NT\$124.15 million imposed for concerted action made up the largest portion of the total fine of NT\$233.20 million, followed by the NT\$48.79 million, 20.9%, imposed for false or misleading advertising (Fig. 1).

Fig. 1 Sanctions Administered in Complaint Cases Processed in the 5 Recent Years—by the Type of Violation



If judged by the type of industry, the 170 cases (54.0%) involving wholesale and retail businesses constituted the largest part of the complaint cases in which sanctions were made in the 5 recent years, followed by the 31 cases (9.8%) for each of the manufacturing industry, the publishing, audio-video production and communication industry, and the information and communications industry, the 3 totaling 73.6% (Fig. 2).

Fig. 2 Reported Cases Processed with Sanctions Made in the 5 Recent Years—by the Type of Industry



FTC Activities in January and February 2018

- ▲ On Jan. 22, the FTC conducted a workshop on “Fair Trade to Be Taken into Account in the Development of the Infant Formula Industry” in Taipei City.
- ▲ On Feb. 27, the FTC held a meeting on “Competition Advocacy and Prohibition of a Joint Increase in Toilet Paper Prices” in Taipei City.



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1. The FTC conducting a workshop on “Fair Trade to Be Taken into Account in the Development of the Infant Formula Industry” in Taipei City

2-3. The FTC holding a meeting on “Competition Advocacy and Prohibition of a Joint Increase in Toilet Paper Prices” in Taipei City

FTC International Exchanges in January and February 2018

- ▲ On Jan. 10 and 30, the FTC respectively attended the teleconferences of the ICN Merger Working Group and Cartel Working Group Subgroup 2.
- ▲ On Jan. 30 and 31, the FTC participated in OECD workshops on “Cartel Screening in the Digital Era” and “Regulation and Competition in Light of Digitization” through remote attendance.
- ▲ On Feb. 7, the FTC attended the teleconference of the ICN Agency Effectiveness Working Group.
- ▲ On Feb. 28, the FTC sent representatives to give lectures during a market research training course organized by the Japan Fair Trade Commission in Tokyo, Japan.



1. The FTC sending representatives to give lectures in Tokyo, Japan

Dear Readers,

In order to improve the quality of our Taiwan FTC Newsletter, we would like to request a few minutes of your time to fill in the questionnaire below. It would be appreciated if you could please directly fill in the questionnaire at the website (<http://www.ftc.gov.tw>). Thank you for your assistance and cooperation.

Regards
Fair Trade Commission

Taiwan FTC Newsletter Reader's Survey

- Nationality : _____
- Category of your organization
Government Private Corporation Embassy NGO Media Scholars
Other (please specify) _____

1. What do you think of the design of the Taiwan FTC Newsletter, including style and photos?
 Very Good Good Average Bad Very Bad

2. Are the articles clear and understandable or difficult to understand?
 Very Clear Clear Average Difficult Too Difficult

3. Are you satisfied with the contents of the Taiwan FTC Newsletter, including choice of subjects, length and thoroughness of articles?
 Very satisfied Satisfied Average Dissatisfied Very Dissatisfied

4. Which section is your favorite one?
 Selected Cases Regulation Report FTC Statistics FTC Activities
 FTC International Exchanges

5. What more would you like to see in the Taiwan FTC Newsletter, e.g. different subjects? Do you have any other suggestions?

Your advice : _____

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