

# Taiwan FTC Newsletter

Creating a Quality Competition Environment in Taiwan

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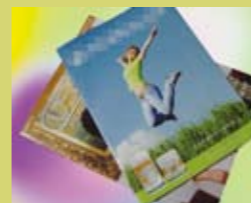
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**Verbal Promises from Resort  
Membership Pushers Not to Be  
Easily Trusted**



**Kang Hsuan Educational Publishing  
Group Imposed by FTC due to  
violation of the Fair Trade Act**



**Ching Yun Enterprise Co., Ltd.  
Imposed by FTC due to violation of  
the Fair Trade Act**



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## Verbal Promises from Resort Membership Pushers Not to Be Easily Trusted

Mr. Chen visited a show at one of the World Trade Center exhibition halls. Someone who claimed to be promoting a resort asked him to fill out a questionnaire and gave him a scratch card. He scratched the card and the promoter immediately said he was a winner but would have to go to the company's office to get the prize. A different person took Mr. Chen to the company and told him it would take about 90 minutes for him to be briefed and watch a film. Nothing was mentioned about the purpose of the briefing and no other information was given. At the office, the personnel who received Mr. Chen first chatted about timeshare arrangements for vacations before showing him a film and a variety of photos. Then, it was revealed that the whole thing was about a promotion activity to sell memberships to a resort overseas. Mr. Chen was offered a special price for the membership as a spokesman in commercials. It was already 9pm by the time Mr. Chen left, after he had spent 6 hours in that office. He paid a deposit when he signed the contract and had to get a bank loan for the remaining amount. The insistence and the extended bombardment from the sales personnel made it impossible for Mr. Chen to leave the spot without making the purchase. Besides being given the opportunity to



buy the membership to an overseas resort for only NTD340 thousand, or half the normal cost, he was also told him that the membership would come with a free investment policy of equal value or else cash bonuses.

Marketing for memberships to overseas resorts is normally conducted through mail, telephone, telexes, or email by inviting consumers to participate in promotional activities. If no raffles are held and the promoter simply tells consumers that they have been randomly selected or have won the prize by luck, without disclosing that the real purpose is to sell a certain product or service, consumers may be psychologically unprepared when they participate in the activity. Such schemed promotion approaches can put consumers in an unequal position as far as the access to

the corresponding transaction information is concerned. In Mr. Chen's case, the salespeople's pushy sales approaches made it impossible for Mr. Chen to leave and, after 6 long hours of bombardment, Mr. Chen made the decision to purchase the membership.


The promoter used filling out the questionnaire as an excuse to invite consumers interested in traveling to attend the briefing at which only travel information would be given. Nothing else was mentioned about the resort membership. The ensuing long bombardment was a premeditated attempt to push the consumer to agree to a transaction for which the consumer was totally unprepared. The conduct was a violation of the regulation contained in Article 24 of the Fair Trade Act.

Since the consumer had no need to use the overseas resort membership that he had purchased, he was seriously concerned about how to retrieve the considerable amount that he had paid. The promoter offered measures through which the consumer could indirectly get the amount paid back. However, if there were other conditions attached for the feedback

offer to be valid, the consumer might still make a wrong decision as a result of his eagerness to cover his loss. When pushing memberships to the overseas resort, the promoter claimed that coming with the membership would be an investment policy including life insurance and a guaranteed investment return equivalent to the cost of the membership. It was also agreed that the promoter would pay the premiums. Under such circumstances, consumers would normally take for granted that they would be entitled to a handsome amount of cash feedback in the future. If, however, the promoter stopped paying premiums, the insurance contract would be terminated and the consumer would never be able to collect the insurance and the bonus from the investment policy. In addition, the promoter used the bonus-sharing scheme to entice Mr. Chen to purchase the overseas resort membership, claiming the total amount of feedback would be nearly the entire cost of the membership. Mr. Chen could only assume that he would retrieve the money he had paid for the membership. The promoter made use of his better position in regard to the access to the corresponding information and single-handedly decided the bonus-sharing feedback procedure. If a member failed to provide required documents

and information in accordance with the established process and deadline, when the member wanted to collect the feedback a few years later, he or she would be in a disadvantageous position because of the terms established by the promoter. The promoter took a percentage of the membership cost to purchase an investment-type financial product, but did not fully disclose the nature and content of the risk involved. The important transaction information regarding the amount of the bonus and payment was withheld and the consumer could be therefore unable to acquire the feedback promised. The said promoter applied the above-mentioned inappropriate measures and sold overseas resort memberships by withholding important transaction information and taking advantage of the trading

counterpart's insufficient access to needed information. The transaction was unfair and was considered deception that could affect trading order. The conduct was apparently in violation of the regulation obtained in Article 24 of the Fair Trade Act.

We are deeply sorry for Mr. Chen's unfortunate experience in his purchase of the overseas resort membership. However, we would like to remind the public that they should not easily trust any verbal promises. When intending to purchase overseas resort memberships, they should not forget to request that everything be clearly stipulated in a contract. 

## Kang Hsuan Educational Publishing Group Imposed by Fair Trade Commission due to violation of the Fair Trade Act

At its 988th Commission meeting on 13 October 2010 the Fair Trade Commission, Executive Yuan passed a decision whereby Kang Hsuan Educational Publishing Group were deemed to have violated Article 24 of the Fair Trade Act. The company was found to have provided inappropriate items to teachers to strive for the opportunity of their textbooks being selected during the period of textbook selection for Taipei and Keelung junior high schools. The company was ordered to immediately cease the unlawful act and were imposed with an administrative fine of NT\$1,000,000.

The textbook evaluation council set for each school decided the edition of textbook for different subjects to ensure the impartiality of textbook selection. The council was composed of teachers in the school, while purchasers were the students who used the textbooks or students parents. Textbooks therefore have a separation feature between the one who has the right to choose book and the one who is the purchaser. If a publisher offers or proposes to provide inappropriate items to the one who chooses the textbook, it may influence the decision of which textbook is chosen.



To ensure the impartiality of textbook selection, the Fair Trade Commission amended its “Fair Trade Commission Disposal Directions (Policy Statements) on the Sales of Elementary and Junior High School Textbooks” at its 919th Commission meeting on 17 June 2010. According to these provisions, if the sales business uses or proposed to offer inappropriate cash, articles or other methods to gain an economic benefit through influencing the selection of textbooks, it is an abuse of the ethics of commercial competition and can potentially violate Article 24 of the Fair Trade Act.

The Fair Trade Commission found that Kang Hsuan Company offered an emulation kit of Anlene milk powder to a teacher during the

period of textbook selection that did not correlate with using specific textbook for teaching. The company clearly offered an inappropriate item to influence the selection of textbooks to favor themselves and did not act in accordance with the ethics of business competition. Such behavior was obviously unfair and was enough to influence the trading order and violate Article 24 of the Fair Trade Act.

After considering the motive, purpose and anticipated improper profits of the unlawful acts of

Kang Hsuan Company; the degree and duration of the unlawful acts' harm to market order; the benefits derived on account of the unlawful acts; the enterprise scale; the remorse shown for the acts and attitude of cooperation in the investigation; and other factors, the FTC, in accordance with the fore part of Article 41 of the Fair Trade Act, ordered the Respondent to immediately cease the unlawful act and imposed an administrative fine.



## Ching Yun Enterprise Co., Ltd. Imposed by Fair Trade Commission due to violation of the Fair Trade Act


At its 971st Commission meeting on 15 June 2010 the Fair Trade Commission passed a decision whereby Ching Yun Enterprise Co., Ltd. were deemed to have engaged in multi-level sales activities and had improperly deducted the impairment value of the goods when participants terminated their contracts.

Ching Yun had not ceased the unlawful acts after being issued with a previous order on 17 September 2009. The company was again ordered to immediately cease the unlawful act and were imposed with an administrative fine of NT\$600,000.

The Fair Trade Commission indicates that multi-level sales businesses should repurchase the goods held by the participant when participants' terminate their contract according to Article 23-2 (2) of the Fair Trade Act. Although the impairment value of the goods could be deducted, the amount of the deduction must consider the degree of functional impairment or loss of transaction price. Ching Yun Enterprise Co., Ltd. violated Article 23-2 (2) of the Fair Trade Act when processed the participants' termination of contract, matters of withdrawal, and return of goods. The company deducted the impairment value of the goods directly by simply



considering the duration of participation but did not examine the factors of functional impairment or loss of transaction price for the products which were not possessed by the participant at the beginning.

The decision of the penalty had been documented and previously sent to Ching Yun Enterprise Co., Ltd. However, Ching Yun Enterprise Co., Ltd. did not cease the unlawful acts and continued to deduct the impairment value of the goods while processing the participants' termination of contract, matters of withdrawal, and return of goods. Hence, Ching Yun Enterprise Co., Ltd. was again imposed with an administrative fine by the Fair Trade Commission. 



## FTC Disposal Directions (Guidelines) on Payment between Large Enterprises and Small-Medium Enterprises

The Fair Trade Commission has enacted and promulgated the Disposal Directions on payment between Large Enterprises and Small-Medium Enterprises as the criteria for handling of restriction on competition or unfair competition as a result of delayed disbursement of payments from large corporations to small and medium enterprises.

### Background

The Fair Trade Commission arrived at a decision at the 985th Commissioners' Meeting on September 21, 2010 and passed the "FTC Disposal Directions on Payments between Large Enterprises and Small-Medium Enterprises" (Guidelines). The enactment of these Guidelines was the result of repeated complaints from the National Association of Small and Medium Enterprises, ROC that many large corporations did not disburse the payments for products received from small and medium enterprises until 6 to 9 months after reception of the goods and sometimes the disbursement was in checks purposely made difficult to cash out with the intention of stalling payment. Small and medium enterprises therefore got into financial trouble and were in need of cash funds or bank loans, and their operations could be endangered or even face crises such as closing down or

bankruptcy. To cope with the problem and under the instruction of the Executive Yuan, the Fair Trade Commission reached a decision at its 953rd Commission Meeting to establish a set of guidelines for the disbursement of payments from large corporations to small and medium enterprises.

In response to complaints from small and medium enterprises that certain distribution businesses with market dominance applied questionable excuses to refuse supplies from their trading counterparts, cut purchase prices, reject products, demand preferential prices, and collect additional charges, FTC established the "Fair Trade Commission Disposal Directions in Distribution Industry", "Fair Trade Commission Disposal Directions on Additional Fees Charged by Distribution Enterprises" and "Fair Trade Commission Disposal Direction on Trade Practices between Departmentstores and Branded Products Suppliers".

Based on the freedom of contract, whether a contract should be established, the parties to be involved, and the content of the contract in relation to the disbursement of payments ought to be determined by the concerned parties. Under

the fundamental principle of the autonomy of private law, the public authority should not overly intervene. However, these Guidelines are established with the domestic industrial structure and the unequal market status of large corporations and small and medium enterprises being taken into consideration. If large corporations take advantage of their dominant market positions and delay disbursement of payments to small and medium enterprises, it can cause difficulties in the application of working capital for the latter or even affect trading order in the overall management environment for small and medium enterprises. This will lead to the abuse of market dominance as well as infringement of the opportunities for small and medium enterprises to participate in fair competition in the market and obviously unfair conduct that could affect trading order. Therefore, the FTC has sorted out the patterns of unfair disbursement of payments by large corporations that could be in violation of the Fair Trade Law and, under the framework of current laws and regulations, has stipulated these Guidelines for concerned businesses and to serve as reference for the FTC when handling similar cases.

## The Guidelines

There are 7 points in the Guidelines:

### 1. Objective

These Guidelines are established to ensure fair competition between enterprises, maintain trading order, and settle cases of restriction on competition or unfair competition resulting from the delayed disbursement of payments from large corporations to small and medium enterprises.

### 2. Terminology

A. Small and medium enterprises: The “small and medium enterprises” referred to in these Guidelines are enterprises which have legally completed company registration or commercial registration and conform to the standards for identifying small and medium enterprises as prescribed in Article 2 of the Act for Development of Small and Medium Enterprises, as well as meeting the following requirements: 1) manufacturing, construction, mining, and quarrying businesses with no more than NTD80 million in paid-up capital; 2) in addition to the ones described in the preceding subsection, other businesses with sales per annum of less than NTD100 million. A proviso to Paragraph 2: In accordance with the nature of the business, government agencies responsible for specific industries may adopt the number of employees as the standard for small and medium

enterprises as follows: 1) manufacturing, construction, mining, and quarrying businesses hiring less than 200 employees on a regular basis; 2) in addition to the ones described in the preceding subsection, other businesses hiring fewer than 100 employees on a regular basis.

B. Large corporations: The “large corporations” referred to in these Guidelines are businesses with a scale exceeding the established standards of small and medium enterprises and which enjoy certain market dominance.

### 3. Factors in the determination of market dominance

A. Whether a large corporation enjoys certain market dominance shall be determined in line with its scale of operations and market share in contrast with those of small and medium enterprises, the extent of dependence of small and medium enterprises on the said large corporation, the possibility of change in terms of trading counterparts for the small and medium enterprises of concern, and the supply-demand relations in regard to specific commodities.

B. Regarding the aforesaid dependence and possibility of a change in trading counterparts,

the following are to be taken into consideration:

- 1) Contract relations: Although dependence is likely to develop as a result of long, sustained contract relations, it is not necessarily the consequence. There may exist other sufficient and expected trading channels in the market.
- 2) The difficulty of transferring to other trading counterparts the financial, material and human resource investments the small and medium enterprises of concern have already made: In cases where purchases of special tools or machine equipment, stocks of special components, or training of special personnel are involved, the larger the investment, the higher the burden and risk that will result from a change in trading counterparts.
- 3) The degree of specialization, particularization, and customization in the production or sales of products by the small and medium enterprises of concern: The more particular and specialized the products (services), the higher the dependence and the tougher it will be for the said small and medium enterprises to make changes.
- 4) The possibility of doing business with other trading counterparts, the trading conditions in comparison with the existing ones, and the acceptance of consumers: If alternative

trading counterparts do objectively exist in the market and the small and medium business of concern can subjectively expect to do business with these trading counterparts, the dependence of the small and medium enterprises of concern on large corporations is regarded as being low.

#### 4. Delay of Disbursement of Payments as a Result of Abuse of Market Dominance

A. If there is written agreement, disputes over the disbursement of payments from large corporations to small and medium enterprises can be handled accordingly. In general, verbal agreement between the concerned parties has the validity of a contract and writing is, in principle, not required. In practice, large corporations and small and medium enterprises often conduct transactions through such verbal agreement and the contractual relations are still regarded as being valid. However, a written contract will not only clearly define the rights and obligations of the parties involved, but also can serve as evidence and disputes can be settled by applying the Code of Civil Procedure. Hence, if there are contracts between large corporations and small and medium enterprises, all issues involving the disbursement of

payments can be settled in accordance with the stipulations in the contract.

B. In the event that there are no written contracts between large corporations and small and medium enterprises and a large corporation carries out one of the following actions against a small or medium enterprise, the disbursement of payments is considered to be an abuse of market dominance if:

- 1) The disbursement of payments is delayed without justifiable reasons.
- 2) The disbursement of payments involves checks knowing that the check will bounce.
- 3) The payments are disbursed without a written notice and explanation.

C. The justifiable reasons described in Subsection 1 in the preceding paragraph shall be determined based on trading habits, whether the small and medium enterprises of concern had any responsibility, the impact of the overall economic environment on the finances of the corporation (such as financial tsunamis), and other reasonable excuses.

#### 5. Handling Procedure

If a large corporation has any of the conduct described in Paragraph 2 of Point 2 and no settlement is achieved within three months after the small or medium enterprise of concern


requests a disbursement of payment, the FTC, when informed of such conduct, shall initiate an investigation. This regulation is established with the intention of reducing the impact of such delay of payment on the small or medium enterprises of concern. However, to avoid excessive administrative intervention into civil disputes between trading parties, small and medium enterprises and large enterprises are advised to try to settle their disputes through negotiation beforehand.

#### 6. Termination of Investigation

When one of the following situations occurs, the FTC may terminate the investigation: A. The trading parties have achieved settlement. B. The disbursement has been completed. C. A court or an arbitration tribunal has reached a verdict on the case. D. The investigation may be terminated in accordance with the FTC's regulations. In other words, if the trading parties achieve settlement on the amount payable and the payment terms or complete the payment before the FTC makes its decision, or a court or arbitration tribunal has

reached verdict on the case, or there are other situations that prompt the FTC to terminate the investigation in accordance with existing regulations, the infringement of trading order and the public interest will be considered unlikely and the FTC may therefore terminate the investigation to avoid over-intervention into civil disputes.

#### 7. Legal Effects


- A. When a large corporation is a monopolizing business and carries out any of the conduct described in Paragraph 2 of Point 4, the conduct may be considered to be in violation of the regulation of Subsection 4 of Article 10 of the Fair Trade Act.
- B. When a large corporation is not a monopolizing business and carries out any of the conduct described in Paragraph 2 of Point 4, and the conduct is apparently unfair and likely to affect trading order, the conduct may be considered to be in violation of the regulation of Article 24 of the Fair Trade Act. 

## Statistics of False Advertising Cases

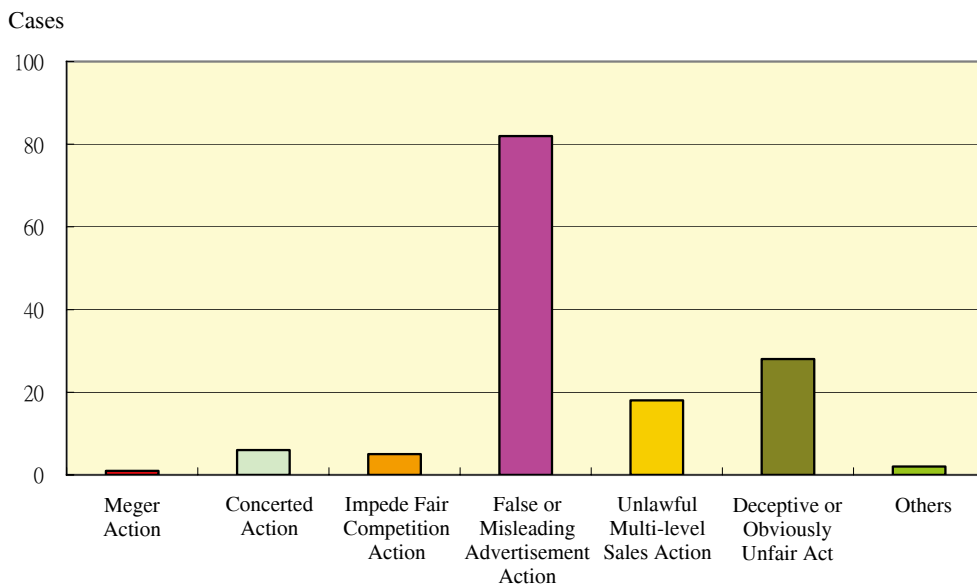
From January to November in 2010 there were 1,353 closed cases. Of these, 140 cases involved some kind of action by the Fair Trade Commission. The most common form of the violation were which made a false, untrue, and misleading representation with regard to the quality of its goods in violation of Article 21 of the Fair Trade Act. These cases represented 82 of the 140 closed cases or 58.6 per cent. That is, there is one case about false advertising case about every 1.7 cases.

False advertising cases were most prevalent in wholesale and retail industry where there were 33 cases and dispositions imposed on 45 companies. Cases were also common in the real estate industry where there were 13 cases in and dispositions imposed on 20 companies. Cases from in both of these industries accounted for 56.1 per cent of false advertising cases over the period.

Moreover, cases regarding the advertised product content, quality, and function not corresponding to the actual reality on shopping channels and networks were the most common with dispositions imposed on 51 companies (or 48.6 per cent of false advertising cases). False advertising cases of building sales in real estate resulted in dispositions on 19 companies (or 18.1 per cent of cases). Others cases regarded false advertising in newspapers and flyers.

From January to November in 2010, there were 105 companies disposed from false advertisements and imposed with administrative fines totaling NT\$23430,000, an average of NT\$223,000 per company. The average fine has decreased NT\$81,000 in comparison with the average administrative fine of NT\$304,000 per company at the corresponding time period last year. 

Cases of Deposition - Base on Unlawful Act From January to November in 2010



## FTC Activities in November 2010

- On November 12, 19, and 23, the FTC held the “FTC Introduction to Regulations on the Business Practices of Financial Industry” in Taichung City, Tainan City, and Taipei City .
- On November 17, the FTC invited Prof.Dr.Dr. Dr.h.c.Franz Jürgen Säcker of Free University of Berlin, Germany to speak on the special topic of “Recent Developments of the German and European Merger Control Regulation”.
- On November 19, the FTC held the “2010 Fair Trade Law Special Topic Series Seminar” in Kaohsiung.
- On November 22 and 23,the FTC held the “Seminar on Development of Competition Law and Case Studies”.
- On November 23, teachers and students from the Department of Financial and Economic Law of Chung Yuan Christian University took part in the Fair Trade Act Training Camp in the Competition Policy Information and Research Center.
- On November 25 and 26, the FTC held the Fair Trade Act Training Camp in National Kaohsiung Marine University and National Sun Yat-sen University .
- On November 30,the FTC held “18th Academic Conference on Competition Policy and the Fair Trade Law”.



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1. Private citizens attended the “FTC Introduction to Regulations on on the Business Practices of Financial Industry” in Taichung.
2. The FTC invited Prof.Dr.Dr.Dr.h.c.Franz Jürgen Säcker of Free University of Berlin, Germany to speak on the special topic of “Recent Developments of the German and European Merger Control Regulation”.
3. The FTC held the “Seminar on Development of Competition Law and Case Studies”.
4. The FTC held “18th Academic Conference on Competition Policy and the Fair Trade Law”.

## FTC International Exchanges in November 2010

- On November 2, the FTC jointed in a conference call for the unilateral conduct of pharmaceutical manufacturers held by the Unilateral Working Group of ICN
- From November 3 to November 5, the FTC sent the members to the “2010 ICN Merger Workshop” and “Roundtable Meeting on Mergers and Public Policies” in Rome, Italy.
- On November 18, the FTC sent the members to the 22nd Taiwan-EU Economic and Trade Consultation in Brussels, Belgium.
- On November 24 and 25, Commissioner Dr. SUN, Lih-Chyun led the FTC staff members to held a competition policy workshop in Jakarta, Indonesia. 



Commissioner SUN, Lih-Chyun (fifth from right) led the FTC staff members to held a competition policy workshop in Jakarta, Indonesia.



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