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Preface

The Fair Trade Law (FTL) of the Republic of China was promulgated on February 4, 1991 and implemented one year later on February 4, 1992. To enforce the Law, the Fair Trade Commission was established on January 27, 1992. The objectives of the Law are to maintain trade order, protect consumer interests and ensure fair competition while promoting the stability and prosperity of the national economy.

Through the active efforts of our colleagues over the past 16 years and with the broader support of society, the Commission has gained significant results in establishing a fair trading system and enhancing awareness and acceptance through enforcement and education of the FTL and related regulations. In response to international globalization and liberalization and having regard to the needs of the domestic economic environment, the Commission amended the FTL in 1999, 2000 and 2002. In the past year, the FTL has been fully reviewed again and a “Draft Amendment for the Fair Trade Law” has been prepared for promulgation and implementation in the future.

The FTC has always been proactive in taking action against illegal practices. Statistics show that, by the end of 2006, the FTC had received 29,242 complaints, applications for concerted action or mergers and requests for explanations, of which 28,820 matters had been finalized. Of this total, the FTC compiled 71 important decisions and approvals as well as 3 judicial cases involving FTL issues rendered by the courts in 2006. In addition to this core work, the FTC continues to take account of current world trends toward economic globalization and liberalization, recognizing that there has been a gradual expansion in the range of cross-border competition issues, international trading cartels and Internet fraud. To keep abreast of the related international context, the FTC has continuously engaged in dialogue with its counterpart agencies throughout the world and participated in various cross
jurisdictional competition activities. It will continue to seek fresh opportunities to expand on this work with international organizations and explore the possibility of entering into cooperation arrangements with other overseas counterpart agencies. The FTC is committed to contributing to the international community and will again play a role in providing technical assistance on competition policy and law issues. We expect this publication series, “Cases and Materials on the Fair Trade Law of the Republic of China”, will serve as a useful vehicle for sharing our experiences with foreign competition law experts, scholars and international organizations. We hope the compilation of this series will also serve as a valuable reference for students, the business community, other government authorities and independent researchers as they seek to understand the practices of the FTL in Taiwan.

Last, but not least, I would like to express my sincere appreciation to Prof. Li-Chih Lin, Prof. Pi-Jan Wu, Prof. Tay-Cheng Ma, Prof. Ching-Yi Liu, and Prof. Bian-Sheng Cui. Their assistance in proofreading translations has greatly assisted in the publication of this book. While all due care and skill was undertaken to ensure the accuracy of the publication, it is still possible that some errors may have occurred in the process of translation. Should there be any discrepancy between the English translation and the original Chinese version, the original Chinese version should be preferred.

Sincerely yours

Jinn-Chuan Tang
Chairperson
Fair Trade Commission
Executive Yuan
Taiwan(ROC)

December, 2008
# Table of Cases

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<td>making false ETC advertisement on television, and the information was not completely disclosed and asymmetric</td>
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Chapter 1

Introduction

The Fair Trade Commission (FTC) compiles cases to lay out its practices and the practices of the courts regarding the Fair Trade Law (FTL) in the past years.

Coverage of this Book

This book compiles 71 selected typical cases decided by the FTC in 2006, and 3 judicial cases decided by Taipei High Administrative Court. In addition to this Chapter, the chapter arrangements of this compilation are as follows:

- Chapter 2 compiles 2 cases on monopoly, which are defined in Article 5 and regulated by Articles 5, 5-1 and 10 of the Fair Trade Law.
- Chapter 3 compiles 6 cases on merger, which are defined in Article 6 and regulated by Articles 6, 11, 11-1, 12 and 13 of the Fair Trade Law.
- Chapter 4 compiles 8 cases and 1 judicial case on concerted actions (cartels), which are defined in Article 7 and regulated by Articles 14, 15, 16 and 17 of the Fair Trade Law.
- Chapter 5 compiles 2 cases on unfair competition, which is related to resale price maintenance and regulated by Article 18 of the Fair Trade Law.
- Chapter 6 compiles 7 cases on unfair competition, which is related to lessening competition or impeding fair competition and regulated by Article 19 of the Fair Trade Law.
- Chapter 7 compiles 20 cases and 1 judicial case on false, untrue and misleading advertisements, which are regulated by Article 21 of the Fair Trade Law.
- Chapter 8 compiles 3 cases on damaging to others’ business reputation, which is regulated by Article 22 of the Fair Trade Law.
- Chapter 9 compiles on 3 cases of multi-level sales, which are defined in Article 23

- Chapter 10 compiles 20 cases and 1 judicial case on other deceptive or obviously unfair conducts, which are sufficient to affect trading order, and therefore deemed to be a violation of Article 24 of the Fair Trade Law.
Chapter 2

Monopoly

Chinese Petroleum Corp.
Formosa Petrochemical Corp.

751st Commissioners’ Meeting (2006)

Case: An ex officio investigation initiated by the Fair Trade Commission on the successive adjustments of wholesale gasoline prices by the two largest gasoline suppliers in Taiwan, in violation of the Fair Trade Law

Key Words: monopoly, improper pricing


Industry: Other Petroleum and Coal Products Manufacturing (1990)

Relevant Laws: Article 10 and Article 14 of the Fair Trade Law

Summary:

1. This case originated from decision of the Fair Trade Commission (FTC) made in October 2004 to render punishment on Chinese Petroleum Corp. (hereinafter called “CPC”) and Formosa Petrochemical Corp. (hereinafter called “FPCC”) for their concerted actions in price adjustments. The FTC has monitored the price adjustment conducts of the said oil suppliers since then; and initiated another investigation on March 14, 2005. Both oil suppliers have adjusted prices seven times since they have been punished, including four price hikes and three price cuts from December 2004 to the end of February 2006.

2. Findings of the FTC’s investigation that the seven price adjustments of CPC and FPCC made after the punishment were handled differently from the past. Formerly, both parties made an advance announcement of price adjustment. Such changes included both parties made same adjustment margin at different points of time; both
parties did not adjust prices simultaneously and there was even price competition; the competitor did not follow price hikes; no advance announcement of price adjustment was made through media, the price adjustment was made and become effective right away. In particular, FPCC took the lead and raised prices on August 31, 2005 but CPC did not follow price hikes. As a result, FPCC faced with the withdrawals of gasoline stations and reduction of oil delivery. Moreover, the FTC has sent staffs to carry out maneuverable investigations whenever the two oil suppliers raised wholesale prices. Such investigations found that many chain gasoline stations did not adjust their retail prices immediately, there were also gasoline stations did not follow the adjustment because they were holding price reduction promotion, or they were instead adopting reverse operation to reduce price for sales increase; therefore, the consumers had various end user retail prices and more selections. Furthermore, the investigation of the FTC showed that the oil suppliers had raised the wholesale prices mainly because the price of international crude oil continued to rise. Their import declarations were evidences showing that the costs of their crude oil imports indeed had similar trend of increase.

3. Grounds for Disposition:

(1) The FTC did not detect any unlawful circumstances of meeting of minds or improper pricing in the price adjustments of CPC and FPCC. However, the FTC still sent letters to both oil suppliers reminding them not to violate laws or affect trading order in their future price adjustments.

(2) Presently, the energy competent authority has already supervised domestic gasoline price adjustment. In order to avoid market interference and distort pricing mechanism, the government authority will only step in to pay close attention on the market price of gasoline when the gasoline price has great fluctuation. For the sake of deliberation, the FTC adheres to the principle of constructive and discretion in the intervention of gasoline market price according to laws. The FTC follows four major principles of “expecting market mechanism become effective”, “respecting the supervision and administration of the industry competent authority”, “conducting necessary intervention and investigation” and “consulting about measures for the
adjustment of market structure” in the intervention of gasoline market price.

(3) The FTC still pays great attention on the gasoline prices of CPC and FPCC and their subsequent price adjustments. If they have any concerted actions again, they may face a fine of not exceeding New Taiwan Dollars (NT$) 50,000,000 each as this is not their first offense. They will also face a criminal liability of fixed-term imprisonment not exceeding three years, or detention in lieu thereof or in addition thereto, a fine of not exceeding NT$ 100,000,000. In addition, both oil suppliers must refer to the reasonable international oil price and its correlation with the purchase price when they adjust gasoline prices in response to the cost pressures. The symmetric variations between the margin of price increase, the frequency of price adjustments, price adjustment and each key factor are studied to determine if both oil suppliers have abused their monopolistic powers in the pricing. Just as the previous occasions of law enforcement, the FTC will vigorously investigate and resolve price adjustment on a case-by-case basis in accordance with the Fair Trade Law (FTL) when the situation has arisen.

Appendix:
Chinese Petroleum Corp.’s Uniform Invoice Number: 03707901
Formosa Petrochemical Corp.’s Uniform Invoice Number: 86522210

Summarized by Yang, Chia-Hui; Supervised by Lin, Kin-Lan   □

Taiwan Sugar Corporation

782nd Commissioners’ Meeting (2006)

Case: Taiwan Sugar Corporation was complained for violating the Fair Trade Law by refusing to sell sugar and enacting unreasonable sugar selling rules
Key Words: monopoly, exclusive sales, refuse to trade, granulated sugar
Summary:

1. This case originated from I-Mei Foods Co., Ltd.’s (hereinafter called the “Complainant”) complaint stating that after granulated sugar was open for importation, Taiwan Sugar Corporation (hereinafter called “Taiwan Sugar”) had monopolized the market; and that Taiwan Sugar might have violated the Fair Trade Law (FTL) by refusing to trade with the Complainant and giving no response to the purchase orders of granulated sugar placed by the Complainant as punishment after the Complainant planned on importing granulated sugar for sale. Tainan Sugar Association also submitted a letter to the Fair Trade Commission (FTC) during the investigation to complain that Taiwan Sugar enacted unreasonable sugar selling rules.

2. Findings of the FTC is investigation: In 2005, the total domestic consumption of brown sugar was about 145,000 tons, in which only 48,536 tons was manufactured by Taiwan Sugar who had a market share of only 33.5%. Currently, there are other companies importing and selling brown sugar products, such as Vedan. The Complainant also claimed that it could manufacture brown sugar. Therefore, since the liberation of domestic granulated sugar market on February 7, 2005, Taiwan Sugar has lost its monopolistic position in the market. Furthermore, because the production season of domestic sugarcane is from the end of December to the beginning of March next year, Taiwan Sugar's manufacturing period of brown sugar is also from December 20 to March 10 next year. Taiwan Sugar stated that when the Complainant requested for brown sugar on November 25, 2005, Taiwan Sugar had sold out superior brown sugar and had only brown sugar which was produced in the previous year and contained higher moisture. Unless voluntarily accepted by the consumer, Taiwan Sugar stated that it would normally refuse to sell such inferior sugar to protect its reputation. Taiwan Sugar stated that it already phoned the Complainant and
explained said situation. Additionally, Taiwan Sugar stated that it never enacted any granulated sugar selling rules. Taiwan Sugar further stated that when the international sugar price went high and there was a panic buying of sugar in early 2006, in order to fully satisfy the demand, Taiwan Sugar immediately imported 48,500 tons of white sugar in March 2006 which is now unmarketable due to oversupply. Up to mid September 2006, Taiwan Sugar had a total stock of 100,000 tons.

3. Grounds for Disposition:
According to current evidence, it is difficult to find Taiwan Sugar in violation of the FTL with regards to its refusing to trade and enactment of unreasonable sugar selling rules.

Summarized by Huang, Chung-Chieh; Supervised by Wu, Pi-Ju
Chapter 3
Merger

NVIDIA BVI Holdings Limited
ULI Electronics Inc.

744th Commissioners’ Meeting (2006)

Case: NVIDIA BVI Holdings Limited filed a merger report to the FTC regarding its intention to merge with ULI Electronics Inc.
Key Words: competition restraints, chips
Reference: Fair Trade Commission Decision of February 9, 2006 (the 744th Commissioners’ Meeting)
Industry: Semi-conductors Manufacturing (2710)
Relevant Laws: Article 6, Article 11 and Article 12 of the Fair Trade Law

Summary:

1. NVIDIA Corporation made an arrangement for its subsidiary company NVIDIA BVI Holdings Limited (hereinafter called “NVIDIA BVI”) to merge with ULI Electronics Inc. (hereinafter called “ULI Electronics”). NVIDIA BVI will be the surviving company after the merger. The merger was filed with the Fair Trade Commission (FTC) according to the provisions of the Fair Trade Law (FTL).

2. Findings of the FTC’s investigation that the filed merger has met the situation “where an enterprise and another enterprise are merged into one” as defined in Article 6(1) (i) of the FTL. Furthermore, the sales of NVIDIA Corporation and ULI Electronics for the preceding fiscal year had exceeded the sales announced by the FTC and thus met the threshold of merger filing stipulated in Article 11, Paragraph 1, Subparagraph 3 of the FTL. Therefore, such act of merger shall be filed with the FTC. In addition, according to the provision of Article 7(1) (i) of the Enforcement Rules to the FTL, both NVIDIA Corporation and ULI Electronics, the enterprises of this merger shall file the report of merger. The FTC thus accepted this merger filing for
further examination.

3. This merger will not constitute any entry barriers because laws and restrictions, patents or other intellectual properties do not exist in the relevant market; moreover, there are many competitors in the domestic market of IC design. The other IC designers do not need huge amount of capital to enter product market related to this merger. The enterprises participating in the merger are unable to exclude the other enterprises from entering the market. Additionally, the market shares of the enterprises do not change significantly after the merger. The major business of NVIDIA Corporation is research and development of intermediate and high level graphic chips. The major business of ULI electronics is research and development of core logic chipset and its related parts. The products manufactured by the enterprises participating in the merger are practically not identical and applied in different areas. Furthermore, the market entry and exit barriers of chipset design are very low. Therefore, the aforementioned merger will slightly affect the chipset design market. Although NVIDIA Corporation has high market share in graphic processor market in 2004, but ULI Electronics did not sell the product at issue, hence this merger will not affect the graphic processor market. Therefore, there is still no obvious evidence of disadvantages resulted from competition restraints in this merger. After merging, the overall economic benefit of this merger outweighs the disadvantages resulted from competition restraint. Therefore, in accordance with the provision of Article 12 of the FTL, this merger is not prohibited.

Appendix:
NVIDIA BVI Holdings Limited
Uniform Invoice Number: Not Applicable
ULI Electronics Inc.’s Uniform Invoice Number: 80145909

Summarized by Chen, Haw-Kae; Supervised by Liou, Chi-Jung
Hon Hai Precision Ind. Co., Ltd.
Premier Image Technology Corporation

769th Commissioners’ Meeting (2006)

Case: Hon Hai Precision Ind. Co., Ltd. filed a merger report to the FTC regarding its intention to merge with Premier Image Technology Corporation

Key Words: competition restraint, economic benefit
Reference: Fair Trade Commission Decision of August 3, 2006 (the 769th Commissioners' Meeting)
Industry: Computers Manufacturing (2711) and Cameras and Photographic Goods Manufacturing (3021)
Relevant Laws: Article 6, 11 and 12 of the Fair Trade Law

Summary:

1. Hon Hai Precision Ind. Co., Ltd. (hereinafter called “Hon Hai”) planned on merging with Premier Image Technology Corporation (hereinafter called “Premier”) with Hon Hai as the surviving company and Premier the merged entity; therefore, Hon Hai filed this merger report to the Fair Trade Commission (FTC) pursuant to the Fair Trade Law (FTL).

2. Findings of the FTC’s investigation:

   This merger fits the merger type: “where an enterprise and another enterprise are merged into one,” stated in Article 6(1)(i) of the FTL. In addition, both Hon Hai and Premier had a sales amount of more than the threshold announced by the FTC in the previous fiscal year. Thus, the merger of said two companies met the requirements of merger reporting provided in Article 11(1)(iii) of the FTL. As a result, this merger shall be reported to the FTC. Furthermore, in accordance with Article 7(1)(i) of the Enforcement Rules of the FTL, the applicants of a merger report shall be the participants of the merger, which in this case were Hon Hai and Premier. Therefore, the FTC admitted this merger report for further review.
3. Grounds for Disposition:

To the participants, this merger will lower the commercial risks, avoid overlap investment and provide one-stop shopping service for their customers. As for the overall economic benefits, this merger will promote the international competitiveness of the domestic electronic industry, provide high quality electronic products to domestic and foreign consumers at low prices, and increase the needs for research and development workers. In case of market power, Hon Hai's market share of connectors has topped the international rankings; its shipping quantity of computer cases has been in the leading position; and its shipping quantity of 3C electronics has also been in the leading position compared with other businesses of the similar nature in the world. Premier is mainly a subcontractor for cameras. In 2005, the top four companies of camera subcontractors and their respective market shares were Premier 44%, Ability Enterprise Co., Ltd. 26%, Altek Corporation 21%, and Asia Optical Co., Inc. 9%. Hon Hai and Premier are both professional subcontractors; however, their products do not overlap. Therefore, the merger of the two companies does not have obvious impact on the market structure and market share of each company's products. The overall economic benefits should outweigh the disadvantages of competition restraints after the merger. As a result, the FTC, pursuant to Article 12 of the FTL, determined not to prohibite the merger.

Appendix:
Hon Hai Precision Ind. Co., Ltd.'s Uniform Invoice Number: 04541302
Premier Image Technology Corporation's Uniform Invoice Number: 04834617

Summarized by Yeh, Su-Yen; Supervised by Liou, Chi-Jung
Chunghwa Telecom Co., Ltd.
Chief Telecom

771st Commissioners’ Meeting (2006)

Case: Chunghwa Telecom Co., Ltd. filed a merger report to the FTC regarding its intention to acquire 70% of shares of Chief Telecom

Key Words: merger report, type I telecommunications operation, type II telecommunications operation, data communication service market, international voice service market

Reference: Fair Trade Commission Decision of August 17, 2006 (the 771st Commissioners’ Meeting)

Industry: Telecommunications (6000)

Relevant Laws: Article 12(1) of the Fair Trade Law

Summary:

1. The applicant of this merger case, Chunghwa Telecom Co., Ltd. (hereinafter called “Chunghwa”), stated that it was the largest consolidated telecommunications carrier of the nation with a business scope of type I telecommunications operations and type II telecommunications operations; its major operations include fixed-line network communications, mobile communications, data communications and satellite communications. Chunghwa planned to acquire 70% of the shares of a type II telecommunications carrier, Chief Telecom (hereinafter called “Chief”). The merger type falls within the scope of Article 6(1) of the Fair Trade Law (FTL) and meets the reporting thresholds provided in Article 11(1)(ii) of the same law. This case was not subject to the exceptions provided in Article 11-1 of the same law, and therefore, shall be reported to the Fair Trade Commission (FTC) pursuant to the laws prior to the merger.

2. Findings of the FTC’s investigation:

The merger type of this case was that Chunghwa planned to acquire 70% of Chief’s shares in cash and might further obtain the positions of directors or supervisors in Chief to directly or indirectly control the business operations or personnel appointment within Chief. Therefore, said case met the descriptions of the merger type set forth in Articles 6(1)(ii) and (v) of the FTL. Up till the end of 2005,
Chunghwa's market share of data communication service market was about 85.3%, while its market share of international voice service market was about 57.8%. The condition of Chunghwa fell under Article 11(1)(ii) of the FTL where the merger shall be reported to the FTC. The exceptions provided in Article 11-1 were inapplicable herein. Therefore, this merger case shall be reported to the FTC pursuant to the laws.

3. Grounds for Disposition:
   (1) Since Chief's market share of data communication market and that of international voice service market were both less than 1%, and this case only had major impact on aforesaid two markets, this merger shall only have limited influence on the centralization of the relevant markets.

   (2) Prior to the merger, Chief entered into long-term contracts and/or contracts notarized by court with other domestic and foreign telecommunication businesses to ensure all parties' performance of the relevant telecommunication service contracts.

   (3) The type II telecommunications operations run by Chief, such as bandwidth resale, virtual network operations and Internet data centers, had rather low technical threshold. Thus, the merger shall not have immediate competition restraints on the relevant telecommunications service market.

   (4) The merger of Chunghwa and Chief will enable them to provide high-quality and consolidated telecommunication services to their customers due to their cooperation in network nodes and integration of resources. In addition, the utilization efficiency of the relevant telecommunication equipment will be effectively improved, and the overall economic benefits will thereby be enhanced.

   (5) Considering the merger behavior hasn't obvious impact on the relevant market structure and competition and the synergy to be induced from the merger, the FTC found that the overall economic benefits shall outweigh the disadvantage of competition restraints and therefore determined not to disapprove this merger pursuant to Article 12(1) of the FTL.

Appendix:
Chunghwa Telecom Co., Ltd.'s Uniform Invoice Number: 96979933

Summarized by Huang, Yan-Bin; Supervised by Chiang, Kou-Lun
Advanced Micro Devices Inc.
ATI Technologies Inc.

777th Commissioners’ Meeting (2006)

Case: Advanced Micro Devices Inc. filed a merger report to the FTC regarding its intention to merge with ATI Technologies Inc.

Key Words: competition restraint, economic benefit

Reference: Fair Trade Commission Decision of September 28, 2006 (the 777th Commissioners' Meeting)

Industry: Computer Components Manufacturing (2614)

Relevant Laws: Article 6, 11 and 12 of the Fair Trade Law

Summary:

1. Advanced Micro Device Inc. (hereinafter called “AMD”), a US company, planned on indirectly acquiring all of the common shares of ATI Technologies Inc. (hereinafter called “ATI”), a Canadian company, through its Canadian subsidiary company, 1252986 Alberta ULC. Through the transaction, ATI will become a subsidiary company of AMD. AMD therefore filed a merger report to the Fair Trade Commission (FTC) pursuant to the Fair Trade Law (FTL).

2. Findings of the FTC’s investigation:

   This merger fits the type: “where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total capital of such other enterprise” and “where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise,” stated in Articles 6(1)(ii) and (v) of the FTL. In addition, Both AMD and ATI had a sales amount of more than the threshold announced by the FTC in the previous fiscal year. Thus, the merger of said two companies met the requirements of merger reporting provided in Article 11(1)(iii) of the FTL. As a result, this merger shall be reported to the FTC. Furthermore, in accordance with Article 7(1)(ii) and (iii) of the Enforcement Rules of the FTL, the applicant of a merger report shall be the holding, acquiring or controlling company
under the merger, which in this case was AMD. Therefore, the FTC admitted this merger report for further review.

3. Grounds for Disposition:

AMD is in keen competition with INTEL, a CPU enterprise. INTEL also specializes in the development of graphic systems providing not only the graphic system in its products but also an integrated platform. However, AMD specializes only in CPU and has not developed its specialty in graphic systems. ATI is dedicated to research, development and marketing ability of graphic systems. In light of the aforesaid facts, this merger for AMD will bring support of advanced graphic technology and elevate its leverage in the competition with INTEL. In addition, this merger will provide domestic computer subcontractors with one-stop shopping service and convenience of single assistance window. On the other hand, this merger involves a merger of the business of computer accessories. All participating enterprises own their professional skill in their relevant market separately and don't exist competition relation in each other. No obvious impact was to be placed on the market structure and market share of the horizontal market after the merger. Furthermore, AMD stated that it will continue to provide open platforms and standards and cooperate with upstream and downstream businesses. Therefore, this merger did not seem to have obvious impact on the competitors regarding the technological connection and upstream/downstream relations and would not cause concerns of competition restraints. The overall economic benefits shall outweigh the disadvantage of competition restraints after the merger. As a result, the FTC, pursuant to Article 12 of the FTL, determined not to disapprove the merger.

Appendix:
Advanced Micro Devices Inc.’s Uniform Invoice Number: none
ATI Technologies Inc.’s Uniform Invoice Number: none

Summarized by Yeh, Su-Yen; Supervised by Liou, Chi-Jung
**Merger of Webs-TV Digital International Co., Ltd.**  
**Blockbuster BEI Taiwan Limited**  

789th Commissioners’ Meeting (2006)

Case: Webs-TV Digital International Co., Ltd. filed a merger report to the FTC regarding its intention to merge with Blockbuster BEI Taiwan Limited

Key Words: video rental, online viewing

Reference: Fair Trade Commission Decision of December 21, 2006 (the 789th Commissioners’ Meeting)

Industry: Renting of Video Tapes and Disks (7732), Telecommunications (6100)

Relevant Law: Article 12(1) of the Fair Trade Law

Summary:

1. Webs-TV Digital International Co., Ltd. (hereinafter called “Webs-TV”) filed a merger report to the Fair Trade Commission (FTC) regarding its intention to merge with Blockbuster BEI Taiwan Limited (hereinafter called “Blockbuster”) on November 21, 2006. Webs-TV mainly provided online video and audio viewing services while Blockbuster mainly provided rentals and sales of home video and audio products. Since Blockbuster had more than 1/4 of market share of domestic video rental market, this merger shall meet the merger threshold set forth in the Fair Trade Law (FTL) and the participating enterprises shall file a merger report to the FTC.

2. Findings of the FTC’s investigation:

   Though this merger had the nature of a conglomerate merger, the merger was mainly involved with the change of share structure of Blockbuster’s parent company. It did not cause any decrease in numbers of current competitors in the video rental market or change market concentration. However, if the eight American movie companies authorized online video and audio service companies, such as Webs-TV, to allow viewers to view or download movies online, online viewing services and the actual distribution would be combined. In other words, the participating enterprises of this case would have horizontal competition.
3. Grounds for Disposition:

Upon discussion and analyses, the FTC felt that neither video rental market nor online viewing market had entry barriers. Even if online viewing services and the actual distribution combined in the future, the enterprises would still have to face potential competitors or existing competitors, such as Asia1, in the video rental market after the merger; while facing competitors or potential competitors operating online added-value services, such as Chunghwa Telecommunications, in the online viewing market. It would be difficult for the participating enterprises to be exempt from the restraint of market competition and to raise product prices or service remuneration. In addition, since the entry barriers were not yet too difficult for the competitors, the competitors would not be able to restrict each other’s business activities or take concerted action. Middle and upstream enterprises would still be limited by the license and licensing amount set by the video agencies and movie production companies. As a result, the participating enterprises of this merger shall not have obvious competition restraints to the relevant markets. Since the benefits to the overall economy should outweigh the disadvantages of competition restraints, the FTC shall not prohibit such merger in accordance with Article 12(1) of the FTL.

Appendix:
Webs-TV Digital International Co., Ltd.’s Uniform Invoice Number: 70552271
Blockbuster BEI Taiwan Limited’s Uniform Invoice Number: 97176362

Summarized by Hsu, Tzung-Yu; Supervised by Lu, Li-Na
Far Eastern Department Stores Co., Ltd.
Pacific SOGO Department Stores Co., Ltd.

789th Commissioners’ Meeting (2006)

Case: Far Eastern Department Stores Co. Ltd. violated the Fair Trade Law by failing to file a merger report regarding it’s merger with Pacific SOGO Department Stores Co. Ltd.

Key Words: department stores, merger

Reference: Fair Trade Commission Decision of December 21, 2006 (the 789th Commissioners’ Meeting); Disposition (95) Kung Ch’u Tzu No. 095175

Industry: Other Retail Sale in General Merchandise Stores (4719)

Relevant Laws: Article 6(1)(v) and 11(1)(iii) of the Fair Trade Law

Summary:

1. This case originated from a complaint stating that: in order to control its competitor, Pacific SOGO Department Stores Co., Ltd. (hereinafter called “Pacific SOGO”), Far Eastern Department Stores Co., Ltd. (hereinafter called “Far Eastern”) used the subsidiaries of Far Eastern and By-Yang Investment Co., Ltd. (hereinafter called “By-Yang Investment”) to increase its shares in Pacific Liu Tung Investment Co., Ltd. (hereinafter called “Pacific Liu Tung Investment”), the parent company of Pacific SOGO, through its trust account with Shanghai Commercial Bank Ltd. (hereinafter called “Shanghai Commercial Bank”). The fact that Far Eastern indirectly controlled the business operation or personnel appointment of Pacific SOGO fell under the merger type set forth in Article 6(1)(v) of the Fair Trade Law (FTL). Additionally, both Far Easter and Pacific SOGO reached the merger filing threshold in terms of their sales amount for the previous fiscal year. Far Eastern should have filed the merger with the Fair Trade Commission (FTC) in advance in accordance with the FTL but failed to do so. Thus, Far Eastern was in possible violation of Article 11(1) of the FTL.

2. Findings of the FTC’s investigation:
Pacific Liu Tung Investment acquired 78.56% of Pacific SOGO’s shares during 2002 and continued to increase investment afterwards. After Pacific SOGO processed capital decrement/increment in June 2003, Pacific Liu Tung Investment currently possessed about 78.6% of Pacific SOGO’s shares. It was sufficient to determine that Pacific Liu Tung Investment and Pacific SOGO share a controlling/subordinate relationship and that Pacific Liu Tung was the parent company of Pacific SOGO. Far Eastern and its subordinate employed their trust account with Shanghai Commercial Bank to participate in the capital increased by cash of Pacific Liu Tung Investment during 2002 and acquired 54.45% of Pacific Liu Tung Investment's shares. Though said shares acquired by Far Eastern and its By-Yang Investment through their trust account with Shanghai Commercial Bank were owned by Shanghai Commercial Bank, Far Eastern actually had the right to decide how to use the trust funds according to the trust agreement entered by Shanghai Commercial Bank and Far Eastern. Additionally, Far Eastern or a third party entrusted by Far Eastern should give specific instructions in operation scope or method, investment target, utilization method, amount, conditions and terms of trust funds. Shanghai Commercial Bank would then follow such instructions to administer and dispose of the trust funds, attend shareholders' meetings, and exercise the voting right. Therefore, though said shares were owned by Shanghai Commercial Bank, the administration, disposition or exercise of shareholder's rights was still carried out pursuant to Far Eastern’s instructions.

3. Grounds for Disposition:

Article 6(1)(v) of the FTL provides that “where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise” should be considered as one of the situations of merger. Article 11(1)(ii) of the FTL provides that “in the event that the sales for the preceding fiscal year of one of the enterprises in the merger exceeds the threshold amount New Taiwan Dollars (NT$) 10,000,000,000 or more for non-financial institutes and NT$ 1,000,000,000 for the merged enterprises) publicly announced by the central competent authority, a report shall be filed with the central competent authority prior
to the merger.” In this case, the shares of Pacific Liu Tung Investment owned by Far Eastern and its By-Yang Investment and the shares of Pacific SOGO owned by Pacific Liu Tung Investment both exceeded 50% of the shares of the possessed companies. Through such “control of possession” or “legal control,” Far Eastern and By-Yang Investment can completely control the shareholders' meeting and board of directors of Pacific Liu Tung Investment and indirectly control the business operation and personnel appointment of Pacific SOGO through the controlling/subordinate relationship between Pacific Liu Tung Investment and Pacific SOGO. Such a merger type shall meet the descriptions set forth in Article 6(1)(v) of the FTL. The sales of Far Eastern and Pacific SOGO in 2001 were respectively NT$16,927,480,000 and NT$26,055,590,000 which exceeded the merger threshold announced by the FTC. In accordance with Article 11(1)(iii) of the FTL and Article 7(1) of the Enforcement Rules to the FTL, Far Eastern shall file a report with the FTC prior to the merger with Pacific SOGO. However, Far Eastern failed to do so and therefore violated Article 11(1) of the FTL. Upon consideration of the past case handling pattern regarding enterprises failing to report merger and the impact on relevant market competition, the FTC ordered Far Eastern to make a supplemental report or any necessary corrections in accordance with Article 13(1) of the FTL and imposed an administrative fine of NT$ 1,020,000 on Far Eastern in accordance with Article 40 of the FTL.

Appendix:
Far Eastern Department Stores Co. Ltd.’s Uniform Invoice Number: 03521905
Pacific SOGO Department Stores Co. Ltd.’s Uniform Invoice Number: 21257316
Pacific Liu Tung Investment Co., Ltd.’s Uniform Invoice Number: 70377128
By-Yang Investment Co., Ltd.’s Uniform Invoice Number: 23418577
Shanghai Commercial Bank Ltd.’s Uniform Invoice Number: 03036306

Summarized by Liao, Hsien- Chou; Supervised by Chen, Yuhn- Shan
Chapter 4
Concerted Action

4.1 DECISIONS

Complaint against Taipei City Photography Association

739th Commissioners’ Meeting (2006)

Case: Taipei City Photography Association was complained for violating the Fair Trade Law by unifying the prices of extra prints of self-photocomposition digital passport-size photo and passport-size color photos
Key Words: photography association, self-photocomposition digital, unified pricing standard
Reference: Fair Trade Commission Decision of January 5, 2006 (the 739th Commissioners’ Meeting)
Industry: Photofinishing Shops (9691)
Relevant Laws: Article 14 of the Fair Trade Law

Summary:

1. The Fair Trade Commission (FTC) received a letter from Taipei City Business Administration Office, indicating that the public has complained against photofinishing association. The complaints alleged that the said association has specified a unified regulation that six copies of self-photocomposition 2x2 inches digital passport-size photo should be printed on a piece of 4x6 photographic paper and charged at New Taiwan Dollars (NT$) 15 per photo rather than the price for developing a 4x6 photo (NT$ 4). Such act has violated the Fair Trade Law (FTL). In addition, the FTC and Taipei City Government have received electronic mails from the public alleging that a particular photo studio in Taipei City had refused to print self-photocomposition digital passport-size photo or charged the print of the said photo at the price of digital passport-size photo. The other photo studios also refused to print the said photo and expressed that this was a regulation of the photography association. A facsimile from the public indicating that the Taipei City Photography
Association has specified a unified charges for extra print of 2x2 inches passport-size color photo as NT$ 90 for a set of six photos. The members of the said Association posted posters for the said regulation at photofinishing shops as a basis of unified pricing. Since the Taipei City Photography Association has involved in all of the aforementioned cases, the FTC thus examined all complaints together.

2. Findings of the FTC’s investigation that: in addition to the regular photo studios, the local digital photo printing market also includes agency service provided by large shopping malls, online photofinishing shops and numerous convenience stores. Furthermore, the digital photography and digital photo printing are growing rapidly; the charge of digital photo printing has shown a trend of tremendous and rapid decline in the recent two years. It is apparent that the market of domestic digital photo printing industry is transparent in information and competitive. With regard to the complaint that Taipei City Photography Association has specified a unified pricing standard for extra prints of self-photocomposition digital passport-size photo and passport-size color photos, the FTC has conducted spot investigations. The investigation found that among the nine investigated photo studios in Taipei City, two studios due to business cost consideration or lack of digital photo printing facilities did not provide the service of printing self-photocomposition digital passport-size photo. The other seven studios that provided the service of printing self-photocomposition digital passport-size photo have different charges on such service. A spot investigation of the color photo printing company being complained showed that the said company indeed has posted a price list of photo taking and extra print for passport-size color photos at its business site. The said price list was important trading information of trading terms and pricing standard for extra prints of passport-size color photo fully disclosed to consumers prior to the transactions. The investigation found no consistency in the pricing, moreover, some photofinishing shops have verbally informed their consumers the important trading information of trading terms and pricing standard for extra prints of passport-size color photo; they have neither produce nor post price lists. Therefore, it is still lack of evidences to ascertain the complaints that the Taipei City Photography Association had produced
posters and posted the said poster at photofinishing shops as a basis of unified pricing by its members. Additionally, although the interviewed photographic equipment company indicated that it has received a notification letter from the Taipei City Photography Association around March 2005 on matters related to the pricing of digital passport-size photographing, but the said company clarified in the FTC's meeting on June 20, 2005 that the earlier statement was inconsistent with the fact. In March 2005, the members of the said Association from Shungshan area had dined together and discussed about the pricing of self-photocomposition digital passport-size photo. The Chairman of Shungshan area for the said Association presented at the FTC's meeting later and expressed that the members dined together to share and exchange their business experiences and opinions, they have not concluded any discussions. A further investigation of minutes given by the Taipei City Government and Taipei City Photography Association did not find concrete evidences that either the said Association or its Sungshan branch has concluded a decision on the photographing of photos for the new national identification cards or the pricing standard of photofinishing of passport-size photos. It is still unsubstantiated to conclude that the said Association has violated the prohibitive regulation of concerted actions.

3. Grounds of Disposition:

(1) During the 739th Commissioners' Meeting on January 5, 2006, the FTC passed a resolution that in accordance with the available evidences, it was still difficult to conclude that the Taipei City Photography Association has any unlawful acts. However, in order to maintain trading order, the FTC has mailed a letter to the said Association, requesting the said Association to inform its members to take notice of the FTL and discontinue using the price list specified by the said Association in 1991. A warning letter was sent to the Sungshan branch of the said Association stating that the joint determination of pricing standard through mutual understanding is prohibited and unlawful. Accordingly, the said Association informed its members to pay attention and comply with the FTL in the letter Bei-Chao-Hsien-Tzu-95011601 on January 16, 2006.
(2) In order to maintain trading order and consumers' rights and interests in domestic digital photo printing market during the period of national identification card replacements, the FTC will continue to pay close attention on the pricing standard of photography and photofinishing of photos for national identification card replacements by the photofinishing shops. The joint price manipulation or any other circumstances of violating the FTL shall be investigated and punished according to laws once it was found.

Summarized by Shue, Ching-Shung; Supervised by Lu, Li-Na

**Chinese Petroleum Corp.**  
**Formosa Petrochemical Corp.**

751st Commissioners' Meeting (2006)

Case: An ex officio investigation initiated by the Fair Trade Commission into the two largest gasoline suppliers in Taiwan engaging in a concerted action by successively adjusting wholesale gasoline prices

Key Words: monopoly, improper pricing
Industry: Other Petroleum and Coal Products Manufacturing (1990)
Relevant Laws: Article 10 and Article 14 of the Fair Trade Law

Summary:

1. This case originated from decision of the Fair Trade Commission (FTC) made in October 2004 to render punishment on Chinese Petroleum Corp. (hereinafter called “CPC”) and Formosa Petrochemical Corp. (hereinafter called “FPCC”) for their concerted actions in price adjustments. The FTC has monitored the price adjustment conducts of the said oil suppliers since then; and initiated another investigation on
March 14, 2005. Both oil suppliers have adjusted prices seven times since they have been punished, including four price hikes and three price cuts from December 2004 to the end of February 2006.

2. Findings of the FTC’s investigation, the FTC found that the seven price adjustments of CPC and FPCC made after the punishment were handled differently from the past. Formerly, both parties made an advance announcement of price adjustment. Such changes included both parties made same adjustment margin at different points of time; both parties did not adjust prices simultaneously and there was even price competition; the competitor did not follow price hikes; no advance announcement of price adjustment was made through media, the price adjustment was made and become effective right away. In particular, FPCC took the lead and raised prices on August 31, 2005 but CPC did not follow price hikes. As a result, FPCC faced with the withdrawals of gasoline stations and reduction of oil delivery. Moreover, the FTC has sent staffs to carry out maneuverable investigations whenever the two oil suppliers raised wholesale prices. Such investigations found that many chain gasoline stations did not adjust their retail prices immediately, there were also gasoline stations did not follow the adjustment because they were holding price reduction promotion, or they were instead adopting reverse operation to reduce price for sales increase; therefore, the consumers had various end user retail prices and more selections. Furthermore, the investigation of the FTC showed that the oil suppliers had raised the wholesale prices mainly because the price of international crude oil continued to rise. Their import declarations were evidences showing that the costs of their crude oil imports indeed had similar trend of increase.

3. Grounds of Disposition:
   (1) The FTC did not detect any unlawful circumstances of meeting of minds or improper pricing in the price adjustments of CPC and FPCC. However, the FTC still sent letters to both oil suppliers reminding them not to violate laws or affect trading order in their future price adjustments.
   (2) Presently, the energy competent authority has already supervised domestic
Concerted Action

gasoline price adjustment. In order to avoid market interference and distort pricing mechanism, the government authority will only step in to pay close attention on the market price of gasoline when the gasoline price has great fluctuation. For the sake of deliberation, the FTC adheres to the principle of constructive and discretion in the intervention of gasoline market price according to laws. The FTC follows four major principles of “expecting market mechanism become effective”, “respecting the supervision and administration of the industry competent authority”, “conducting necessary intervention and investigation” and “consulting about measures for the adjustment of market structure” in the intervention of gasoline market price.

(3) The FTC still pays great attention on the gasoline prices of CPC and FPCC and their subsequent price adjustments. If they have any concerted actions again, they may face a fine of not exceeding New Taiwan Dollars (NT$) 50,000,000 each as this is not their first offense. They will also face a criminal liability of fixed-term imprisonment not exceeding three years, or detention in lieu thereof or in addition thereto, a fine of not exceeding NT$ 100,000,000. In addition, both oil suppliers must refer to the reasonable international oil price and its correlation with the purchase price when they adjust gasoline prices in response to the cost pressures. The symmetric variations between the margin of price increase, the frequency of price adjustments, price adjustment and each key factor are studied to determine if both oil suppliers have abused their monopolistic powers in the pricing. Just as the previous occasions of law enforcement, the FTC will vigorously investigate and resolve price adjustment on a case-by-case basis in accordance with the Fair Trade Law (FTL) when the situation has arisen.

Appendix:
Chinese Petroleum Corp.’s Uniform Invoice Number: 03707901
Formosa Petrochemical Corp.’s Uniform Invoice Number: 86522210

Summarized by Yang, Chia-Hui; Supervised by Lin, Kin-Lan
An ex officio investigation of any manipulation

754th Commissioners’ Meeting (2006)

Case: An ex officio investigation initiated by the Fair Trade Commission on manipulation in the price increases of vegetables and fruits during the latter half year of 2005

Key Words: vegetable and fruit, green onion, manipulation in price increase

Reference: Fair Trade Commission Decision of April 20, 2006 (the 754th Commissioners’ Meeting)

Industry: Vegetables (0114)

Relevant Laws: Article 14 of the Fair Trade Law

Summary:

1. This case originated from a media’s report on July 7, 2005 indicating that the Directorate-General of Budget, Accounting and Statistics has announced the consumer price index in June has risen by 2.39%, as compared with that of last year. However, the price for food has risen 6.03% for the past six months. Premier Hsieh indicated that the soaring prices of vegetables and fruits were mainly caused by the flood disaster, and instructed the government to carry out thorough investigation of whether there was any price manipulation or hoarding. In addition, the export of mango to Japan may have caused the price of mango to rise recently and further investigation is needed to find out whether the farmers have intentionally raised the price of mango, as they saw the possibility of selling mango to the Mainland China. Upon approval from the superior authority, the Fair Trade Commission (FTC) initiated an ex officio investigation on July 8, 2005 and handled the issues as a case of top priority. Moreover, the FTC service center also received a call from the public on July 4, 2005, complaining that the price of green onion from Yilan has increased by five to six times even though Yilan area was not hit by the torrential rain, a doubt of price manipulation. The Vice Chairperson instructed, “In coordinate with the Premier Hsieh’s comment reported on media yesterday, this complaint shall be included in the ex officio investigation. The investigation extends to all vegetables and fruits that may have incidents of law violation.” The application to initiate investigation was
approved with the remark of “handled according to the comment of Vice Chairperson Yu”.

2. Findings of the FTC’s investigation:

   (1) Vegetables: The objective evidence from market revealed that the soaring prices of vegetables during the second half of 2005 were caused by a series of natural disasters, the typhoon and torrential rain, which led to drastic reductions of vegetables supplies. The enterprises made decisions independently according to their own business considerations. It is still no obvious and concrete evidence to show that the enterprises by means of contract, agreement or any other form of mutual understanding, with any other competing enterprise, to jointly determine the price of goods or services, and thereby to restrict each other’s business activities. In addition, there is no obvious and concrete evidence showing that the enterprises have any deceptive or obviously unfair conduct that is able to affect trading order.

   (2) Green onion: In 2005, a series of natural disasters, the flood in June and the Haitang typhoon in July, have seriously damaged green onions in central and southern Taiwan, causing green onion from Yilan became the major source of supply. The market shortage has driven up the price of green onions. There were many consignees and shippers in the green onion market, and they have determined the price of green onions according to their own commercial judgments. Furthermore, Taipei Agricultural Products Marketing Co. adopted public auction system. The investigation did not find any obvious and concrete evidences of artificial price hikes for green onions by the enterprises. In addition, the Sanhsing Area Farmers Association from Yilan has adopted joint marketing of their green onions long time ago, and thus they probably can control the quantity supplied. However, it is still unable to conclude that they have in violation of the Fair Trade Law (FTL) according to the currently available evidences.

   (3) Fruits: The objective evidences from market revealed that the price hike of fruits during the second half of 2005 was caused by a series of natural disaster, the typhoon and torrential rain, which led to drastic reductions of fruits supplies. The enterprises made decisions independently according to their own business
considerations. The super typhoon Nanmadol at the end of 2004 and the typhoon Haitang and Talim in 2005 have blown down a legion of banana trees, causing the harvest and supply to major distribution markets dropped by 20% and 26% respectively as compared with the last year, which led to the price soaring. Although the supply of pineapples did not change much from that of last year, but the abnormal climate in 2005 has caused the prices of domestic fruits to rise; the consumers have substituted pineapples for other fruits and thus causing both demand and price for pineapples to increase. There was a cold current during the fruiting period of mangos in February and March of 2005, as a result, the percentage of fruiting has dropped and the harvest declined sharply. The harvest at Yu-jing Shiang declined around 60 to 70% and that of Nan-hua Shiang declined around 70 to 80%. In addition, the disastrous torrential rain in June has seriously damaged mangos, and coupling with the increase export demand, the price of mango has increased. It is still no obvious and concrete evidence to show that the enterprises by means of contract, agreement or any other form of mutual understanding, with any other competing enterprise, to jointly determine the price of goods or services, and thereby to restrict each other’s business activities. In addition, there is no obvious and concrete evidence that the enterprises have any deceptive or obviously unfair conduct that is able to affect trading order.

3. Finding: On April 20, 2006, the FTC 754th Commissioners’ Meeting concluded that according to the continuous investigations from the second half of 2005 until now, there is no concrete evidence showing the soaring prices of vegetables and fruits were due to joint price manipulations. However, in order to prevent the relevant enterprises from violating laws or affecting trading order later, the FTC sent letters to Taipei City Vegetables Association, Taipei City Fresh Fruits Association and Taipei Agricultural Products Marketing Co., asking them to notify their respective members that price fixing through mutual consent, market monopolization or other abuses of market position that in violation of the FTL are prohibited.

Summarized by: Shue, Ching-Shung; Supervised by: Lu, Li-Na
Compal Electronics, Inc.
Asustek Computer, Inc.
Quanta Computer, Inc.

754th Commissioners’ Meeting (2006)

Case: Compal Electronics, Asustek Computer and Quanta Computer filed a concerted action application to the FTC regarding its intention for the joint plan of developing standardized components for notebooks

Key Words: notebook, D Tray, joint development


Industry: Integrated Circuits Manufacturing (2611)

Relevant Laws: Article 7 and Article 14 of the Fair Trade Law

Summary:

1. Compal Electronics, Asustek Computer and Quanta Computer (hereinafter called “the applicants”), the three notebook computer makers have planned to reallocate and specify the components of notebook computer through specification development. They planned to develop the specification of D tray for notebook computer jointly, including the common parts for each component of the tray, the interface between electronics and software and the interface between the components of tray and the other parts of notebook computer, such as the attached LCD cover and auxiliary components. In accordance with the first paragraph of the first proviso of Article 14 of the Fair Trade Law (FTL), the notebook makers thus have filed an application for an approval as the said plan has met the definition of concerted action.

2. Based on the following grounds, the act of the applicants to formulate standard specifications for notebook computer is beneficial to the economy as a whole and in the public interest whereas the disadvantages of lessen competition or unfair competition are yet not obvious. Therefore, the application of concerted action is approved. The grounds for approval are as follow:
(1) Beneficial to the economy as a whole and in the public interest:

(i) Cost reduction: In addition to the benefits of mass production and economies of scale, the operation of standard specifications is also conducive to the reduction of research and development expense, the trading cost with suppliers, marketing cost, after-sales service and educational training costs.

(ii) Quality and efficiency improvement: Because of standardization in specification, the component makers have high substitution of compatible components. Therefore, they can concentrate efforts in upgrading their product’s quality to be attractive. Then, the quality of product will become the factor of market competition. Thus, the standard specifications are beneficial to the improvement of notebook computer’s quality as a whole.

(iii) Improvement in consumer benefits: After the standardization of specification, the consumers have more options in the purchase of notebook computers. Besides, they can also enjoy price reduction that brought by the economies of scale and cost reductions.

(iv) The plan is beneficial to the development of the nation’s information technology industry: The deliberation of opinions provided by the relevant units and business entities reveal that the standard specifications formulated by the applicants with their capital, manpower, resources and technology will give impetus to notebook computer market and expand the scale of technology development. Because of the spillover effect, the makers not participating in the plan may also enjoy the benefits from taking part in production and sales. The competitiveness of domestic makers with the international branded makers will increase. The said concerted action is significant in the development of the nation’s information technology industry.

(2) Disadvantages of lessen competition or unfair competition: The doubts that the joint act of the applicants in research, development and formulation of standard specifications may lead to lessen competition or unfair competition will exist in any of the following situations. The applicants of this concerted action do not provide the standard specifications to manufacturers not participating in the concerted action, or postpone the public announcement of the standard specifications, or do not disclose patent that is needed in the production of the relevant products or components. The
standard specifications have resulted only specific manufacturers can supply or provide relevant components that use standard specifications. In addition, the necessity of patent rights for the said standard specifications can lead to exclusiveness, authorization refusal without justification, or discrimination in the authorization, and unreasonable charges collection. In order to resolve the said doubts of lessen competition or unfair competition, the Fair Trade Commission (FTC) thus has attached conditions or required undertakings in the approval to prevent the applicants from engaging in any of the aforementioned acts.

3. Upon the assessment, the conduct of the applicants in formulating standard specifications for notebook computer will reduce cost, improve quality and promote consumer interests; beneficial to economy as a whole and in the public interests. Therefore, the application is approved according to the proviso of Article 14(1) of the FTL. The approval is effective until April 19, 2009. In addition, in order to prevent the disadvantages of lessen competition or unfair competition that may arise after this concerted action is approved, and also to ensure the benefits to the economy as a whole and in the public interest, the FTC has attached conditions in the approval it grants pursuant to Article 15 of the FTL.

Appendix:

Compal Electronics, Inc.’s Uniform Invoice Number: 21222725
Asustek Computer Inc.’s Uniform Invoice Number: 23638777
Quanta Computer Inc.’s Uniform Invoice Number: 22822281

Summarized by: Chen, Shu-Hua; Supervised by: Liou, Chi-Jung
Taiwan Lunchbox United Association
Taichung County Lunchbox Association
Taichung City Lunchbox Association

760th Commissioners’ Meeting (2006)

Case: Taiwan Lunchbox United Association, Taichung County Lunchbox Association and Taichung City Lunchbox Association violated the provisions of concerted action in the Fair Trade Law by reaching an agreement to increase the school lunch charges

Key Words: school lunch, public bidding, trade association, concerted action

Reference: Fair Trade Commission Decision of June 1, 2006 (the 760th Commissioners’ Meeting), Disposition Kung Ch’u Tzu No. 95070

Industry: Instant Food Manufacturing (0895)

Relevant Laws: Article 7, Paragraph 1, Paragraph 3 and Article 14, Paragraph 1 of the Fair Trade Law

Summary:

1. This case originated from a newspaper report on April 21, 2006, indicating that Taiwan Lunchbox United Association has invited its members to convene “Forum on the Danger of Shoddy Food in Schools and the Quality of Nutritious Lunch for Students” on April 20, 2006 at the Public Health Bureau, Taichung City. An announcement to increase the charges of school lunch was made in the forum. The charges for junior high school and elementary school students will be increased by New Taiwan Dollars (NT$) 5 per lunchbox, and the increase for senior high school is NT$10 per lunchbox. Since such act may have violated Article 14(1) of the Fair Trade Law (FTL) that no enterprise shall have any concerted action, the Fair Trade Commission (FTC) thus has included this case into items to be examined by “Task Force for the Prevention of the Price Manipulation of Necessary Commodities” and initiated an ex officio investigation.

2. Findings of the FTC’s investigation that Taiwan Lunchbox United Association indeed has convened “Forum on the Danger of Shoddy Food in Schools and the
Quality of Nutritious Lunch for Students” at the Public Health Bureau, Taichung City on April 20, 2006. The said forum was sponsored by Taiwan Lunchbox United Association and co-sponsored by Taichung City Lunchbox Association and Taichung County Lunchbox Association. The chairpersons of the aforementioned associations were speakers in the said forum. The chairperson of Changhua County, Taoyuan County and Tainan County Lunchbox Associations were also invited to attend this forum. In addition, all seven member companies of Taichung City Lunchbox Association and thirteen member companies of Taichung County Lunchbox Association have attended this forum. In the said forum, Mr. Chiu Ta-Tien, the Chairman of Taiwan Lunchbox United Association, Mr. Fang Tsung-Mao, the Chairman of Taichung City Lunchbox Association and Mr. Lin Chen-Chieh, the Chairman of Taichung County Lunchbox Association publicized a study on the cost and charges of school lunch for schools in the central region. At the same time, they also suggested that the charges for school lunch should be increased beginning from the next academic year, a NT$5 increase for elementary and junior high school and a NT$10 increase for senior high school. In addition, the written documents of “Safety and Sanitation Management, and Important Factors of Operation for Group Catering and Lunchbox Enterprises – A View from the Shoddy Food Hazard Prevention in School” were given out in the forum. The wordings “Chairman Chiu of Taiwan Lunchbox United Association and chairmen of lunchbox associations from the central area will adjust the lunchbox charges for schools of all levels soon, from the original NT$40 to NT$50…..” was recorded in the said documents.

3. Grounds for Disposition:

(1) Article 14(1) of the FTL stipulates no enterprise shall have any concerted action. Article 7(4) of the FTL stipulates by means of its charter, a resolution of a general meeting of members or a board meeting of directors or supervisors, or any other means, to restrict activities of enterprises is also deemed as horizontal concerted action as defined in the FTL. Taiwan Lunchbox United Association, Taichung City Lunchbox Association and Taichung County Lunchbox Association invited their members to participate in “Forum on the Danger of Shoddy Food in Schools and the
Quality of Nutritious Lunch for Students” that convened on April 20, 2006. An announcement that the charges for school lunch will be adjusted beginning from the next academic year was made by means of verbal suggestion and given out written documents. It is substantiate to conclude that the said associations have given concrete suggestions or instructions to their member enterprises on important business activities relating to market competition, such as whether to adjust the charges of school lunch, timing, range and method of adjustment. The aforementioned associations argued that the bidding of school lunch adopted the most advantageous bidding principle in contract awarding and the selling price is determined by the school. Therefore, unless the school agreed with their requests to increase the selling price of school lunch, or else they were not able to increase the price successfully. Nevertheless, the conduct of the aforementioned associations calling together their members to a meeting and announced to increase the charges of school lunch still indirectly affect the selling price of school lunch. If the school wishes to carry out bidding smoothly, the selling price set forth in the bidding instructions must above the “reservation price” of at least one enterprise, otherwise, no enterprise will have intention to participate in the bidding and the bidding will be aborted. (In the case that the Government Procurement Act is applicable, then according to Article 48 of the said Act, the opening of tender can be carried out only when there are three or more of qualified enterprises participate in the bidding. In other words, the selling price set forth by the school must above the “reservation price” of at least three suppliers). Under the circumstance of normal competitive market operation, the “reservation price” of each supplier is “personal data” that known only by the respective supplier. The suppliers will decide whether to participate in the lunch tender of a specific school after comparing the selling price set forth by the school and its own “reservation price”. However, after the aforementioned forum, the suppliers exchanged with one another their opinions on the selling price. They coordinated and jointly adjusted their opinions on the “reservation price” of supplying school lunch (in this case, the charges for junior high and elementary schools were increased by NT$5, the charges for senior high school was increased by NT$10 or from NT$40 to 50). Consequently, the likelihoods of
tender failure due to not enough tender suppliers for schools that did not increase the selling prices will increase when they conducted lunch tender for the next academic year. The supply of school lunch will be affected. Moreover, the schools had learned that the suppliers jointly determined or adjusted their “reservation prices” from news release and external message circulation, and in order to avoid the outcome of no lunch can be provided due to tender failure, it is likely that the schools in order to cope with the issue will adjust the selling prices of school lunch. Hence, the final price of school lunch was affected. Because of the aforementioned exchange, coordination, and adjustment of opinions on the selling price of school lunch, the likelihoods of tender failure due to not enough tender suppliers for schools that did not increase the selling prices will increase when they conducted lunch tender for the next academic year. In addition, there were less inducement to lure the member suppliers to participate in the school lunch tender and thus lesser competition in the quality of school lunch.

(2) The Commissioners’ Meeting discussed and concluded that the conduct of Taiwan Lunchbox United Association, Taichung City Lunchbox Association and Taichung County Lunchbox Association calling their members together for a meeting and made an announcement of increasing the charges of school lunch has violated the prohibitive provision for concerted action stipulated in Article 14, Paragraph 1 of the Fair Trade Law. The said associations are ordered to cease the unlawful act immediately, in addition to this, a fine of NT$ 890,000, NT$ 400,000 and NT$ 300,000 are imposed on Taiwan Lunchbox United Association, Taichung County Lunchbox Association and Taichung City Lunchbox Association respectively.

Summarized by: Liao, Hsien-Chou; Supervised by: Chen, Yuhn-Shan
Fei Ma Ferry Co., Ltd. and four other ferry operators, which operate regular routes between Pingtung’s Dunggang and Hsiau Liouchiou

761st Commissioners’ Meeting (2006)

Case: Fei Ma Ferry Co., Ltd. and four other ferry operators, which operate regular routes between Pingtung’s Dunggang and Hsiau Liouchiou, violated Article 14 of the Fair Trade Law by joint determination of the route schedule

Key Words: ferry, concerted action

Reference: Fair Trade Commission Decision of June 8, 2006 (the 761st Commissioners’ Meeting), Disposition Kung Ch’u Tzu No. 95095

Industry: Ocean Water Transportation (5410)

Relevant Laws: Article 14 of the Fair Trade Law

Summary:

1. This case originated from a received complaint indicating that Fei Ma Ferry Co., Ltd., Chun Yi Ferry Co., Ltd., Tung Hsin Ferry Co., Ltd., Ching Chiang Ferry Co., Ltd. and Kuan Kuang Ferry Co., Ltd., the five ferry operators that operate routes between Dunggang and Hsiau Liouchiou have proceeded to determine route schedules and sell tickets jointly without prior permission. Furthermore, the said operators took advantage of their dominant positions in the market either have arbitrarily delayed or suspended services without giving any prior notice between March 14, 2005 and March 17, 2005. Such conduct has seriously affected trading order and consumers’ interests, and probably has violated the Fair Trade Law (FTL).

2. Findings of the Fair Trade Commission (FTC)’s investigation:

The five ferry operators that operate routes between Dunggang and Hsiau Liouchiou have established “Joint Operation of Dunggang and Hsiau Liouchiou Line Ferry”. The purpose of such operation was to keep the operators away from competing with one another to provide services during the peak hours and no service
during off-peak hours, which inevitably would affect the transportation rights and interests of Liouchiou residents. They jointly signed “Memorandum of Joint Operation of Dunggang and Hsiau Liouchiou Line Transportation Service” and “Agreement of Joint Operation of Dunggang and Hsiau Liouchiou Line Transportation Service”. In accordance with the aforementioned agreement, the office of joint operation had scheduled the daily routes of Dunggang and Hsiau Liouchiou line; the route schedule for each ferry company was then posted on the wharf’s signboard and a joint ticket booth was established at the wharf. It was obvious that the said five ferry operators indeed had reached consensus on the agreement of jointly scheduled the routes and sold tickets. It is evidence that the conduct of the aforementioned ferry operators, by means of “agreement” with any other competing enterprises to jointly determine the price of goods or services, or to limit the terms of quantity and thereby to restrict each other’s business activities. In addition, the investigation found that between March 14, 2005 and March 17, 2005, the services of three ferries (“Tung Hsin Ferry” and “Tung Sheng Ferry” run by private operator, “Hsin Tai Ferry” run by the government) were suspended for the reason of owing Pingtung County Government’s fishing port maintenance fees. However, the routes for both suspended private ferry operators have already been scheduled, and the other private operators that were scheduled for another hours were not willing to give their assistances (the cost of diesel oil for every ferry service was around New Taiwan Dollars (NT$) 10,000), and thereby causing delays from the original schedules. Since 90% of the Liouchiou town’s 13,000 population regularly travel to and fro between Dunggang and Hsiau Liouchiou via ferries, and tourists have made more than 200,000 visits to Liouchiou town every year, but ferry is the only mode of transportation for getting in and out from Hsiau Liouchiou, hence, the traveling to and from Hsiau Liouchiou was seriously affected.

3. Grounds for Disposition:

By means of agreement, the aforementioned five private ferry operators have agreed with the conduct to restrict each other’s business activities, such as consensus on the number of scheduled routes services, restriction for each operator to decide its
own service schedule and sharing of operating profit. Hence, the market competition was lessened and consumers’ selections were reduced. Such conduct was sufficient to affect the supply-demand of Dunggang and Hsiau Liouchiou Line sea transportation market and the transportation rights and interests of Liouchiou residents was seriously affected. The said conduct has violated Article 14 of the Fair Trade Law. Consequently, in accordance with the anterior paragraph of Article 41 of the Fair Trade Law, the five private ferry operators are ordered to cease the aforementioned unlawful acts, together with Fei Ma Ferry Co., Ltd., Chun Yi Ferry Co., Ltd., Tung Hsin Ferry Co., Ltd., and Ching Chiang Ferry Co., Ltd. are imposed with a fine of NT$ 180,000 each. A fine of NT$ 110,000 is imposed on Kuan Kuang Ferry Co., Ltd. because the operator has suspended service as a result of the ferry caught in fire and hence shorter duration of unlawful act.

Appendix:
Fei Ma Ferry Co., Ltd.’s Uniform Invoice Number: 91395039
Chun Yi Ferry Co., Ltd.’s Uniform Invoice Number: 91877964
Tung Hsin Ferry Co., Ltd.’s Uniform Invoice Number: 91882930
Ching Chiang Ferry Co., Ltd.’s Uniform Invoice Number: 91810155
Kuan Kuang Ferry Co., Ltd.’s Uniform Invoice Number: 90246378

Summarized by: Tsao, Hui-Wen; Supervised by: Chiang, Kou-Lun
Summary:

1. This case originated from a letter filed by a complainant stating that the ROC Publishing Business Association (hereinafter called “Association”) improperly interpreted regulations in favor of the interest of few textbook publishers by following the secret agreement of these publishers and issuing official letters to every national junior high and elementary schools saying that giving away test sheets and workbooks by businesses might constitute violation of said Association’s “Guidelines Regarding Sales of National Junior High and Elementary School Textbooks”.

2. Findings of the Fair Trade Commission (FTC)’s investigation:

   (1) The Vice Chairperson and Executive Secretariat, Mr. Hsu, of the Textbook Publishing Commission under the Association had called many meetings with Kang Hsuan Educational Publishing Co., Ltd. (hereinafter called “Kang Hsuan”), Nan I Book Enterprise Co., Ltd. (hereinafter called “Nan I”), Han Lin Publishing Co., Ltd. (hereinafter called “Han Lin”), Newton Education & Publishing Corporation and announced to jointly cease giving workbooks and test sheets to students from the first semester of school year 2006.
(hereinafter called “Han Lin”), and Newton Education & Publishing Corporation (hereinafter called “Newton”) during their gatherings at the Association or restaurants since the end of 2005. During these gatherings, said companies discussed about joint cease of giving away complimentary items, the time tables, penalties, deposits, attorney retainer and drafting and signing of self-regulatory guidelines. The minutes of said meetings were also made.

(2) Aforesaid businesses additionally retained an attorney to draft self-regulatory guidelines and operation rules of guarantees. In order to ensure the enforcement of the aforesaid self-regulatory guidelines, these companies also provided deposits to the attorney for safekeeping. Moreover, the personnel of the FTC attended several textbook selection explanatory meetings in which the representatives of the aforementioned companies specifically stated that these businesses were about to cease giving away workbooks and test sheets to students from school year 2006. Furthermore, the FTC dispatched personnel to visit several elementary schools and found that most of the teachers were informed of the above statement from all of the business operators.

(3) Based upon the selection result of national junior high and elementary school textbooks for the first semester of school year 2005, Kang Hsuan had a market share of 38.59%; Nan I 25.36%, Han Lin 20.74%, and Newton 3.19%. The four companies had a total market share of 87.88%.

3. Grounds for Disposition:

(1) Kang Hsuan, Nan I, Han Lin, and Newton violated the provision governing concerted actions as provided in Article 14 of the Fair Trade Law (FTL):

(i) Definition of the Relevant Market: Due to the liberalization of domestic junior high school textbooks in 2002, the market involved herein was the “national junior high and elementary school textbooks” in the domestic context. Market participants were the relevant business operators who published textbooks for national junior high and elementary schools.

(ii) Actors of Concerted Action: Although there were several textbook business operators attending the relevant meetings convened by the Textbook Publishing
Commission, only Kang Hsuan, Nan I, Han Lin and Newton were present when the resolution was made. Additionally, said four companies delivered the deposits by company checks to an attorney to ensure the enforcement of their self-regulatory guidelines. Therefore, the participants of the concerted action herein were Kang Hsuan, Nan I, Han Lin and Newton. Moreover, said companies were all publishers of textbooks for national junior high and elementary schools fitting the definition of “Enterprises” referred to in Article 2 of the FTL with substantial competitive relationships among the companies. In conclusion, aforementioned four companies were the actors of this concerted action.

(iii) Method and Content of Concerted Actions: Since 2005, aforesaid four companies had had several meetings discussing about cease of giving away complimentary workbooks and test sheets from the first semester of school year 2006. Not only did they come to an agreement, but also retained an attorney to stipulate self-regulatory guidelines and rendered deposits to ensure the enforcement of the aforesaid actions. These companies additionally announced to schoolteachers that they would cease giving away workbooks and test sheets to students commencing from school year 2006.

(iv) Impact on Market Function: Aforesaid four companies had a market share of more than 80% in the national junior high and elementary school textbook market. Their actions had caused competition restraints to the market and had sufficient impact on the market function.

(2) After considering the motivation, purpose, and expected improper benefit of the unlawful act of the aforesaid four companies; the degree and duration of the act’s harm to market order; benefits derived on account of the unlawful act; the scale, operating condition, sales and market position of the enterprise; whether or not the type of unlawful act involved in the violation has been correct ed or warn ed by the Central Competent Authority; types and number of and intervals between past violations, and the punishment for such violations; remorse shown for the act and attitude of cooperation in the investigation; and other factors, the FTC ordered these four companies to immediately cease such unlawful act and an administrative fine of NT$6.53 million was imposed on Kang Hsuan; New Taiwan Dollars (NT$) 4,230,000 on Nan I, NT$2,280,000 on Han Lin, and NT$1,420,000 on Newton in accordance
with the fore part of Article 41 of the FTL. The total amount of the fines imposed herein was NT$14,460,000.

Appendix:
Kang Hsuan Educational Publishing Co., Ltd.’s Uniform Invoice Number: 23142092
Nan I Book Enterprise Co., Ltd.’s Uniform Invoice Number: 68461979
Han Lin Publishing Co., Ltd.’s Uniform Invoice Number: 69382361
Newton Education & Publishing Corporation’s Uniform Invoice Number: 70370390

Summary:

1. In 2005, the Fair Trade Commission (FTC) indirectly received email from the public complaining that the Sun Moon Lake Joint Service Reservation Center (website: www.boatshop.idv.tw) employed the name of Nantou Ferry and Yacht Business Association (hereinafter called “Association”) to advertise its business
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operation and might have violated the regulations prohibiting commercial organizations’ profit-seeking behavior, as provided in the Law of Commercial Organizations; additionally, said business operator's joint reservation action might have violated the Fair Trade Law (FTL).

2. This case was investigated and submitted to the 776th Commissioners' Meeting on September 21, 2006 for resolution. The grounds for disposition are as follows:

   (1) It was found that the Association was established in 1959 when every business operator was striving for customers with no proper order. In order to avoid trouble in the future, business operators figured that the order at the dock might be solved through shift arrangements. As a result, the Association was established in 1959 and immediately commenced the arrangements. The current shift arrangement is to group 23 Class A boats as one team. Each boat is given equal shifts in order. The accounts are settled every 10 days. After the deduction of membership fees, insurance premiums and entertainment tax, the balance is equally disbursed to the members as the revenue distributed to each boat. In the event that the actual number of trips should be more or less than the shift scheduled, the revenue will be adjusted accordingly (each trip shall be New Taiwan Dollars (NT$) 1,500), which shall be the actual income. In addition, all of the Class B, C and D boats are divided into 4 teams without being categorized. The boats of each team will take customers from the designated dock in order. The accounts are settled every 10 days. After the deduction of membership fees, insurance premiums and entertainment tax, 55% of the balance is disbursed to Class B boats; while the rest 45% to Class C and D boats.

   (2) The Association limits the number of trips made by its members and allocates business income to these members through the consent to joint shift arrangements. No competition exists among these members. The Association also refrains consumers from deciding on their patronage. Said actions cause enough impact to affect the demand and supply of the yacht service market at the Sun Moon Lake area and damage public interests and overall economic benefits. Moreover, through jointly selling tickets, collecting income and expenditure, and allocating business income based upon the types of boats or trips to shorten the income difference among
business operators, share profit and avoid competition, the members' freedom of engaging in business operations to provide goods or services is restrained. The market competition mechanism of employing favorable prices, quantity, quality, services or other conditions to strive for trading opportunities has been destroyed. Therefore, these actions result in competition restraints and fall within the definition of “concerted actions” provided in Article 7 of the FTL. Due to the Association's violation of Article 14(1) of the FTL, the FTC shall impose an administrative fine of NT$ 510,000.

3. In addition, this case also involved the relevant provisions of the Regulations for Administering Small Ships. Pursuant to Article 3 of the said regulations, “the Competent Authority referred to herein shall be the governing Competent Transportation Affairs Authority at the place of calling or the local government at the place where none of Competent Transportation Affairs Authority is establishes pursuant Article 62 of the Boat Act”. Moreover, pursuant to Article 17 of the same regulations, “in order to maintain the order of the waters and reasonable operation, the Competent Authority may order the business operators of small boats located in the same area to cooperate in their business operations.” Therefore, the Competent Authority of the Sun Moon Lake waters shall be Nantou County Government. In the event that the business operators of the small boats in said area have the need to cooperate in their business operations, the FTC shall so suggest that Nantou County Government handle the relevant affairs ex officio.

Summarized by Tsao, Hui-Wen; Supervised by Chiang, Kou-Lun
4.2 JUDICIAL

Hualien County Liquid Fuel Trade Association

Taipei High Administrative Court Judgment (2006)

Case: The Fair Trade Commission is dissatisfied with the Taipei High Administrative Court’s Judgment 91-Su-Tzu-1568 for the Hualien County Liquid Fuel Trade Association’s violation of the Fair Trade Law, and filed an appeal with the Supreme Administrative Court that has annulled the original judgment and ruled that the Fair Trade Commission has won the lawsuit.

Key Words: trade association, gas cylinder, selling price adjustment
Reference: Taipei High Administrative Court Judgment (95) Pan-Tzu No. 00284
Industry: Gas Supply (3520)
Relevant Laws: Article 14 of the Fair Trade Law

Summary:

1. This case originated from complaints by Hualien residents that the gas prices had continued to increase in Hualien area. There were suspicions that the Hualien County Liquid Fuel Trade Association (hereinafter called “the appellee”) has uniformly determined the said price increases. The Fair Trade Commission’s (FTC) found that the appellee had called a meeting of all Hualien area gas vendors at the Tung Shuai Hotel in March 2000. With the excuses of reasonably reflecting the costs and avoiding long-term loss, the Chairman of the said Association calculated that reasonable prices for household gas cylinders should be certain dollars. The vendors attended the meeting reached a uniform pricing agreement for household gas cylinders during the hotel meeting. The gas vendors in the Hualien County adjusted selling prices accordingly after receiving the Association's notification. The conduct of the appellee in restricting the market competition of Hualien area’s cylinder gas distribution had violated the provision of Article 14 of the Fair Trade Law (FTL) and thus the said appellee was punished for its unlawful conduct. The appellee is
dissatisfied with the investigation result and thus filed an appeal with the Executive Yuan (Cabinet). The Executive Yuan (Cabinet) dismissed the said appeal. Thereafter, the appellee filed an administrative litigation with Taipei High Administrative Court. The Court revoked the appeal decision and the original punishment. The FTC thus filed an appeal with the High Administrative Court as dissatisfied with the aforementioned ruling.

2. Taking into account the intention of the debate and evidences of the investigation, the judgment of the High Administrative Court was held as follows:

   (1) The real world observations showed that trade associations has usually played a leading role in most concerted actions of price hikes. Furthermore, trade associations are formed by enterprises and there exists competition among them. The charters or meeting resolutions for trade associations are made by their members directly or based on the authorizations of the member enterprises; and hence the decisions made by trade associations in essence are mutual understandings of their members. Therefore, the FTL regulates the resolutions of trade associations and trade associations are enterprises defined in Article 2 (3) of the FTL. Hence, the appellee in this case shall be governed by the said Law. Article 7 of the FTL identifies the trading and competition activities engaged by the enterprises as basis for regulations. Therefore, the constitution of concerted action must include at least two competing enterprises. However, if the provision of Article 7 of the FTL is interpreted strictly, it is very likely that the enterprises may use this Article to cover up their conducts and thus engage in the unlawful concerted actions and not subject to punishment. In addition to agreement or other forms of mutual understanding, the concerted action can be accomplished through organizations. Trade associations are typical form of concerted action accomplished through organization. The enterprises looking for concerted action have the options of discussion among one another for an agreement or other forms of mutual understanding, or through the resolution of their respective trade association. Regardless of the method chosen, the restraint on free competition
is the same, and the impact on market function is also similar. Therefore, the FTL shall give similar evaluation to both types of concerted actions; and should not handle the concerted actions differently just because they are different in terms of their appearances of agreement. For concerted action made through trade association, the respective trade association will be the principal entity making external expression of intent. Such expression is tantamount to the fact that the meeting of minds of such concerted action is initiated by the competing enterprises. That is to say, the reprehensions for those who have actually benefited are still the same from the internal economic viewpoint even though the principal entity of expression of intent has changed from the external legal viewpoint. This Court always has the opinion that it is appropriate for Article 7 of the FTL to include trade associations into the list of the principal entity of concerted actions.

(2) The representative of the appellee called the association's members for a meeting at the end of March 2000. More than ten members attended the meeting and the formula of cost calculation previously used by the liquefied petroleum gas supply office was used to calculate the reasonable prices of a household 20-kg gas cylinder as New Taiwan Dollars (NT$) 560 and a 16-kg gas cylinder as NT$ 450 in the meeting. The 12th Board of Directors and Supervisors name list for the appellee, its members list, statement of its representative, the company's basic information, statements given by the witnesses, Li Chen-Liang, Liu Chun-Hsuan, Liu-Chen Hsiu-Tsao, Luo Tsai-Sung, Weng Tsung-Jung and the uniform invoices enclosed with the original punishment, and the cost analysis of liquefied petroleum gas were enclosed for examinations. The consensus of raising the prices of gas cylinders was made through mutual understanding, the competing enterprises jointly determined the product prices, mutually restricted one another business activities, restrained the gas cylinder market competition in Hualien area, such conducts were sufficient to affect the market mechanism; and thus has violated Article 14 of the FTL. The appellant in accordance with the anterior paragraph of Article 41 of the FTL, ordering the enterprises involved immediately ceased their concerted action starting from the next
day after receiving the dispositions. The enterprises involved should follow the said order immediately, and it is appropriate to uphold the appeal decision. It is unjustifiable for the appellee to file a petition of rescinding the disposition and the approval given by the judgment of first instance is groundless.

Summarized by Lai, Chia-Ching; Supervised by Lee, Wen-Hsiu
Chapter 5
Unfair Competition-Resale Price Maintenance

Champion Building Materials Co., Ltd

789th Commissioners’ Meeting (2006)

Case: Champion Building Materials Co., Ltd. violated the Fair Trade Law by restraining distribution market competition
Key Words: tiles, suggested sales price
Reference: Fair Trade Commission Decision of December 21, 2006 (the 789th Commissioners’ Meeting); Disposition (95) Kung Ch’u Tzu No. 095173
Industry: Other Porcelain and Ceramic Products Manufacturing (2329)
Relevant Laws: Article 18 of the Fair Trade Law

Summary:

1. This case originated from a statement faxed by Sheng Wei Construction Engineering Ltd. in Chiayi City stating that: Champion Building Materials Co., Ltd. (hereinafter called “Champion”) requested building material businesses not to deliver goods in the name of dividing regional distributors to monopolize the market and drive up the prices of tiles. Construction businesses therefore sustained much loss. Moreover, citizens in Changhua area reported that Champion’s distributors in central Taiwan refused to supply those building material businesses that were offered lower quotes. The Fair Trade Commission (FTC) therefore initiated an investigation for both complaints.

2. Findings of the FTC’s investigation:

Champion is a manufacturer of two tile brands, Champion and Marcobelli, with 10 regional distributors who sell Champion’s products exclusively. It was agreed in the contracts entered by and between Champion and its distributors and building material businesses that Champion’s products shall be sold at the prices according to the suggested price lists appended to the products. In the event that any party fails to
comply with Champion’s policies and reduces the prices, the distribution right will be cancelled or supply ceased and penalty imposed. Champion’s distributors admitted that they would sell products based upon the unit price lists in accordance with the agreement. As for special quotes, the distributors shall file an application form with Champion. Champion would decide on the final sales prices. Champion’s distributors and downstream retailers (building material businesses) admitted that any and all quotations and contracts given to and entered with their clients should be consistent with the product unit price lists. It is obvious that Champion’s act of enacting agreed resale prices and relevant punitive measures has affected downstream distributors and retailers’ freedom to decide on prices.

3. Grounds for Disposition:
   (1) According to Article 18 of the Fair Trade Law (FTL), “Where an enterprise supplies goods to its trading counterpart for resale to a third party or such third party makes further resale, the trading counterpart and the third party shall be allowed to decide their sale prices freely; any agreement contrary to this provision shall be void.” In other words, an enterprise shall allow its trading counterparts to decide on sales prices freely. Thus, if an enterprise sets limitations on the resale prices of its products and takes measures to request trading counterparts to follow, such an act of restraining downstream business operators’ trading activities has already deprived downstream business operators of their freedom to decide on prices according to their own cost structure and market competition and therefore weakened the price competition among different sales operators within the same brand. This type of act is explicitly prohibited in the FTL. Moreover, according to the FTC’s Interpretation Kung-Yan-Shih No. 032, in the event that upstream businesses simply suggest resale prices without specifically requesting or requiring that downstream businesses shall employ such suggested prices to sell or shall not give discounts, such upstream businesses shall not be deemed to violate the aforesaid regulation. Furthermore, the concept of restraint shall not be limited to actual disadvantage sustained due to violation of the measures taken by upstream businesses. On the contrary, the so-called restraint shall be determined according to whether the trading counterparts’ freedom to decide on prices is artificially interfered, such as mental oppressions and that the resale prices are therefore maintained the same.
(2) Champion is a manufacturer of two tile brands, Champion and Marcobelli. It was agreed in the contracts entered by and between Champion and its distributors and building material businesses that Champion’s products shall be sold at the prices according to the suggested price lists appended to the products. In the event that any party fails to comply with Champion’s policies and reduces the prices, the distribution right will be cancelled or supply ceased and penalty imposed. Champion is currently the largest domestic tile enterprise in terms of reputation and market share. Since the distributors have to bear the risks of tile products, sales and finance, the aforementioned punitive measures have respectable impact and mental oppressions on the downstream distributors and building material businesses. Moreover, Champion’s distributors and downstream retailers (building material businesses) admitted that any and all quotations and contracts given to and entered with their clients should be consistent with the product unit price lists. It is obvious that Champion’s act of enacting agreed resale prices and relevant punitive measures has affected downstream distributors and retailers’ freedom to decide on prices. Champion’s act of restraining its downstream trading counterparts’ freedom of deciding on resale prices has damaged the market competition mechanism and violated Article 18 of the FTL.

(3) After considering the motivation, purpose, and expected improper benefit of the unlawful act of Champion; the degree of the act's harm to market order; the duration of the act's harm to market order; benefits derived on account of the unlawful act; the scale, operating condition, sales and market position of the enterprise; whether or not the type of unlawful act involved in the violation has been corrected or warned by the Central Competent Authority; types and number of and intervals between past violations, and the punishment for such violations; remorse shown for the act and attitude of cooperation in the investigation; and other factors, the FTC ordered Champion to immediately cease the unlawful act and imposed an administrative fine of New Taiwan Dollars (NT$) 720,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:
Champion Building Materials Co., Ltd.’s Uniform Invoice Number: 49701774

Summarized by Yang, Chia-Hsien; Supervised by Sun, Ya-Chuan
Sanyo Pottery & Porcelain Industry Co., Ltd

789th Commissioners’ Meeting (2006)

Case: Sanyo Pottery & Porcelain Industry Co., Ltd. violated the Fair Trade Law by restraining distribution market competition

Key Words: tiles, suggested sales price

Reference: Fair Trade Commission Decision of December 21, 2006 (the 789th Commissioners' Meeting); Disposition (95) Kung Ch’u Tzu No. 095174

Industry: Other Porcelain and Ceramic Products Manufacturing (2329)

Relevant Laws: Article 18 of the Fair Trade Law

Summary:

1. This case originated from a statement faxed by Sheng Wei Construction Engineering Ltd. in Chiayi City stating that: Sanyo Pottery & Porcelain Industry Co., Ltd. (hereinafter called “Sanyo”) requested building material businesses not to deliver goods in the name of dividing regional distributors to monopolize the market and drive up the prices of tiles. Construction businesses therefore sustained much loss. It was then requested in the statement that the Fair Trade Commission (FTC) would commence an investigation.

2. Findings of the FTC’s investigation:

Sanyo is a manufacturer of two tile brands, STG and San Marino, with 15 regional distributors who can sell other tile brands besides Sanyo’s products. It was agreed in the contracts entered by and between Sanyo and its distributors that the distributors shall sell Sanyo’s products at the prices according to the suggested price lists appended to the products and shall not reduce the prices without authorization. It was also agreed that the contract should be terminated in the event of default. Additionally, Sanyo enacted a “Cross-Regional Coordination Rules” providing that distributors shall pay attention to the market prices of crossed regions and shall not lower the sales prices for vicious competition. If vicious competition affecting the market prices is proved to be true, such distributor shall remit 3% of the total transactions as penalty.
Both Sanyo and its distributors admitted that no price reduction would occur between distributors. It is obvious that the agreed provisions regarding suggested price lists, no price reduction and relevant punishment have affected downstream trading counterparts’ freedom to decide on prices.

3. Grounds for Disposition:
   
   (1) According to Article 18 of the Fair Trade Law (FTL), “Where an enterprise supplies goods to its trading counterpart for resale to a third party or such third party makes further resale, the trading counterpart and the third party shall be allowed to decide their sale prices freely; any agreement contrary to this provision shall be void.” In other words, an enterprise shall allow its trading counterparts to decide on sales prices freely. Thus, if an enterprise sets limitations on the resale prices of its products and takes measures to request trading counterparts to follow, such an act of restraining downstream business operators’ trading activities has already deprived downstream business operators of their freedom to decide on prices according to their own cost structure and market competition and therefore weakened the price competition among different sales operators within the same brand. This type of act is explicitly prohibited in the FTL. Moreover, according to the FTC’s Interpretation Kung-Yan-Shih No. 032, in the event that upstream businesses simply suggest resale prices without specifically requesting or requiring that downstream businesses shall employ such suggested prices to sell or shall not give discounts, such upstream businesses shall not be deemed to violate the aforesaid regulation. Furthermore, the concept of restraint shall not be limited to actual disadvantage sustained due to violation of the measures taken by upstream businesses. On the contrary, the so-called restraint shall be determined according to whether the trading counterparts’ freedom to decide on prices is artificially interfered, such as mental oppressions and that the resale prices are therefore maintained the same.

   (2) Sanyo is a manufacturer of two tile brands, STG and San Marino. It was agreed in the contracts entered by and between Sanyo and its distributors that the distributors shall sell Sanyo’s products at the prices according to the suggested price lists appended to the products and shall not reduce the prices without authorization. It was
also agreed that the contract should be terminated in the event of default. Sanyo is currently third largest domestic tile enterprise in terms of reputation and market share. Since the downstream distributors have to bear the risks of tile products, sales and finance, the aforementioned measures have respectable impact and mental oppressions on the downstream distributors and building material businesses. These trading counterparts’ freedom to decide on prices has actually been restrained by the disadvantageous measures mentioned above. Moreover, relevant distributors and downstream retailers stated that any and all quotations and contracts were done according to the prices lists provided by Sanyo. It is obvious that Sanyo’s suggested resale prices and relevant punitive measures set forth in the contracts entered by and between Sanyo and its distributors have affected the freedom of these distributors and retailers to decide on the resale prices. Sanyo’s act has damaged the market competition mechanism and violated Article 18 of the FTL.

(3) After considering the motivation, purpose, and expected improper benefit of the unlawful act of Sanyo; the degree of the act's harm to market order; the duration of the act's harm to market order; benefits derived on account of the unlawful act; the scale, operating condition, sales and market position of the enterprise; whether or not the type of unlawful act involved in the violation has been corrected or warned by the Central Competent Authority; types and number of and intervals between past violations, and the punishment for such violations; remorse shown for the act and attitude of cooperation in the investigation; and other factors, the FTC ordered Sanyo to immediately cease the unlawful act and imposed an administrative fine of new Taiwan Dollars (NT$) 720,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:
Sanyo Pottery & Porcelain Industry Co., Ltd.’s Uniform Invoice Number: 34263157

Summarized by Yang, Chia-Hsien; Supervised by Sun, Ya-Chuan
Chapter 6
Unfair Competition-Lessening Competition or Impeding Fair Competition

Yung Chi Paint & Varnish Mfg. Co., Ltd.

748th Commissioners’ Meeting (2006)

Case: Yung Chi Paint & Varnish Mfg. Co., Ltd. was complained for making false representation on the passive fire protection material “Huo Pa F-100” and its advertisement

Key Words: passive fire protection materials, U.S. UL testing standard

Reference: Fair Trade Commission Decision of March 9, 2006 (the 748th Commissioners’ Meeting), Letter Kung Er Tzu No. 0950002013 of March 10, 2006

Industry: Other Chemical Products Manufacturing (1890)

Relevant Laws: Article 19, Paragraph 1, Subparagraph 3, Article 21, Paragraph 1 of the Fair Trade Law

Summary:

1. This case originated from a complaint letter made by Mao Yuan Industrial Co., Ltd., briefly stated as; Yung Chi Company publicly presented the U.S. UL exterior use testing report for its product “Huo Pa F-100” without a certification for exterior use. However, Yung Chi Company indicated in the product manual of “Huo Pa F-100” that the said product has passed UL-1709 exterior environmental testing and suitable for use in exterior environment. In addition, when the “Huo Pa F-100” petrifaction passive fire protection material originally passed the UL-1709 petrifaction fire protection testing, the thickness of its tested samples was found to be between 30~33 PCF. Nevertheless, Yung Chi Company has sold products “Hou Pa F-100” with thickness between 45.3~49.5 PCF to its trading counterparts. Furthermore, Yung Chi Company used the aforementioned improper means to dump passive fire protection materials at low prices, thus affected the market trading order
of passive fire protection material and violated the Fair Trade Law (FTL).

2. Findings of the Fair Trade Commission (FTC)’s investigation that Yung Chi Company has applied testing and registration for “Hou Pa F-100” according to the U.S. UL1709 Standard. After passing the outdoor simulation of fire protection testing on February 16, 1994, the said product was registered as UL Design Number XR713 and in accordance with the UL1709 Standards, the material is suitable for use in interior or exterior environment. Furthermore, the “Hou Pa F-100” passive fire protection material has gone through regular and non-periodical factory inspections of UL’s “Follow-up Service” every year. The samples collected in inspections are sent to UL’s laboratory in the U.S. for testing and the testing results showed that the samples have conformed to the standards. Moreover, the report of passive fire protection experiments of the Material Laboratory of Taiwan Construction Research Institute enclosed by the complainant showed that the results are greater than “the smallest mean value and the smallest individual value” of the said product. The results are not different from the original testing result conducted by the US UL. With regard to the evidences given by the complainant that the accused has acquired great sales, it is still not substantiate to conclude that the accused has acquired the said sales through unlawful means. To sum up, it is still difficult to conclude that the accused Yung Chi Company has circumstances of violating the FTL according to the available evidences.

Appendix:
Yung Chi Paint & Varnish Mfg. Co., Ltd.’s Uniform Invoice Number: 75137605

Summarized by Lin, Hsiao-Hung; Supervised by Lin, Gin-Lan
C.K.S International Airport

749th Commissioners’ Meeting (2006)

Case: C.K.S International Airport violated the Fair Trade Law by adopting differential treatment of restricting the bidder’s qualification without justification in the property rental tender of “The Placement of Commercial Advertising at Terminal 1 and Terminal 2”

Key Words: international airport, tender, Government Procurement Law, differential treatment, commercial advertising

Reference: Fair Trade Commission Decision of March 16, 2006 (the 749th Commissioners’ Meeting), Disposition Kung Ch’u Tzu No. 095023

Industry: Civil Air Transportation (5510)

Relevant Laws: Article 19, Paragraph 1, Subparagraph 2 of the Fair Trade Law

Summary:

1. The complainant indicated that C.K.S International Airport had adopted differential treatment of restricting the bidder’s qualification without justification in the property rental tender of “The Placement of Commercial Advertising at Terminal 1 and Terminal 2”. The act is likely to lessen competition or to impede fair competition, and in violation of the provision of Article 19, Subparagraph 2 of the Fair Trade Law (FTL).

2. Findings of the Fair Trade Commission (FTC)’s investigation that, C.K.S International Airport in conducting the property rental tender of “The Placement of Commercial Advertising at Terminal 1 and Terminal 2” has selectively referred to Article 36 of the Government Procurement Law and the relevant regulations of “Standards for Qualifications of Tenderers and Determination of Special or Large Procurement”. However, C.K.S International Airport ignored the provisions of other preventive measures in the aforementioned law and standards stipulated for the avoidance of competition restraints resulting from the determination of bidders’ qualification. For example, Article 37 of the Government Procurement Law stipulates “K. except for financial qualifications that the supplier may submit in lieu a bank
Unfair Competition—Lessening Competition or Impeding Fair Competition

guarantee or an insurance policy under which the bank or insurer shares the performance and compensatory liability with the supplier jointly and severally.” was left out and not referred by C.K.S International Airport. C.K.S International Airport prescribed that the qualified bidder must meet the qualification of having paid-up capital of not less than New Taiwan Dollars (NT$) 100,000,000, thus causing only a specific number of companies can participate in the bidding.

3. Grounds of Disposition:

(1) C.K.S International Airport conducted the property rental tender of “The Placement of Commercial Advertising at Terminal 1 and Terminal 2” for renting out the commercial advertising placement. C.K.S International Airport provided commercial advertising placement to the winning bidders and collected premium from them, thus the private business activities of C.K.S International Airport has met the definition of enterprise in the FTL.

(2) Although the Public Construction Commission of Executive Yuan had explained that the tender at issue did not meet the criteria of construction work, property or service procurement stipulated in the Government Procurement Law and thus the said Law was inapplicable. However, C.K.S International Airport had selectively referred to certain provisions of the Government Procurement Law and the relevant sub-laws, but ignored the provisions of other preventive measures in the aforementioned laws stipulated for the avoidance of competition restraints resulting from the determination of bidders’ qualification. Although C.K.S International Airport argued that, “a bank guarantee or an insurance policy under which the bank or insurer shares the performance and compensatory liability with the supplier jointly and severally” might supersede “the requirement of bidder’s capital”, and denied of double restrictions for the bidders’ qualifications, however, the aforementioned argument was not stipulated in the bidding instructions. Moreover, in addition to the performance bond, C.K.S International Airport has prescribed in the bidding instructions of the tender at issue that the qualified bidder must meet the qualification of having paid-up capital of not less than NT$ 100,000,000. Such double thresholds have imposed restrictions on the bidders’ qualifications, and obviously far beyond the
extent that is necessary for the ascertainment of winning bidder is “suitable for contract performance” or has “actually fulfilled the contract”. It is not substantiate to conclude that the aforementioned thresholds were based on the just grounds defined by Article 26 of the Enforcement Rules to the FTL.

(3) When C.K.S International Airport conducted the tender at issue, Hehe Company and Taiwan Mo Fei Erh Company were among members of the advertising business association that have paid-up capital of more than NT$ 1,000,000, and actually engaged in the outdoor commercial advertisement. Both companies were affiliated companies of the winning bidder Po Hung Company and all three companies were externally known as Omniad Media Incorporation. Due to the stipulation of paid-up capital restriction in the tender at issue, some suppliers who were originally interested in the bidding have given up the bidding as they did not meet the paid-up capital requirement stipulated in the tender at issue. As a result, only two suppliers, Po Hung Company and Iwant-in.net Inc could actually participate in the bidding process of the tender at issue and it was difficult to conclude that effective competition can arise in the process. Therefore, it is evident that the capital restriction for bidders prescribed by C.K.S International Airport imposed restraint on competition.

(4) Taken into consideration that C.K.S International Airport provides landings and take-offs of international flights, ground services, embarkation and disembarkations of passengers and cargo transits, the aircraft movement of around 180,000 flights and the passenger volume of around 20,000,000 individuals every year, C.K.S Airport is an enterprise that has significant market power. Therefore, the aforementioned differential treatment of restricting the bidders’ qualifications adopted by C.K.S International Airport was unjustifiable. Such conduct has violated the provision of Article 19(ii) of the FTL and hence C.K.S International Airport is ordered to cease the aforementioned unlawful act and a fine of NT$ 900,000 is imposed according to the anterior paragraph of Article 41 of the FTL.

Appendix:
C.K.S International Airport

Summarized by Huang, Yan-Bin; Supervised by Chiang, Kou-Lun
Chinese Educational Development and Cooperation Association (CEDCA)

755th Commissioners’ Meeting (2006)

Case: Chinese Educational Development and Cooperation Association (CEDCA) was complained for violating Article 19, Paragraph 1, Subparagraph 3, Article 22 and Article 24 of the Fair Trade Law by disseminating fliers “BELI is not equivalent to the Language Center of University of California, Berkeley” and “Don’t Forget Your Rights and Interests”

Key Words: study tour service, improper means, coercion and inducement, business reputation


Industry: Other Educational Services (7990)

Relevant Laws: Article 19, Paragraph 1, Subparagraph 3, Article 22, and Article 24 of the Fair Trade Law

Summary:

1. This case originated from a complaint indicating that Chan Heng-Jui, was the actual responsible person of Chinese Educational Development and Cooperation Association (CEDCA). In order to harass and captivate the parents of the complainant’s student, Chan has pretended as the parent of a student and disseminated the false accusation fliers “BELI is not equivalent to the Language Center of University of California, Berkeley” to the complainant’s second batch students of BELI Language Institute in August 2004. Furthermore, Chan has traveled to the school in US together with the complainant’s students. He continued to engage in the acts of harassment there. In addition, CEDCA in virtue of malicious slander has disseminated the false fliers of “Don’t Forget Your Rights and Interests”, such fliers were sufficient to affect the wills of student parents when they were thinking of whether to allow their children attending the courses of BELI Language Institute arranged by the complainant. In addition, the fliers were sufficient to mislead the
student parents into believing that the aforementioned courses of the complainant were not legally offered and their children were exposed to the risks of being repatriated. As a result, the goodwill of the complainant was damaged seriously.

2. Findings of the Fair Trade Commission (FTC)’s investigation that from the objective viewpoint, Chan Heng-Jui was entity of the conduct in this case; that is, Chan has disseminated the fliers at issue for the purpose of CEDCA’s competition in the market. The dispute of this case was that the complainant criticized CEDCA for making and disseminating the fliers at issue. Several questions were found in the fliers; such as the students in the study tour group were not arranged to attend classes with students from other countries, the intentional concealment of Language Center of University of California, Berkeley has already been closed in May 2004, the cost of study tour group was too high, the trading counterparts were unable to get official student visa, the completion certificates for the program were not issued by Language Center of University of California, Berkeley, an arrangement was made for the students to attend classes at BELI Language Center that was unable to issue Form I-20. Even more, the complainant has let its students to enter the US with Form I-20 of the other language center and thus they were confronting with the risks of forced to transfer to another school or been sent back home.

3. Grounds of Disposition:

(1) By means of disseminating fliers to the trading counterparts of the complainant, Chan Heng-Jui, the responsible person of CEDCA has questioned about the quality, fare and legality of the study tour groups arranged by the complainant. The ordinary conduct of disseminating fliers in fact did not have any nature of coercion or inducement, the purpose of such conduct inherently can be conceived as an intention to compete for trading counterparts. However, the fliers at issue did not include the name, address and telephone number of CEDCA. Also, the said means were unlike coercion or inducement that can either force or cause trading counterparts to have business activities with an enterprise, or distort the choices of trading counterparts. Except for the subjective judgment of reasonableness of group fare, the other points
stated in the fliers at issue were originated from disputes arose from the policy change of Language Center of University of California, Berkeley. Such points should be explained to the trading counterparts spontaneously by the complainant at the beginning of the trading. Therefore, it is still difficult to conclude on these grounds that CEDCA has caused the trading counterparts of its competitor to do business with itself by improper means that have same degree of compulsion as coercion or inducement, and thus has act that was likely to lessen competition or to impede fair competition. It is still difficult to deem that CEDCA has violated the provision of Article 19 (3) of the Fair Trade Law (FTL).

(2) The business data of CEDCA and the complainant showed that both parties were engaging in the business of study tour service and located at Taipei city. Therefore, it can be said that the fliers at issue were disseminated for the purpose of competition. As for the fliers at issue that were disseminated by CEDCA on the campus of University of California, Berkeley, there were some allegations. Amongst were “the official language center of University of California, Berkeley was closed in May of this year, do you know this when you signed up the program? Or the fact has been intentionally concealed?” and “the language center of University of California, Berkeley was closed in May of this year, Merica still enrolled students in the name of University of Berkeley, when were you informed about this fact? At the time of signing up? Or prior to the departure?” The complainant expressed that its company has announced the said messages with relevant advertisements in the enrollment forums. Therefore, the complainant was not in the condition of purposely concealing the said facts. However, the matters inquired by CEDCA in the fliers at issue were merely questions raised on the relevant issues and it was difficult to conclude that such questions were false messages. Regarding to the paragraph of BELI Language Institute was unable to issue the Form I-20, the Ministry of Education indicated, “In accordance with the regulations, any students who goes to school that is different from that recorded in the Form I-20 must leave the US or the entry will be denied. Taking the examples of BELI and ECIW, the students may be requested to leave the US.” Therefore, it is still difficult to regard the statements of the fliers at issue, “BELI is not related to the University of Berkeley at all. Hence, as a matter of fact your
children are unable to obtain official student identification cards!” and “Merica ignored the rights and interests of the students, made arrangement for them to attend classes at BELI Language Center that was unable to issue Form I-20. Even more, it has let its students to enter the US with Form I-20 of the other language center. Who shall bear the risk of the students being forced to transfer to another school or been sent back home?” were false. Regarding to the paragraph of whether the conduct of CEDCA was sufficient to damage the business reputation of another, the relevant fact must be deliberated in order to make judgment of whether the damage of business reputation has been resulted. The judgment was not made solely on the subjective view of the party concerned. The complainant claimed that the fliers at issue have led to difficulty in student enrollment, damage in business reputation, losses of students’ trusts, and the teachers’ complaints that their reputations were affected in relation to the said fliers. However, the statements given by both parties did not show any case of student has rescinded contract with the complainant due to the fliers at issue and transferred to CEDCA. Furthermore, there was no positive evidence to prove that the number of student enrollment has declined or a drastic drop of sales volume. In addition, the complainant stated that it has spent huge amount of money to hold a press conference and run advertisement to clarify rumors made by CEDCA. However, the investigation found that Yang Chun-Kuo has revealed the controversies recorded in the fliers at issue to the reporter of China Times Weekly, not Chan Heng-Jui or CEDCA. According to the available evidences, it is still difficult to deem that the conduct of CEDCA was sufficient to damage the business reputation of the complainant. To sum up, the act of CEDCA in disseminating the fliers at issue for the purpose of competition still did not meet the condition of constitution, and hence it is difficult to conclude that CEDCA has in violation of the provision of Article 22 of the FTL.

(3) Next, Chan Heng-Jui was the responsible person of CEDCA, both CEDCA and the complainant were engaging in the business of study tour service and located at Taipei city. Therefore, it can be deemed that both companies were competitor to another. The conduct of Chan Heng-Jui in disseminating the fliers at issue and the content of the fliers were related to the business of both parties concerned. Thus, it is
Unfair Competition—Lessening Competition or Impeding Fair Competition

It is substantiate to conclude that the said conduct and the fliers at issue were for the purpose of competition. In addition, both CEDCA and the complainant have expressed that no trading counterpart has rescinded contract with the complainant and signed contract with CEDCA due to the fliers at issue. Furthermore, the content of the fliers at issue were not groundless and not at the level that would coerce and harass the trading counterparts. The nature of fair market competition was not violated and thus there was no deceptive or obviously unfair circumstance. Hence, in accordance with the available evidences, it is still not substantiate to conclude that there was in violation of the provision of Article 24 of the FTL.

Summarized by: Mai, Huei-Li; Supervised by: Lu, Li-Na

American Genesis Microchip Corporation

757th Commissioners’ Meeting (2006)

Case: American Genesis Microchip Corporation was complained for violating the Fair Trade Law by improperly disseminating false accusation letters that affect the business reputation of another

Key Words: display controller chips, TSU series products, exclusion order, warning letter


Industry: Semi-conductors Manufacturing (2710)

Relevant Laws: Article 19, Paragraph 1, Subparagraph 1 and Subparagraph 3, Article 22, and Article 24 of the Fair Trade Law

Summary:

1. This case originated from a complaint filed by MStar Semiconductor, Inc., indicating that its company and the American Genesis Microchip Corporation are competitors in display controller chips market. Genesis filed an accusation with the
U.S. International Trade Commission (hereinafter called “ITC”) earlier alleging that the complainant has infringed upon its patented product. The ITC issued an order to embargo imports of the aforementioned products of MStar into the US in the preliminary determination of April 2004 and the final determination of August 2004. MStar redesigned the disputed products after learning about the preliminary determination in April 2004 and successfully researched and manufactured new products that were not related to the patent at issue. Also, the said new products have complied with the certification methods indicated in the ITC’s order, passed US Customs’ certification and could be imported into the U.S. Unexpectedly, Genesis by means of attaching PDF files to electronic mails sent out false accusation letters in December 2004. Without any references, Genesis alleged in the letters that the complainant’s display controller chips have infringed its patent and the complainant should prove that the new designed chips did not infringe its patent rights. Therefore, it can be deemed that Genesis may have violated the provisions of Article 19(i), Article 19 (iii), Article 22 and Article 24 of the Fair Trade Law (FTL).

2. Findings of the Fair Trade Commission (FTC)’s investigation that the first, second and forth paragraph of the letters at issue were indeed statements of facts. The main contention of the first paragraph was that Genesis is the patentee of US patent number 5739867, the stipulations of ITC’s determination and exclusion order. The second paragraph was statements concerning the report and successive clarification made by DigiTimes on TSU series products of MStar. A list of authorized representative companies was included in the forth paragraph. Genesis contended in the third paragraph that MStar has burden of proof that its new products were excluded from patent infringement and responsible for the application of exclusion order’s alteration. The third paragraph was subjective view of Genesis on the patent litigation. A deliberation of the letters showed that the said letters were Genesis’s response to clarify market rumors. The letters at issue in this case is different from the nature of “warning letter” as defined in the aforementioned decision guidelines. Genesis as the party concerned of this case sent out letters explaining the relevant details of ITC’s litigation and the successive developments to its clients. Based on its
subjective recognition about facts, Genesis as the patentee feared that the relevant news reports may harm its rights and interests, and thus sent out the letters at issue to personal e-mail. It is still difficult to conclude that Genesis has intentionally sent out the letters because of “for the purpose of injuring such particular enterprise” or “causing the trading counterpart(s) of its competitors to do business with itself by other improper means”. Hence, it is yet difficult to conclude that Genesis has violated the provisions of Article 19 (i), and Article 19 (iii) of the FTL.

3. Exactly as above-mentioned, the contents of the letters at issue were probably for the protection of the patentee’s rights and interests of patent, or a response to the report of DigiTimes, or explanations of the case to the clients, or expression of opinions on the relevant patent litigation. Hence, with regard to the statement of facts that made from the subjective recognition, it is still difficult to say that the letters were sent out “on account of the purpose of competition”, thus it is still different from the requirement stipulated in Article 22 of the FTL. Additionally, it is found that this case was a transnational patent litigation. Furthermore, both newspapers and the Internet had reported and given comments on the said patent right litigation beforehand. The relevant parties concerned may obtain information through public channels or inquired both parties involved in the accusation before the letters at issue were written. Considering the act of Genesis as an opportunity to give the public an explanation on the relevant dispute and necessarily to safeguard the company, it is still difficult to say that such act of issuing the letters was obviously unfair. Moreover, the FTC found that the recipients of the letters at issue were all individual staffs of particular departments. The companies of these staffs may not know about the said e-mails. The letters will not affect trading between both parties even if their companies knew about it. Therefore, it is still difficult to conclude that there is in violation of Article 24 of the FTL.
Taichung County Lunchbox Association

761st Commissioners’ Meeting (2006)

Case: An ex officio investigation initiated by the Fair Trade Commission into Taichung County Lunchbox Association’s collection of security deposits from its members to prevent its members from price war, which violated the Fair Trade Law

Key Words: school catering, check as security deposit, permanent suspension of rights

Reference: Fair Trade Commission Decision of June 8, 2006 (the 761st Commissioners’ Meeting), Disposition Kung Ch’u Tzu No. 095085

Industry: Bakery Product Manufacturing (0842)
Relevant Laws: Article 19, Subparagraph 4 of the Fair Trade Law

Summary:

1. This case originated from a letter written by Taichung County Government and transferred from the Ministry of Interior. Taichung County Government requested for an explanation of whether the act of Taichung County Lunchbox Association to collect security deposits from its members in order to prevent them from price war was unlawful. The Fair Trade Commission (FTC) was requested to provide its opinion on such conduct. In addition to the provision of opinion, the FTC also initiated an ex officio investigation to examine the lunchbox market of Taichung County.

2. Findings of the FTC’s investigation that the members of Taichung County Lunchbox Association have reached agreement and resolution in the general meeting that the price of a four dishes and one soup school lunchbox should not less than New Taiwan Dollars (NT$) 40. Furthermore, the members were reminded not to engage in cut-throat competition. It is found that the price of lunchbox for some schools in Taichung County had dropped to NT$35 from NT$ 40 in the middle of 2001. The member enterprises believed that such cut would reduce profit and consequently the members of Taichung County Lunchbox Association reached a resolution in the general meeting in August 2001 and all members were notified that they should
maintain the price of lunchbox at NT$ 40. In order to prevent the members from engaging in price war, a resolution of collecting NT$ 200,000 check from each member as a security deposit was reached. As a punishment, the check of a member that violated the regulation will be cashed. In August 2005, Chun Kuo Chan Catering Company and Kuo Miao Hsiang Food Co., Ltd. participated in the lunchbox bidding of Ta Ming Elementary School at Ta Ya Town, priced at the lower price of NT$ 35 (separate the lunchbox into meal and fruit and the bids were for meal only). The Association’s Chairman had made several calls prior to the commencement of bidding to stop the said members from participating in the bidding. After bidding, the checks of the said members were cashed by the Association and their security deposits were confiscated (the check of Kuo Miao Hsiang Food Co., Ltd. was overdue and cannot be cashed). Even more, the Association has reached a resolution to suspend the rights of Chun Kuo Chan Catering Company permanently. It is evidence that the said Association indeed has carried out the aforementioned punishment of confiscating the member’s security deposit when it violated the regulation prohibiting price war.

3. Grounds for Disposition:

(1) The Taichung County Lunchbox Association has increased and maintained the price of a lunchbox at NT$ 40 by means of the resolution made in the general meeting. The members were also requested to deposit NT$ 200,000 checks as security. Such conduct has violated the provision of Article 19 (iv) of the Fair Trade Law (FTL).

(2) Taking into consideration the motivation, purpose and expected improper benefit of the unlawful acts of the said Association; the degree and duration of the act’s harm to market order; benefits derived on account of the unlawful act; scale, operating condition and market position of the enterprise; past violations, remorse shown for the act and attitude of cooperation in the investigation, therefore, the said Association is ordered to cease the unlawful acts and a fine of NT$ 640,000 is imposed according to the anterior paragraph of Article 41 of the FTL.

Summarized by: Huang, Chung-Chieh; Supervised by: Wu, Pi-Ju
Concord Consolidated Securities Co., Ltd.
Concord Futures Co., Ltd.

771st Commissioners' Meeting (2006)

Case: An ex officio investigation initiated by the Fair Trade Commission into Concord Consolidated Securities Co., Ltd. and Concord Futures Co., Ltd.'s giveaway event “Wow! House Giveaway,” which violated the Fair Trade Law

Key Words: gift and prize, advertisement, efficiency competition

Reference: Fair Trade Commission Decision of August 24, 2006 (the 771st Commissioners’ Meeting); Disposition (95) Kung Ch’u Tzu No. 095129

Industry: Securities (6311) and Futures (6321)

Relevant Laws: Article 19 of the Fair Trade Law

Summary:

1. According to the information gathered from the public and Internet, it was found that Concord Consolidated Securities Co., Ltd. (hereinafter called “Concord Securities”) and Concord Futures Co., Ltd. (hereinafter called “Concord Futures”) claimed in their giveaway activity “Wow! House Giveaway” that in the event that a client enters into a contract with a futures consultant during the activity, purchases one set of Super Deal Card worth New Taiwan Dollars (NT$) 3,600 with a securities transaction amount of more than NT$200,000 or more than 10 transactions of domestic/foreign futures and options, such a client could have a chance to participate in the drawing of house purchasing funds of NT$10,000,000. Due to the possible violation by the said activity, the Fair Trade Commission (FTC) initiated an investigation ex officio.

2. The FTC stipulated the FTC Guidelines on Cases Concerning Promotion by Means of Gifts and Prizes pursuant to Article 19(iii) of the Fair Trade Law (FTL) for cases where enterprises employ gifts and prizes to induce and strive for their competitors' trading counterparts. According to Article 4 of the said rules, in the event that an enterprise hosts any giveaway event, the biggest price shall not exceed 120
times of the monthly basic wage announced by the Council of Labor Affairs, Executive Yuan. Additionally, pursuant to Article 6 of the said rules, in the event that an enterprise violates Article 4 when hosting a giveaway event, said enterprise shall also violate Article 19(iii) of the FTL. Upon investigation, the FTC found that Concord Securities and Concord Futures held the activity in question from August 25, 2005 to October 14, 2005. The biggest price, house purchasing funds NT$10,000,000, exceeded 120 times of the monthly basic wage announced by the Council of Labor Affairs (the biggest price shall not exceed NT$1,900,800) in violation of the said guidelines. Furthermore, although said enterprises claimed that the NT$10,000,000 price was merely a reciprocation for the clients instead of an inducement, said enterprises also admitted that the purpose of the price to be set at NT$10,000,000 was set as the biggest price in the market to attract clients and to create a climax for the activity. Additionally, said enterprises employed conspicuous characters to advertise “Wow! House Giveaway $3,600 + Small Amount Transactions to Make NT$10,000,000 House Purchasing Funds,” which caused a rather effective inducement to relevant public and affected consumers' judgment when deciding to trade. It is obvious that said enterprises attempted to attract clients, boost sales and strive for trading opportunities by using a drawing activity of a high amount price to affect clients' normal selection of goods or services. Said actions are against the nature of efficiency competition and cause competition restraints or impede fair competition violating Article 19(iii) of the FTL.

3. After considering the motivation, purpose, and expected improper benefit of the unlawful act of Concord Securities and Concord Futures; the degree of the act's harm to market order; the duration of the act's harm to market order; benefits derived on account of the unlawful act; the scale, operating condition, sales and market position of the enterprise; whether or not the type of unlawful act involved in the violation has been corrected or warned by the Central Competent Authority; types and number of and intervals between past violations, and the punishment for such violations; remorse shown for the act and attitude of cooperation in the investigation; and other factors, the FTC imposed an administrative fine of NT$400,000 on Concord
Securities and an administrative fine of NT$240,000 on Concord Futures in accordance with the fore part of Article 41 of the FTL.

Appendix:
Concord Securities Co., Ltd.’s Uniform Invoice Number: 23824511
Concord Futures Co., Ltd.’s Uniform Invoice Number: 16848544

Summarized by Tseng, Chiu-Chen; Supervised by Tai, Pei-Yi

**Taiwan Tobacco & Liquor Corporation**

776th Commissioners’ Meeting (2006)

Case: Taiwan Tobacco & Liquor Corporation violated the Fair Trade Law by improperly restraining trading counterparts to purchase bestseller tobacco products during the unbalance between market demand and supply

Key Words: tie-in sales, imbalance between market demand and supply

Reference: Fair Trade Commission Decision of September 21, 2006 (the 776th Commissioners’ Meeting); Disposition (95) Kung Ch’u Tzu No. 095142

Industry: Tobacco Manufacturing (0900)

Relevant Laws: Article 19 of the Fair Trade Law

Summary:

1. It was reported by media that Taiwan Tobacco and Liquor Corporation (hereinafter called “TTL”), during March 2005, implemented a measure encouraging only customers who purchased new tobacco products to have the priority to purchase Long Life tobacco products. Therefore, the Fair Trade Commission (FTC) initiated an ex-officio investigation.
2. Findings of the FTC’s investigation:

The Executive Yuan passed the amendment draft of Tobacco and Liquor Tax Act in early March, 2005 planning to elevate the amount of tobacco health and welfare surcharge (hereinafter called “surcharge”). Therefore, the tobacco market encountered a shopping rush and inventory shortage due to the anticipation of a price rise. In order to deal with the imbalance between market demand and supply, the TTL took a measure total quantity control from February 21, 2005 to June 30, 2005. Additionally, the TTL commenced bonus purchase of tobacco products starting from March 18, 2005 allowing customers who purchased some new tobacco products to have the priority to purchase a certain amount of previous Long Life tobacco products.

3. Grounds for Disposition:

(1) The measure of total quantity control taken by the TTL was a temporary measure to deal with the imbalance between market demand and supply. The concept of such a measure was to take into account the actual needs of different retailers and allow small-sized retailers to have basic quota. Therefore, the measure was not improper. However, the TTL would still violate the Fair Trade Law (FTL) if it employed the aforesaid measure to further engage in other improper competition.

(2) The tobacco product bonus purchase measure in question taken by the TTL was to allow consumers who purchased certain new tobacco products to have the priority to purchase certain amount of four specific types of old Long Life products. Aforementioned new and old tobacco products respectively have independent economic value. Therefore, these two types of products need not to be sold jointly. The TTL’s act fits the characteristics of tie-in sales by using the purchase of new tobacco products as the trading condition for the priority of purchasing old tobacco products. Furthermore, the TTL’s Long Life series has had respectable popularity and competition advantage. The total sales value of the four old Long Life products exceeded 11% of the entire domestic tobacco market in 2004. Therefore, these products have certain influence on the market. Under the circumstances where there was a shopping rush on the market and the total account measure was taken regarding Long Life tobacco products, the TTL’s tie-in sales would have caused its trading
counterparts to have to purchase the new Long Life tobacco products to purchase old Long Life tobacco products with priority, but not because of the quality or prices of the new products. As a result, the measure might have impeded the fair competition in the tobacco market.

(3) After considering the TTL’s market share of almost 40%, being the top two in the market, and its action of taking advantage of the imbalance between market demand and supply to engage in tie-in sales, though the implementation period only lasted one month and had no conspicuous effect, the FTC ordered the TTL to cease any illegal action and imposed an administrative fine of New Taiwan Dollars (NT$) 301,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:
Taiwan Tobacco & Liquor Corporation’s Uniform Invoice Number: 03787101

Summarized by Lin, Hsin-Wen; Supervised by Wu, Pi-Ju □
Chapter 7
False, Untrue and Misleading Advertisements

7.1 DECISIONS

Taipei Fubon Bank Co., Ltd.

748th Commissioners’ Meeting (2006)

Case: Taipei Fubon Bank Co., Ltd. violated Article 21 Paragraph 1 of the Fair Trade Law by making false and misleading representation in its advertisement of New Taiwan Dollar certificate of deposit and publishing the said advertisement in the relevant newspaper and magazines

Key Words: profit-doubling, more quotas for limited time, interest rate, advertisement

Reference: Fair Trade Commission Decision of March 9, 2006 (the 748th Commissioners’ Meeting), Disposition (95) Kung Ch’u Tzu No. 095024

Industry: Domestic Banks (6212)

Relevant Laws: Article 21, Paragraph 1 of the Fair Trade Law, applied mutatis mutandis to Paragraph 3

Summary:

1. This case originated from a complaint of the public, indicating that the complainant has read an advertisement of Taipei Fubon Bank Co., (hereinafter called “Taipei Fubon”) in the Liberty Times on January 3, 2005 that printed as “Fubon Makes Highest Interest! Fubon’s Profit-Doubling Program”. Consequently, the complainant visited Taipei Fubon on January 6, 2005 to make an application for Fubon’s Profit Doubling Program A. The application was turned down because Taipei Fubon told the complainant that the New Taiwan Dollars (NT$) 5,000,000,000 quota for Program A has been completely subscribed. However, the complainant read a report of the Economics Daily on January 12, 2005 that only NT$ 2,500,000,000 was subscribed for the said program. Then, the complainant told Taipei Fubon this

2. It is found that the Taipei Fubon’s “Fubon Makes Highest Interest! Fubon’s Profit-Doubling Program” advertisement has two versions, insert and full-page. The insert advertisement only stated “Fubon Makes Highest Interest! Fubon’s Profit-Doubling Program The Maximum Interest Rate For Certificate of Deposit is 4.6%” with the words “Taipei Fubon Bank”, the telephone number and website of the Bank included at the bottom of the insert. In addition to the messages in the insert, the phrases “profit-doubling, more quota for limited time, from January 5, 2005 (starting immediately) to the end of February, bring your money to Taipei Fubon to open a two-months New Taiwan Dollar certificate of deposits (NT$ 2,000,000 or above), the interest rate quoted for your deposit doubles immediately (2.3%). For a new investment-oriented product, that is equivalent to US$ 30,000 or more, the annual interest will be increased to 4.6%. Letting your deposit creates double profit! Limited quota for this offer, please call immediately for more detail” were printed at the bottom of the full-page advertisement. Such advertisements gave the public an impression that the interest rate for any certificates of deposit of NT$ 2,000,000 or more opened during the period of January 5, 2005 to the end of February, 2005 would be 2.3%. Or, the interest rate for certificate of deposit would go up to not more than 4.6% when the depositor bought investment-oriented product of US$ 30,000 or more. However, it is found that Taipei Fubon in practice has set up a NT$ 5,000,000,000 quota for the NT$ 2,000,000 certificate of deposit program; no deposit will be accepted when the said quota has been subscribed. However, the application of purchasing investment-oriented products was accepted until February 28, 2005. Taipei Fubon Bank also admitted these practices. Next, the examination of financial
institutions’ interest rates quotations for the period between January 5, 2005 and February 28, 2005 showed that the maximum fixed interest rate for three-month certificate of deposit was only around 1.265%. It is obvious that the 2.3% interest rate for certificate of deposit offered by Taipei Fubon was very attractive, and furthermore the said certificate of deposit program has NT$ 5,000,000,000 quota. Again, the investigation found that the certificate of deposit quota for doubling-profit program was completely subscribed within 9 days after its launching, which was from January 5, 2005 to January 13, 2005, a great discrepancy from the deadline of February 28, 2005 stated in the advertisement. Taipei Fubon did not disclose the important trading information in the advertisement that the program of 2.3% interest rate for certificate of deposit indeed has NT$ 5,000,000,000 quota, causing the potential trading counterparts to have wrong trading expectation. It is substantiate to conclude that the advertisement in this case has false and misleading representations.

3. Furthermore, the investigation found that after the quota of Fubon’s Profit-Doubling Program A has been completely subscribed on January 13 2005, Taipei Fubon still published the advertisement in this case in Next Magazine, 190th issue (2005.1.13), Winwin Weekly, 421st issue (2005.1.17-1.23), Business Weekly, 895th issue (2005.1.17-1.23) and China Times Weekly, 1403rd issue (2005.1.11). Taipei Fubon argued that, the Bank was unable to withdraw the said advertisement immediately because of the magazines’ circulation procedures. However, it is found that Taipei Fubon also did not announce that no more application would be accepted or take any remedial measures to let consumers know about the termination of the program after the quota of Fubon’s Profit-Doubling Program A has been completely subscribed. Taipei Fubon as the advertiser of advertisement at issue should be responsible for true representation in the said advertisement, and should not excuse itself by holding the consumers responsible for verifying the advertisement because of the advertisement’s circulation procedures. Therefore, it can be concluded from the available evidences that Taipei Fubon has made false and misleading representations when it continued to publish the advertisement of Fubon’s Profit-Doubling Program A in the aforementioned magazines after the quota for the said program has been
completely subscribed.

4. The 748th Commissioners’ Meeting of the Fair Trade Commission decided that the aforementioned advertising act of Taipei Fubon has violated the provision of Article 21, Paragraph 1 of the Fair Trade Law, applied mutatis mutandis to Paragraph 3. Taking into consideration the motivation of the unlawful acts of Taipei Fubon; the degree of the act’s harm, circumstances of the unlawful act, scale of the enterprise; and attitude shown for the act, Taipei Fubon is ordered to cease the unlawful acts and a fine of NT$ 330,000 is imposed according to the anterior paragraph of Article 41 of the Fair Trade Law (FTL).

Appendix:
Taipei Fubon Bank Co., Ltd.’s Uniform Invoice Number: 03750168

Summarized by: Yu, Wei-Jhen; Supervised by: Wu, Lieh-Ling

Chu Ho Fa Construction Co., Ltd.

749th Commissioners’ Meeting (2006)

Case: Chu Ho Fa Construction Co., Ltd. violated Article 21 of the Fair Trade Law in its “Ti Ching Villa” pre-sale house advertisement

Key Words: false advertisement, pre-sale house

Reference: Fair Trade Commission Decision of March 16, 2006 (the 749th Commissioners’ Meeting), Disposition Kung Ch’u Tzu No. 095022

Industry: Buildings Construction (4100)

Relevant Laws: Article 21, Paragraph 1 of the Fair Trade Law

Summary:

Chu Ho Fa Construction Co., Ltd. (hereinafter called “Chu Ho Fa”) in the
advertisement of 3D night scene diagram “KING BORDER courtyard chapter” for “Ti Ching Villa” construction project, has drawn the first floor of each building as parking space and one to two vehicles were parked at the parking space. A comparison to the floor plan of the whole area showed that the left sides of unit A9 to unit A1, the downsides of unit A1 to unit D1, and the right sides of unit D1 to unit D7, the garages were marked with both dotted and real lines. In addition, taking the case of “layout plan for a furnished unit D7”, the said plan included wordings such as “a new way of parking RV and enjoying life, double parking spaces, not exposed to wind and rain, safe from being coveted by thief……, in addition to satisfy the wish of homeowner to wash and wax his loving car personally, the design has also allowed the villa entering into the new era of RV recreation. There is a green space at the backyard of the villa.” A garage for two cars to park side by side (a horizontal dotted line was depicted inside the garage) and wall pillars were drawn at the bottom of the diagram.

2. Findings of the Fair Trade Commission (FTC)’s investigation that the Taichung City Government has determined arcade of the said building as squatter. In addition, according to the construction drawing and as-constructed drawing approved by the Public Works Department of Taichung City Government for the said construction project, the base inside the building line of “Ti Ching Villa” construction project was applied for and approved as land for arcade and arcade, the first floor was for parking spaces. However, in the aforementioned advertisement, bedroom and bathroom, yard and a garage for two cars were illustrated for the first floor. It is substantiate to conclude that the layouts and garage illustrated in the advertisement of the said construction project indeed were squatter building. Chu Ho Fa argued that the garage at issue was indicated with dotted lines, and the sales and purchase agreement has stated clearly that the garage was constructed in the second time construction and the complainant was informed this fact beforehand. However, a dotted line was indicated in the garage of the aforementioned advertisement, such design may cause a misuse of space for arcade as garage and thus has violated the relevant law. It is difficult for the ordinary consumers to understand that the layout indicated in the advertisement at
issue has violated the construction laws. Even if the second time construction was carried out and Chu Ho Fa was able to handover the building as indicated in the advertisement, the risk that the construction being reported and torn down still existed. Therefore, the representations and symbol of the advertisement were greatly different from the knowledge of ordinary consumers and such discrepancy had exceeded the level acceptable by ordinary consumers. In addition, even if Chu Ho Fa had notified consumers the aforementioned issues, either by means of contract or in words, the general understanding of ordinary consumers is that an advertisement shall make representations or symbol that are indeed consistent with the product itself. In order to prevent the false advertisement from misleading consumers into making the decision of trading and hence harming his or her rights and interests, and causing the competitors to loose the trading opportunities, Chu Ho Fa could not be excused for providing supplemented explanations in the advertisement or contract.

3. Taking into consideration the motivation, purpose and expected improper benefit of the unlawful acts of Chu Ho Fa; the degree and duration of the act’s harm to market order; benefits derived on account of the unlawful act; scale, operating condition, and market position of the enterprise; whether or not the type of unlawful act involved in the violation has been the subject of correction or warning by the Central Competent Authority; types of, number of, and intervening time between past violations, and the punishment for such violations; remorse shown for the act and attitude of cooperation in the investigation, and other factors, therefore, a fine of New Taiwan Dollars (NT$) 3,000,000 is imposed on Chu Ho Fa according to the anterior paragraph of Article 41 of the Fair Trade Law (FTL).

Appendix:
Chu Ho Fa Construction Co., Ltd.’s Uniform Invoice Number: 86640027

Summarized by: Kuo, An-Chi; Supervised by: Yeh, Tien-Fu
Far Eastern Electronic Toll Collection Co., Ltd.

751st Commissioners’ Meeting (2006)

Case: Far Eastern Electronic Toll Collection Co., Ltd. was complained for violating the Fair Trade Law by making false ETC advertisement on television, and the information was not completely disclosed and asymmetric.

Key Words: Electronic Toll Collection (ETC), on-board unit (OBU), information asymmetry, false advertisement.


Industry: Other Information Supply Services (7329).

Relevant Laws: Article 21 and Article 24 of the Fair Trade Law.

Summary:

1. This case originated from a complaint filed by elected representatives in March 2006, indicating that Taipei High Administrative Court has rendered a verdict to revoke the National Freeway Bureau’s screening announcement that Far Eastern Alliance was the “priority applicant” of the establishment and operation of electronic collection system. However, Far Eastern Electronic Toll Collection Co., (hereinafter called “Far Eastern”) has made promotional advertisements on television intensively between March 1, 2006 and March 7, 2006 without performing the responsibility of reminding its consumers the risk of installing OBU. Far Eastern may have made false advertisements that did not disclose full information and also were asymmetric, thus has violated the provisions of the Fair Trade Law (FTL).

2. Findings of the Fair Trade Commission (FTC)’s investigation that Far Eastern has intensively broadcasted seven advertisements on television between March 1, 2006 and March 7, 2006. Amongst, six advertisements did not show any misleading representations on the future operation of the electronic collection system and its influence on the rights and interests of consumers. The content of said advertisements were only the sharing of experiences given by users of the electronic collection system. The other television advertisement announced, “The service of electronic
collection will nonetheless continue. It is guaranteed that the OBU can be returned and the original purchase price will be refunded if there is any problem.” Such announcement was made according to the agreement signed between Far Eastern and Taiwan Area National Freeway Bureau, MOTC (hereinafter referred to as National Freeway Bureau) on February 25, 2006, and the National Freeway Bureau’s letter of March 3, 2006 demanded the users of OBU must reach 100,000 by March 9, 2006. Therefore, the television advertisements showed the experiences of electronic collection users and explained the measures used to protect the rights and interests of consumers. It is obvious that Far Eastern did not have any intention to make false representation on purpose. Furthermore, in addition to notify consumers the messages related to the future operation of electronic collection and its influence on the rights and interests of consumers through the broadcasting of television advertisements, Far Eastern has held a press conference on February 26, 2006. Then, Far Eastern published an open letter on newspaper on February 27 and the same letter was exhibited at the company’s own retail outlets. The said letter stated clearly, “in coordination with the government’s instruction, our company (refer to Far Eastern, similarly hereafter) will continue to operate normally”, and “in the case that consumer wishes to return the OBU and card, we will handle the return willingly” and “our company promised to buy back the OUB at the original selling price if we loose the lawsuit in the court’s ruling.” Actually, in accordance to the official declaration issued by the Ministry of Transportation with regard to the verdict of Taipei High Administrative Court, Far Eastern was permitted to continue the operation and totally liable for the trading disputes related to OBU and IC cards. Such permission was to ensure the continuation of ETC operation and the rights and interests of the users. The consumers without doubts will receive refunds for their returned OBU or cards when they filled up the return application forms at any Far Easter’s own retail outlets. Therefore, it is still difficult to conclude that there was false or misleading representation in the conduct of Far Eastern.

3. In addition, it is found that according to the “Electrical Toll Collection’s Establishment and Operating Contract” signed between Far Eastern and National...
Decisions

Freeway Bureau, the future operation of electrical toll collection system is determined by the policy decision of the transportation competent authority. Far Eastern did not have any need of concealing the messages related to the future operation of electronic collection system and its influence on the rights and interests of consumers. Furthermore, the verdict of Taipei High Administrative Court was known across the country after reported by the media. Therefore, there was no structural asymmetry in the consumers’ acquisition of important trading information. Moreover, when Far Eastern carried out promotions in order to coordinate with the contract, agreement or instruction of National Freeway Bureau, it has published open letters several times as well as exhibited the said open letter at all of its own retail outlets. Far Eastern did not conceal the Taipei High Administrative Court’s verdict of revoking Far Eastern Alliance as the “priority applicant” of the bidding of establishment and operation of electronic collection system. According to the official declaration issued by the Ministry of Transportation with regard to the Taipei High Administrative Court’s verdict, Far Eastern was permitted to continue the operation but was completely liable for the trading disputes related to OBU and IC cards in order to ensure the continuation of ETC operation and the rights and interests of the users. Certainly, the consumers will receive refunds for their returned OBU or cards when they filled up the return application forms at any Far Easter’s own retail outlets. Therefore, with regard to the future operation of electronic collection system and its influence on the rights and interests of consumers, Far Eastern did not engage in any deceptive conduct.

4. The FTC’s 751st Commissioners’ Meeting reached a decision on March 30, 2006 that in accordance with the available evidences, it is still not substantiate to conclude that the advertising and promotion activities conducted by Far Eastern in the electronic toll collection have in violation of the provisions of Article 21 and Article 24 of the FTL. As to whether a warning notice should be included in the ETC television advertisement, the inclusion of warning notice is for reminding consumers to take into consideration the potential risk (or loss) before their purchases. However, as explained earlier, Far Eastern did not purposely conceal the result of Taipei High
Administrative Court’s verdict in its trading with consumers. Furthermore, the National Freeway Bureau has guaranteed in its official declaration that the government is prepared to continue the ETC operation if Far Eastern looses the lawsuit. The rights and interests of users who have already installed the ETC system also will be protected. Comparing to the potential hazard of tobacco and liquor product to human’s health, the degree of risk for ETC is rather insignificant. However, the policy consideration of including the warning notice is within the authority of National Freeway Bureau, thus the FTC has submitted this issue to the competent authority, the Ministry of Transportation, for decision.

Appendix:
Far Eastern Electronic Toll Collection Co., Ltd.’s Uniform Invoice Number: 98770235

Save and Safe Tech. Co., Ltd.

751st Commissioners’ Meeting (2006)

Case: Save and Safe Tech. Co., Ltd. violated Article 21, Paragraph 1 of the Fair Trade Law by making false and misleading representation as to the value of air ticket prize in the advertisement of lucky draw

Key Words: prize, air ticket, false advertisement

Reference: Fair Trade Commission Decision of March 30, 2006 (the 751st Commissioners’ Meeting), Disposition Kung Ch’u Tzu No. 095031

Industry: Wholesale of Building Materials (461)

Relevant Laws: Article 21 of the Fair Trade Law

Summary:

1. A complaint was made by the public against the website www.twdeco.com.tw posted by Save and Safe Tech. Co., Ltd.. The website hold a prize drawing for
“twdeco’s fifth anniversary celebration and year-end sale, prizes of traveling around the world and big cash”, and announced that one of the prizes was a roundtrip air ticket to Hong Kong worth at New Taiwan Dollars (NT$) 14,000 market price. However, the ticket price for the said air ticket was only NT$ 4,950 and thus the announcement was suspected of violating the Fair Trade Law (FTL).

2. Findings of the Fair Trade Commission (FTC)’s investigation that Save and Safe Tech. Co., Ltd. announced in the website advertisement that the prize for the prize drawing was a roundtrip air ticket to Hong Kong worth at NT$ 14,000. Save and Safe argued that the Company has indicated the market price of a roundtrip air ticket to Hong Kong was NT$ 14,000 because Cathay Pacific Airlines has posted in its website that the roundtrip air ticket between Taipei and Hong Kong was NT$ 13,406 at the time that the prize drawing promotion at issue was hold. However, it is found that the price of Taipei and Hong Kong roundtrip air ticket varied with the terms of use. The evidence provided by the party involved Ezfly Travel Agent Corp. showed that two kinds of air tickets were provided at that time, one priced at NT$ 4,950 and the other one was priced at NT$ 12,118, both tickets were different in their terms of use. The former air ticket was valid for three months, non-returnable, no alteration of flight and non-transferable, whereas the latter was valid for 12 months, returnable but no alteration of flight and non-transferable. In addition, the passengers of the former air tickets can only take specific flights (flights CX401 19:10-21:00, CX451 20:00-21:45 Taipei to Hong Kong, any flights before 2:00 p.m. from Hong Kong to Taipei everyday); such restriction did not apply to the latter air ticket.

3. Grounds of Disposition: the Hong Kong roundtrip air ticket given by Save and Safe Tech. Co., Ltd. in its prize drawing was valid for three months, non-returnable, no alteration of flight and non-transferable. In addition, the air ticket also had flight restriction and the market price was only NT$ 4,950. The aforementioned terms of use and actual value were recorded clearly in the voucher of air ticket at issue. Furthermore, Save and Safe Tech. Co., Ltd. confessed that it had paid NT$ 4,950 cash to Ezfly Travel Agent Corp. for the ticket, verifiable by the receipt of air ticket
purchase. It is obvious that Save and Safe Tech. Co., Ltd. clearly knew the actual value of the air ticket prize at issue but announced in the advertisement that the market value of the air ticket prize was NT$ 14,000, significantly different from the actual value of the said air ticket. The announcement was sufficient to mislead the trading counterparts into believing that the air ticket prize was air ticket that has better terms of use and more expensive, and hence making erroneous trading decisions. The advertisement at issue was obviously false and misleading, thus has violated the provision of Article 21(1) of the FTL. Therefore, Save and Safe Tech. Co., Ltd. is ordered to cease the aforementioned unlawful acts immediately and a fine of NT$ 260,000 is imposed according to the anterior paragraph of Article 41 of the FTL.

Appendix:
Save and Safe Tech. Co., Ltd.’s Uniform Invoice Number: 16653287

Summarized by Hung, Hsuan; Supervised by Chiang, Kou-Lun

The American World Gym Fitness Co., Ltd.

751st Commissioners’ Meeting (2006)
Case: The American World Gym Fitness Co., Ltd. violated Article 21 of the Fair Trade Law by making false and misleading representation in its service content when soliciting for new members
Key Words: American World Gym, preferential program, false advertisement
Reference: Fair Trade Commission Decision of March 30, 2006 (the 751st Commissioners’ Meeting), Disposition Kung Ch’u Tzu No. 095030
Industry: Other Sporting Services (8749)
Relevant Laws: Article 21, Paragraph 1 of the Fair Trade Law, applied mutatis mutandis to Paragraph 3
Summary:

1. The Fair Trade Commission (FTC) received a complaint from the public indicating that the complainant has seen the member solicitation advertisement published by World Gym Fitness Co., Ltd., Kaohsiung branch in the United Daily on April 21, 2005. The said advertisement has made the following announcements, “no entrance fee and only New Taiwan Dollars (NT$) 888 per month”, “one to one personal coach”, “about 100 lessons each week”, “free parking”, “investment of NT$150,000,000”. However, the complainant found the truth was quite different from that indicated in the advertisement after joining the club. In addition, the punished did not give its members a period to review the contract before they signed contracts. The consumers can only read the contract after they made payment and even when the contract was provided to the consumers for review, the reviewing period was only three days. Recently, the punished has even announced the false advertisement “The entrance fee is only NT$ 2,688 now, the last day of this super value program” everyday. Such advertisement will mislead the ignorant consumers into making the decisions of joining the club, thus has violated the provisions of Article 21 and Article 24 of the Fair Trade Law (FTL).

2. Findings of the FTC’s investigation:

   (1) The “no entrance fee and only NT$ 888 per month” program: The members of this program were not required to pay any entrance fees and they only have to pay the monthly fees of NT$ 888. There was a usage restriction for members of this program, they can only come to the club, use the club’s facilities and group aerobic class two days per week on the days chosen by them.

   (2) “One to one personal coach”: Upon joining the club, regardless of the types of program chosen by the member, the punished will make an appointment with each member to arrange a free two hours one-to-one personal coach course. A physical assessment of the member was conducted in the first hour and in the second hour; the member was given suggestions on his/her individual exercise plan and the instructions to operate the fundamental sport equipments.

   (3) “About 100 lessons each week”: there were three group aerobic classes in the
club, the aerobic teachers will teach aerobic lessons in these group aerobic classes. During his or her visit to the club, the member can choose any class time to learn aerobic. The class schedule for October was enclosed for examination.

(4) “Free parking”: Each member was entitled for a two hours free parking every time he or she visited the club. The charges for extra hour were NT$ 20 per hour for regular day and NT$ 30 per hour for holiday.

(5) “Investment of NT$150,000,000”: Refers to the total expense of overall planning for the club, including rental for the site, design, decoration, sports equipments, and management system for members, salary and training of employees. The list of development expenses for the club was enclosed for examination.

(6) With regard to the advertisement, “The entrance fee is only NT$ 2,688 now, the last day of this super value program”: The punished has posted the advertisement poster of inviting customers to join the club at NT$ 2,688 at the hall entrance for a long time. After receiving a letter from the FTC, only then the club discovered that the management at the site has not removed the said advertisement immediately according to the regulation at the end of the NT$ 2,688 promotion program. The punished has routinely introduced different promotional programs every month. In general, in order to coordinate with the advertisement of print media, every promotion program is lasted for two weeks. The punished has organized the following promotional programs for the period between September and November; “Only NT$ 2,688 entrance fee (a program that has usage time restriction)” from September 1, 2005 to September 15, 2005, “Buy 18 months get 18 months free” program from September 16, 2005 to September 28, 2005, “Only NT$ 688 per month (a program that has usage time restriction)” from October 1, 2005 to October 14, 2005, “Only NT$ 588 per month (a program that has usage time restriction)” from October 15, 2005 to October 31, 2005 and “Only NT$ 888 per month (a program that has usage time restriction)” from November 15, 2005 to November 30, 2005. The punished would not promote the activities of each program after the expiration of the said program. The salespersons also were not allowed to sell the expired program. The failure of Kaohsiung branch to promptly replace poster of previous program with a new one was simply a flaw of the administrative management. The punished must
admitted that its on-site management indeed was not perfect, and should immediately ordered the management at the site to remove the said poster after receiving the FTC’s letter to avoid any misinterpretation by consumers.

3. Grounds for Disposition:

(1) The promotion program “The entrance fee is only $2,688 now, the last day of this super value program” was carried out by Kaohsiung branch of the punished from September 1, 2005 to September 15, 2005. The member of the said program must pay entrance fee of $2,688 for the membership of the club. After that, the member must pay monthly cleaning fee of $1,288 for using the club’s facilities every month. The member may be or was given two to three months of gratuitous club’s uses if he or she prepaid one-year cleaning fees in advance. The punished noted that the said program did not perform well and not attract anyone to join the club during the promotion. The said program was not used again in the club’s marketing after its expiration. However, the staffs at the site have made an administrative mistake by forgetting to remove the said advertisement. Actually, the punished did not have conduct and intention of making false advertisement. However, the investigation found that the phrase of “the last day of this super value program” as used by the punished in its advertisement might lead the ignorant consumers into believing it and thus making a hasty decision of joining the club. It is found that two consumers have requested the salesperson for joining the club with “$2,688 program” when the said advertisement was posted on the signboard. Even though both consumers only paid $200 deposits and called the punished later to demand for contract rescission, the punished still advertised the “the last day of this super value program”. It is obvious that the content of service has false and misleading representation. Other than that, it is still difficult to conclude that the other parts of the advertisement at issue have false representations.

(2) Taking into consideration the motivation and purpose of the unlawful acts of World Gym are not serious, the expected improper benefit derived from the unlawful acts is small, the degree of the act’s harm to market order is slight, the duration of the act’s harm to market order is not long, the scale, operating condition, sales and market
position of the enterprise, the enterprise has not been corrected or warned by the
central competent authority, first violation, acceptable remorse shown for the act and
attitude of cooperation in the investigation, a fine of NT$ 170,000 is imposed
according to the anterior paragraph of Article 41 of the FTL.

Appendix:
American World Gym Fitness Co., Ltd.’s Uniform Invoice Number: 80023103

            Summarized by: Huang, Chian-Mei; Supervised by: Lee, Wen-Hsiu

NTUDOCTOR Co, Ltd.

752nd Commissioners’ Meeting (2006)

Case: NTUDOCTOR Co, Ltd. was complained for violating the Fair Trade
Law by publishing “the nation’s largest tutoring network”,
“NTUDOCTOR Tutoring Center is the nation’s largest tutoring web”
on the webpage, exploiting the metatag function of website design and
improperly using the “104” symbol of 104 Corporation
Key Words: webpage, the nation’s largest, metatag, trademark, false
advertisement
Reference: Fair Trade Commission Decision of April 6, 2006 (the 752nd
Commissioners’ Meeting), Disposition (95) Kung Ch’u Tzu No.
095035
Industry: Other Educational Services (7990)
Relevant Laws: Article 21, Paragraph 1 of the Fair Trade Law, applied
mutatis mutandis to Paragraph 3, Article 24 of the Fair Trade
Law

Summary:

1. This case originated from a complaint filed by 104 Corporation (hereinafter
called “104 Co.”), indicating the following points:
   (1) NTUDOCTOR Co, Ltd. (hereinafter called “NTUDOCTOR”) announced on its
“NTUDOCTOR Tutoring Center” webpage (http://www.ntudocotr.com.tw) that its tutoring center was “the nation’s largest tutoring network”, “NTUDOCTOR Tutoring Center is the nation’s largest tutoring web”, without any objective data or evidences. Such announcement may have violated Article 21(1) of the Fair Trade Law (FTL), applied mutatis mutandis to Paragraph 3.

(2) When NTUDOCTOR designed its webpage, it has exploited the metatag function of website design and by means of metatag has written the mark or symbol “104 Tutoring Web” and “104 Tutoring” of 104 Co. to the program of NTUDOCTOR’s website. Such design led to the ease and promptness for web users to find a specific webpage of NTUDOCTOR’s website when they keyed in the aforementioned keywords into the search engine. In addition to this, NTUDOCTOR also designed another new webpage (http://www.ntudocotr.com.tw/new-ntudocotr/tutorall/index.asp), the representations “104 Tutor Nationwide DOCTOR TUTOR” and “104 NTUDOCTOR Tutoring Center” were separately posted on the said webpage and the web page title at the top of browser. The intention of the said webpage’s design was to increase the number of person visiting the NTUDOCTOR’s website, rate of exposure and trading opportunity through search engine. Such conduct was an attempt to free ride the goodwill of 104 Co. and exploited the efforts of 104 Co., hence, it is ethically reprehensible in business competition and has in violation of the provision of Article 24 of the FTL.

2. It is found that NTUDOCTOR has made representations of “the nation’s largest tutoring network” and “NTUDOCTOR Tutoring Center is the nation’s largest tutoring web” on its webpage in September 2004. NTUDOCTOR argued that it has searched from the websites and found there were five tutoring websites provided statistics of their tutors. After comparing these statistics with the total tutors from its center, NTUDOCTOR thus has made the aforementioned representations. As for the 104 Tutor Web of 104 Co., no comparison can be made because the webpage of 104 Co. did not provide any tutor statistic. However, it is found that there are many enterprises engaged in domestic tutor network. When NTUDOCTOR published the aforementioned webpage advertisement, it did not obtain the objective and concrete
statistics of tutors for each domestic tutor network. NTUDOCTOR only provided total tutors of five tutor networks that it can find, hence, it is really difficult to deem that NTUDOCTOR already has concrete and objective statistics that were able to prove that it was “the nation’s largest tutoring network”. Furthermore, the 104 Co. has presented a statistical data of tutors at that time, showing that there were 98,816 tutors for 104 Co., and NTUDOCTOR only has 29,688 tutors at the same time. The number of tutors for 104 Co. was far greater than that of NTUDOCTOR. It is more evidence that the credibility of the representations of NTUDOCTOR’s advertisement in this case is questionable. The operating scales of network tutor agents and its number of tutors have always been the important reference data when enterprises strive for the opportunity of electronic commerce trading. NTUDOCTOR confessed that it was unable to know the number of tutors for the “104 Tutor Web” of 104 Co., and did not state clearly in the webpage the basis of its comparison and the sources of the relevant statistics. It has regarded itself as “the nation’s largest tutoring network” based directly on the number of tutors for five tutor networks that it has investigated. The web users were unable to verify or confirm the accuracy of the aforementioned announcement, and they were misled into believing that NTUDOCTOR has the largest scale of operation in the business. Therefore, the announcements of “the nation’s largest tutoring network”, “NTUDOCTOR Tutoring Center is the nation’s largest tutoring web” in the said advertisement of NTUDOCTOR are false and misleading representations, in violation of the provision of Article 21(1) of the FTL, applied mutatis mutandis to Paragraph 3.

3. The 104 Co. was founded in 1996 as the first domestic job search website in the Internet. After that, 104 Co. was granted the exclusive rights to use the series of “104” trademarks in 1998. Furthermore, the Intellectual Property Office, Ministry of Economics has deemed the “104” trademark as the well-known trademark. It is found that the operation of tutor agency websites were the major business items for both the complainant and the respondent. Thus the complainant and the respondent are competing with each other in the operation of tutor agency websites. While there was no relation at all between the content of NTUDOCTOR’s website and the words
“104”, NTUDOCTOR has keyed in the symbol “104” of 104 Co. in metatag to exploit the said symbol so that the search engine can easily find NTUDOCTOR, and led the potential clients to visit its website. The conduct of NTUDOCTOR by means of free riding the effort of 104 Co. in market achievement, has increased the exposure rate or visiting rate of its website as well as to increase its trading opportunity, a conduct to exploit the efforts and free ride the business reputation of another. Such conduct was sufficient to affect the trading order that emphasizes on the efficient competition of price, quality and service, and obviously unfair to the honest competitors that have abided by the essence of fair competition. Therefore, it is ethically reprehensible in business competition. The conduct of NTUDOCTOR in this case has violated the provision of Article 24 of the FTL.

4. Taking into consideration the motivation of the unlawful acts of NTUDOCTOR; the degree of the act’s harm, circumstances of the unlawful act, scale of the enterprise; and attitude shown for the act, NTUDOCTOR is ordered to cease the unlawful acts and a fine of NT$ 140,000 is imposed according to the anterior paragraph of Article 41 of the FTL.

Appendix:
NTUDOCTOR Co, Ltd.’s Uniform Invoice Number: 80583772

Summarized by: Tsai, Shueh-Chiu; Supervised by: Wu, Lieh-Ling

Jung Shing International Co., Ltd.

753rd Commissioners’ Meeting (2006)
Case: Jung Shing International Co., Ltd. was complained for violating Article 21 and Article 24 of the Fair Trade Law by making false advertisement on debt coordination
Key Words: false, misleading, debt coordination
Summary:

1. This case originated from the public’s complaint and the letter of the Financial Supervisory Commission, Executive Yuan (hereinafter called “FSC”) indicating that Jung Shing International Co., Ltd. (hereinafter called “respondent”) had made following announcements on the website and in the newspaper’s advertisement. The advertisement announced “After paying the debt, the client will be assisted to restore his/her on credit record at Joint Credit Information Center”, “Helping the client to reduce his/her total debt by approximately 30% to 50%”, and publishing “A comparison table of the Bankers Association’s coordination mechanism and OK Jung Shing International’s coordination mechanism”. The aforementioned letters indicated that such announcements and publication might have made false advertisements.

2. With regard to “After paying the debt, the client will be assisted to restore his/her on credit record at Joint Credit Information Center” announced in the advertisement, it is found that the Joint Credit Information Center (hereinafter called “JCIC”) has separately prescribed an announcement period to disclose the credit fault of each party concerned. Such announcement period is determined according to the seriousness of fault made by the party concerned. After the party concerned has settled the debt, there is no possibility for him or her to either shorten or alter the announcement period of his/her credit record because of the respondent’s assistance. Furthermore, the respondent also did not deny that the on credit record at JCIS must be handled according to the regulations of JCIS after the client paid back the debt. The credit fault will be announced continuously for at least six months after the settlement of debt. The personal credit history recorded by JCIS concerns with the terms of correspondence between an individual with the financial institution and has been valued generally. The credit record at JCIS will continue to be announced for at
least six months after the settlement of debt, and there is no possibility at all that the record can be canceled immediately after the settlement of debt. The Bankers Association and the FSC replied in their letters that the aforementioned advertisements and publication indeed were misleading. The advertisements in this case did not state the JCIS on credit information’s announcement period. The representations of the said advertisement will mislead ordinary person into believing that the respondent can assist him/her to restore his/her on credit record at the JCIS after he/she paid back the debt, and thus made erroneous trading decision. Therefore, according to the available evidences, it is deemed that the aforementioned advertisements have made false and misleading representations.

3. With regard to “Helping the client to reduce his/her total debt by approximately 30% to 50%” announced in the advertisement, it is found that the figures stated in the announcement were estimated according to the operating experience of the respondent and the common practices of debt collection companies. The respondent did not have any concrete and objective data prior to this advertisement. Next, it is found that although the respondent has provided the 50.45% average reduction of total debt for clients that have succeeded debt coordination in January and February of 2006 as evidence, however, the respondent has calculated the percentage of total debt reduction differently from the practices of ordinary banks. Therefore, a further examination is needed to ascertain the attainability of the claim of reducing “30% to 50% of total debt”. Maybe there were clients of the respondent reducing their total debt by 30% to 50% as a result coordination, however, in accordance with the banks’ practices, there were not many debtors who can successfully reduce his/her debt by 30% to 50%. In a report presented to the Fair Trade Commission (FTC), the Bankers Association expressed that “In practice, the possibility of reducing total debt by approximately 30% to 50% in the debt coordination shall be considered as an exception; it is not a common practice.” The report was enclosed for examination. To sum up, it is insufficient to conclude from the evidences provided by the respondent that most debtors who have commissioned the respondent to handle coordination will achieve the claim of “Helping the client to reduce his/her total debt by approximately
30% to 50%” as printed in the advertisement. Therefore, according to the available evidences, it is deemed that the expression “Helping the client to reduce his/her total debt by approximately 30% to 50%” are false and misleading representations, and thus has in violation of Article 21(1) of the Fair Trade Law (FTL), applied *mutatis mutandis* to paragraph 3.

4. With regard to the publishing of “A comparison table of the Bankers Association’s coordination mechanism and OK Jung Shing International’s coordination mechanism”, the following findings are found:

   (1) The subjects of comparison for “A comparison table of the Bankers Association’s coordination mechanism and OK Jung Shing International’s coordination mechanism” were “The Bankers Association’s coordination mechanism” and “OK Jung Shing International’s coordination mechanism”. “The Bankers Association’s coordination mechanism” adopts a free-of-charge collective coordination, which the debtor does not have to pay any fees. Moreover, the debtor can make debt coordination with several creditor banks in the same debt coordination and attain similar terms of debt payment with all creditor banks. However, for the debt coordination provided by the respondent, the respondent was commissioned by its client to carry out the coordination of debt settlement with a creditor bank (including debt collection company). When the client has several creditor banks, the respondent must carry out debt settlement coordination and sign contract individually with each creditor bank. At the time of accepting the commission and after completing the debt coordination, the respondent collected relative membership fee and service charges from the debtor. A comprehensive examination of both debt coordination mechanisms shows that, regardless of the content design, coordination process, coordination subject, and the total of creditor banks that were bound by the result of coordination, they are different. The extra cost of coordination, such as money and time that were needed in debt coordination, was also incommensurate. The advertisement in this case compared both coordination mechanisms directly without making any specific description of their differences. Such act of comparing debt coordination mechanisms of different levels after all was a marketing of one’s
debt coordination service. In case of the content of comparison was not objective and unfair, the standard of comparison was not consistent, then the credibility of the advertisement is questionable. In addition to this, the said advertisement also will distort the debtor’s choices of making objective trading decision. Thus, it is likely that the advertisement will deceive the debtor into making erroneous trading decision. Furthermore, the Bankers Association with the supervision of the FSC carries out the collective coordination mechanism, and hence the mechanism is accountable. If the respondent was not objective, fair and true in making comparison to the coordination mechanism of the Bankers Association, then the respondent in virtue of the accountability of “coordination mechanism” carried out by the Bankers Association has strived for the trading opportunity. It is deemed that the respondent has deceptive or obviously unfair conduct that was able to affect trading order.

(2) The additional payment required for the service of debt coordination was important trading information that would be taken into consideration by the respondent in the decision of debt coordination. It is found that at the time of accepting the debtor’s commission, the respondent would collect NT$ 2,000 membership fee for each commissioned debt coordination service. Upon the completion of coordination, the respondent, depending on the types of debt being successfully coordinated, would collect a service charge that ranged from NT$ 2,500 to NT$ 5,000 per case. However, there was no charges for the debt coordination provided by “the Bankers Association’s coordination mechanism”. The advertisement in this case did not announce any information of the said charges for debt coordination, thus causing the debtor unable to make objective decision of choosing the manner of debt coordination that is more favorable to him/her and in consequence would made erroneous trading decision. The respondent has concealed important trading information in the advertisement that there was a charge for the coordination mechanism provided by it whereas that provided by the Bankers Association coordination mechanism was free. The debtors thus were misled into believing that there were charges for both coordination mechanisms, regardless of provided by the Bankers Association or the respondent. Consequently, the respondent would have more chances of being selected by the debtors in their trading decisions. The conduct
of the respondent has in violation of the provision of Article 24 of the FTL.

(3) In the comparison table, the “Terms of Coordination” for “OK Jung Shing International’s coordination mechanism” was written as such “In addition to unsecured debt, commission was also accepted for collateralized debt (including house and car loans).” The “Terms of Coordination” for “The Bankers Association’s coordination mechanism” was written as “unsecured debt (including cash card, credit card and unsecured loan).” It is found that the “house loan and car loan” indicated in the aforementioned “In addition to unsecured debt, commission was also accepted for collateralized debt (including house and car loans)” of “OK Jung Shing International’s coordination mechanism”, referred to the debt coordination carried out by the respondent for the balance of debt after the collaterals for bank were auctioned. Next, it is found that the debt handled by “The Bankers Association’s coordination mechanism” also included the debt that could not be paid off due to insufficient amount received from the execution of the property rights of security for the secured loans. Therefore, for the secured loan of “house loan and car loan”, the balance of loan that still could not be paid off after the execution of the real rights of security was still within the scope of debt coordination handled by “The Bankers Association’s coordination mechanism”. The respondent has unilaterally intercepted the scope of debt coordination handled by “The Bankers Association’s coordination mechanism”, thus misled the debtors into believing that the scope of debt coordination provided by the respondent’s “OK Jung Shing International’s coordination mechanism” was broader than that provided by “The Bankers Association’s coordination mechanism”. Therefore, in accordance with the available evidences, it is obvious that the respondent has engaged in deceptive and obviously unfair conduct that is sufficient to affect trading order.

(4) In the comparison table, the “Balance Due” and “Annual Amortization” items for “The Bankers Association’s coordination mechanism” were separately printed with the representations of “New Taiwan Dollars (NT$) 300,000 and above” and “not less than 15% of total debt”. However, it is found that in the debt coordination of “The Bankers Association’s coordination mechanism”, besides the terms “NT$ 300,000 and above” and “15% or more of total debt”, the qualification of NT$
300,000 and above for total debt was inapplicable in the case that the debtor is a student. In addition, due to special factors, a loan of interest rate as low as 0% and as long as 10 years can be given to a debtor depending on his or her actual condition. Furthermore, such loan was not subjected to the restriction of not less than 15% of total debt must be paid back each year. The respondent has unilaterally intercepted parts of qualifications and regulations of debt coordination handles by “The Bankers Association’s coordination mechanism”, thus misled students or debtors in special conditions into making erroneous trading decision. Then, the trading opportunity for the respondent would increase. The conduct of the respondent has in violation of the provision of Article 24 of the FTL.

5. Taking into consideration the motivation of the unlawful acts of the respondent; the degree of the act’s harm, circumstances of the unlawful act, scale of the enterprise; and attitude shown for the act, the respondent is ordered to cease the unlawful acts immediately and a fine of NT$ 1,850,000 is imposed according to the anterior paragraph of Article 41 of the FTL.

Appendix:
Jung Shing International Co., Ltd.'s Uniform Invoice Number: 27337105

Summarized by: Lee, Wan-Chun; Supervised by: Wu, Lieh-Ling

Presicarre Corp. and Chanson Sporting Goods Co., Ltd.

758th Commissioners’ Meeting (2006)

Case: Executive Yuan forwarded letters stating that Chanson Sporting Goods Co., Ltd. and Presicarre Corp. violated Article 21 of the Fair Trade Law by publishing untrue advertisement regarding their product “CS-100 Silver Shark Massage Beetle”

Key Words: advertisement, advertiser, false, untrue or misleading, review
Reference: Fair Trade Commission Decision of May 18, 2006 (the 758th Commissioners' Meeting); Disposition (95) Kung Ch'u Tzu No. 095051
Industry: Retail Outlet (4754), Sporting & Athletic Articles Manufacturing (3111)
Relevant Laws: Article 21(1) of the Fair Trade Law

Summary:

1. This case originated from letters forwarded by the Executive Yuan, in which the Chanson Sporting Goods Co. Ltd. (hereinafter called “Chanson”) was complained for publishing advertisement of “CS-100 Silver Shark Massage Beetle” which claimed that the said product was “able to simulate fat dissipation to dissipate excess fat.” It was found that the said product was not qualified as medical treatment equipment provided in the Law Governing Pharmaceutical Affairs. Therefore, the product should be unable to produce any medical effect. The statement claimed in the advertisement in question did not have any base of medical theory or clinical experiment. The advertisement had possibly violated the Fair Trade Law (FTL), and therefore, was submitted to the Fair Trade Commission (FTC) for further investigation.

2. Findings of the FTC’s investigation:
   (1) The words of “Chanson Sporting Goods Co. Ltd.” along with Chanson’s company website and toll free customer service number were stated on the advertisement in question. Chanson also admitted that it paid for the production of the advertisement and delivered same to the Presicarre Corp. (hereinafter called “Presicarre”). Therefore, Chanson shall be the advertiser in this case.
   (2) Presicarre’s logo of “Carrefour” and the red and blue arrows, company website and slogan “Everyday Low Price at Carrefour” were printed on both sides of the advertisement in question. People would have an impression that Presicarre’s stores were selling the product in question, and that consumers might be able to purchase the product from Presicarre based upon the product and price information contained in the advertisement. Furthermore, according to the national contract entered by Presicarre and Chanson, Chanson shall supply products to Presicarre. Both Chanson
and Presicarre acknowledged that the product in question was bought out by Presicarre and sold at Presicarre’s stores. Presicarre also admitted that the advertisement in question was produced by Chanson and directly delivered to each of Presicarre’s stores to be placed at the entrance and offered at no cost to the consumers. Since the advertisement contained Presicarre’s company name and logo and was placed at Presicarre’s stores for consumers, Presicarre shall bear the duties of a store administrator and due diligence regarding the information provided to the consumers and ensure that the advertisement or relevant sales information used and disseminated shall be true representations. Presicarre’s obligation shall not be exempt, though it did not produce or review the advertisement in question. Moreover, Presicarre directly issued its uniform invoices for the sales of the product in question. Although Presicarre claimed that the advertisement was neither produces nor reviewed by Presicarre, Presicarre shall still be subject to Article 21 of the FTL.

3. The advertisement in question has been confirmed by the Department of Health to be exaggerating and untrue by having no base of medical theory or clinical experiment. Additionally, Chanson claimed that the contents of the advertisement were based on the product function description provided by the manufacture and that Chanson failed to confirm the effects. Yet, Chanson still could not provide any specific evidence to support the claimed effects. Moreover, Presicarre admitted that the contents of the advertisement in question was, according to Chanson's representations, based upon the observation of personal experience of the product in question. However, Presicarre still could not provide any specific base of medical theory or clinical experiment to support the claimed effects. Therefore, upon the existing evidence, it is proved that Chanson and Presicarre violated Article 21(1) of the FTL by producing false, untrue and misleading representations in the advertising flyers regarding the quality and contents of the product “CS-100 Silver Shark Massage Beetle.”

4. The aforesaid acts were determined to be a violation of Article 21(1) of the FTL by resolution adopted by the 758th Commissioners’ Meeting. After considering the
motivation and circumstances of the unlawful acts of Chanson and Presicarre; the degree of the acts' harm; business scale; remorse shown and attitude of cooperation in the investigation, the FTC ordered Chanson and Presicarre to immediately cease such unlawful acts and imposed an administrative fine of New Taiwan Dollars (NT$) 2,170,000 on Presicarre and NT$ 290,000 on Chanson in accordance with the fore part of Article 41 of the FTL.

Appendix:
Presicarre Corp.'s Uniform Invoice Number: 22662550
Chanson Sporting Goods Co., Ltd.'s Uniform Invoice Number: 34454640

Summarized by Lin, Yu-Ching; Supervised by Wu, Lieh-Ling  □

Ford Distribution Taiwan Ltd.

766th Commissioners' Meeting (2006)

Case: Ford Distribution Taiwan Ltd. violated Article 21 of the Fair Trade Law by employing untrue website advertisement and product catalogs referring to the televised video “NCAP crash test gave 4 star rating” for marketing Mazda6 motor vehicles

Key Words: untrue advertisement, motor vehicle, product catalog, airbag
Reference: Fair Trade Commission Decision of July 13, 2006 (the 766th Commissioners’ Meeting); Disposition (95) Kung Ch’u Tzu No. 095113
Industry: Wholesale of Motor Vehicles (4651)
Relevant Laws: Article 21(1) of the Fair Trade Law

Summary:
1. This case originated from complaint email submitted by the public saying that Ford Distribution Taiwan Ltd. (hereinafter called “Ford Taiwan”) referred to “NCAP Crash Test 4 Star Rating” in its website advertisement and product catalogs for
marketing Mazda6 motor vehicles. Ford Taiwan employed foreign crash test results (NCAP test) in its product advertisement; however, the car tested by this foreign test was equipped with side airbags. The actual car type sold domestically, however, was not equipped with side airbags. Therefore, said advertisement had possibly in violation of Article 21 of the Fair Trade Law (FTL).

2. Findings of the Fair Trade Commission (FTC)’s investigation:

It was found that the Mazda6 car subject to the Euro NCAP crash test was equipped with dual front airbags, side airbags and head-protecting side curtains. Said crash test contained an offset crash test and a side impact crash test. The test result was given a 4 star rating. However, when Mazda6 was introduced in Taiwan, it was only equipped with dual front airbags without the side airbags and the head-protecting side curtains, which is the standard equipment of the car subject to the aforementioned crash test. Since airbags and protecting curtains are the safety equipment of a motor vehicle, which protect the people in the car when the car is under impact by mitigating the impact force and reducing the damage caused to human body. Therefore, such equipment has its effects for driving safety and impact protection. In other words, whether a car is equipped with relevant airbags, quantity of airbags and equipment location can affect the effects of protection. Additionally, the test result was determined by the test conditions. It is possible that different test conditions might lead to different test results. Ford Taiwan employed “NCAP Crash Test 4 Star Rating” for cars that were equipped differently from the cars subject to the test. Since two types of cars were equipped differently, it is doubtful that the test results of the two car types would be the same. Furthermore, Ford Taiwan had employed the aforesaid marketing line on its website and for its product catalogs ever since the Mazda6 was first introduced in Taiwan in September 2002. The aforesaid crash test, however, was only done in November 2003. Therefore, Ford Taiwan employed contents that were not proved at the time when these contents were published in Ford Taiwan’s advertisement. It is confirmed that Ford Taiwan made false, untrue and misleading representations. Additionally, the representations of the advertisement failed to disclose information regarding the type of car tested, relevant
equipment, test amount, etc., which could cause respectable amount of general or relevant public to have wrong cognition or made wrong decisions. Thus, Ford Taiwan had violated Article 21 of the FTL.

3. Although Ford Taiwan claimed that the marketing sentence in question was not the accent of the advertisement and was merely one of the product messages, and that the sentence was quoted from Mazda6 Product Guide Book given by the factories in Japan, said marketing sentence was still Volvo Taiwan’s representation or symbol since Ford Taiwan was the party who employed such a sentence on its website and in its product catalogs. Whether or not the sentence was the accent of the advertisement shall not bear upon the nature of the advertisement and the falseness. Based upon the aforesaid facts, Ford Taiwan had in violation of Article 21(1) of the FTL. After considering the motivation, purpose, and expected improper benefit of the unlawful acts of Ford Taiwan; the degree and duration of the acts’ harm to market order; benefits derived on account of the unlawful acts; the scale, operating condition, sales and market position of the enterprise; past violations; remorse shown for the acts and attitude of cooperation in the investigation; and other factors, the FTC ordered Ford Taiwan to immediately cease such unlawful acts and imposed an administrative fine of New Taiwan Dollars (NT$) 1,560,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:
Ford Distribution Taiwan’s Uniform Invoice Number: 70501338

Summarized by Kua, An-Chi; Supervised by Yeh, Tien-Fu
Feifan Marketing Enterprise

770th Commissioners' Meeting (2006)

Case: Feifan Marketing Enterprise violated Article 21 of the Fair Trade Law by publishing untrue loan advertisement

Key Words: bank contracted marketing agency, interest rate, untrue advertisement, mortgage broker

Reference: Fair Trade Commission Decision of August 10, 2006 (the 770th Commissioners’ Meeting); Disposition (95) Kung Ch'u Tzu No. 095124

Industry: Other Consulting Services (7409)

Relevant Laws: Article 21 of the Fair Trade Law

Summary:

1. This case originated from a letter forwarded by the Financial Supervisory Commission, Executive Yuan (hereinafter called “the FSC”) on June 19, 2006. In the said letter, the FSC reported that since April 1, 2006, financial institutions could only commission marketing companies in which they have 100% of shares to engage in marketing operations of credit cards and consumer loans (including cash cards). However, in the advertisement of Feifan Convenient Loan, it was claimed that this company was a bank contracted marketing agent and was a convenience store of financial planning for more than 30 banks. Additionally, outsourced credit card marketing companies shall only engage in credit card marketing operations and accept the commission from only one card issuing institution. Moreover, Feifan Convenient Loan was neither a mortgage marketing agent outsourced by a bank nor a settlement agent as announced by the Bankers Association of the Republic of China (hereinafter called “Bankers Association”); therefore, the aforesaid advertisement might be untrue. Furthermore, contents such as “consolidated mortgage interest rate starting from 1.68%” were found in the copy of the said advertisement, which are identical to the violation type of representations regarding “low interest rates” made by mortgage brokers and punished by the Fair Trade Commission (FTC).

2. Regarding the statements of being a bank contracted marketing agent and a
convenience store of financial planning for more than 30 banks, the FTC requested Feifan Marketing Enterprise (hereinafter called “Feifan”) in writing for an explanation. Feifan admitted that the aforementioned statements were merely employed as a marketing method. In fact, Feifan had not entered into any contract with any bank. Therefore, it is obvious that the advertisement in question is a false, untrue and misleading representation.

3. The FTC was informed by the Bankers Association that from April 2005 to March 2006, the most preferential mortgage interest rate was 1.68% (Union Bank of Taiwan). Said interest rate was only effective for the first 3 months. From the fourth month onwards, the interest rate would be changed to 3.99%, 5.99% or 11.99% based upon the selected plans. In other words, the aforesaid preferential mortgage interest rate was only good for the first 3 months and subject to change from the fourth month onwards based upon the types of plans. The new mortgage interest rates should be much higher than the preferential rate. However, Feifan’s advertisement only mentioned “consolidated mortgage interest rate starting from 1.68%,” instead of disclosing the term of the preferential rate in question. What was stated in the advertisement was obviously inconsistent with the actual practice by the banks. Mortgage terms are not all the same; some might even be longer than 1 year. Additionally, the interest rate might be much higher than the preferential rate. Interest rate is crucial for mortgage applicants to engage in mortgage trade and service. Feifan shall have the obligation to fully disclose the interest rate for mortgage applicants to select the plans that best suit their needs. Feifan failed to contain the term of the preferential rate and disclose the meaning of the “consolidated mortgage interest rate starting from 1.68%” or the interest rate applied during the non-preferential period. The advertisement left mortgage applicants with no sufficient information to confirm the mortgage details and might lead mortgage applicants into having mistaken cognition and making wrong decisions. Therefore, it is obvious that Feifan concealed important trading information in the representations of the advertisement in question and made such advertisement misleading.
4. During the FTC's 770th Commissioners' Meeting on August 10, 2006, the FTC determined that the aforesaid statements contained in Feifan’s advertisement in question to be false, untrue and misleading representations regarding the contents and quality of the mortgage service, which in violation of Article 21(3) applied mutatis mutandis to Article 21(1) of the Fair Trade Law (FTL).

Appendix:
Feifan Marketing Enterprise's Uniform Invoice Number: 09604972

Quatek Co., Ltd.
Long Yih Industrial Co., Ltd.

772nd Commissioners' Meeting (2006)

Case: The advertisement of “Korea Sanitizing/Fruits & Vegetables Purifying Cabinet” published on Kof World’s website violated the Fair Trade Law by containing exaggerated and untrue statements

Key Words: untrue advertisement, shopping website, fruits and vegetables purifying cabinet

Reference: Fair Trade Commission Decision of August 24, 2006 (the 772nd Commissioners’ Meeting); Disposition (95) Kung Ch’u Tzu No. 095130

Industry: Retail Sale of Electrical Household Appliance in Specialized Stores (4641)

Relevant Laws: Article 21(1) of the Fair Trade Law

Summary:

1. This case originated from a letter forwarded by the Department of Health on September 19, 2005. The Department of Health implemented the “2005 Supervisory Program of Unlawful Medical, Drug, Cosmetics and Food Advertisement” and found that: Quatek Co., Ltd. (hereinafter called “Quatek”) published an advertisement
regarding its “Korea Sanitizing/Fruits & Vegetables Purifying Cabinet” on Kof World's shopping website. The advertisement in question was in regards to a general product. However, the statements of the said advertisement “mentioning fast dissolvent of utensils and sanitization, and six functions including 1. Get Detergent residues off the utensils; 2. Preserving & Fresh-Keeping; 3. Skin-Protecting and Beauty-Treatment; 4. Disinfecting Bacterium; 5. Purifying Drinking Water; and 6. Purifying Air” were exaggerated and untrue. Therefore, the Department of Health referred this case to the Fair Trade Commission (FTC) for further investigation.

2. The FTC issued letters to request Quatek and the manufacturer of the product in question, Long Yih Industrial Co., Ltd. (hereinafter called “Long Yih”) to be present at the FTC for explanation. Additionally, upon the investigation of the advertisement in question, cooperation pattern of both parties, sales records and relevant evidence, the findings of the FTC are as follows:

(1) Subject of Conduct:
Quatek and Long Yih entered into a “Sales Contract of Products Sold on Kof World Shopping Website,” in which both parties agreed to sell products on Kof World's shopping website. Quatek purchased the product in question for New Taiwan Dollars (NT$) 1,600 and sold it for NT$2,290 on the Internet. It is obvious that Quatek made profits from the price difference by engaging in the electronic commercial trade of the product in question. Since Quatek made profits from the online trade, said party shall serve more than just an intermediary and shall have the duties of due diligence regarding the truthfulness of the advertisement. Therefore, Quatek shall be the subject of the advertising conduct. It was also found that Long Yih was the party who provided the statements of the advertisement in question. In order to increase the opportunities of sales, Long Yih employed the online advertisement in question to sell the product to consumers through the online trade conducted in conjunction with Quatek. According to the cooperation between Long Yih and Quatek and the sales profits shared jointly by both parties, Long Yih shall also be the subject of the advertising conduct herein.

(2) Cooperation Pattern:
The purchase order procedure of the product in question is that consumers should place an order through the order placing system (shopping cart) established by Quatek;
then, Quatek will consolidate the orders and transfer the same to Long Yih for shipment. The follow-up matters such as online payments, invoice issuance, etc. are also handled by Quatek. Therefore, Quatek and Long Yih work in a complementary relation in the whole trading process.

(3) Authority of Advertisement Modifications:

Although the advertisement contents were provided by Long Yih to Quatek, Quatek has the authority to add descriptions of product utilization in light of the advertisement statements and specifications provided by the manufacturer.

3. Upon the Department of Health's authentication of the test report prepared by the Industrial Technology Research Institute and provided by Long Yih, it was found that the said test report was merely about the water experiment with no comparison group provided for comparison. Therefore, the test report is unable to prove the claimed effects of “fast dissolvent of utensil and sanitization” stated in the advertisement in question. In addition, the manufacturer failed to submit any information to support the six functions also stated therein. Thus, it is unable to determine the truthfulness of the advertisement in question. Since Quatek and Long Yih are both the subjects of the advertising conduct, both parties shall have the duties of due diligence to confirm the claimed effects. Also, since the aforesaid test report was prepared merely for “water”, Long Yih shall not misinterpret the effects of the product in question to cover other objects and exempt advertiser's obligations of due diligence and truthful representations. Additionally, Quatek shall not exempt itself from the obligations of confirmation and due diligence by claiming that the advertisement in question was provided by another person. It is confirmed that Quatek and Long Yih made false, untrue and misleading representations regarding the quality and contents of the product in question.

Appendix:
Quatek Co., Ltd.’s Uniform Invoice Number: 01508624
Long Yih Industrial Co., Ltd.’s Uniform Invoice Number: 76308373

Summarized by Lin, Jr-Yu; Supervised by Lin, Gin-Lan
Guei Ting International Fashion Garment Ltd.

774th Commissioners’ Meeting (2006)

Case: Guei Ting International Fashion Garment Ltd. violated the Fair Trade Law by making false, untrue and misleading representations on the website regarding the origin of its brand “NATURALLY JOJO”

Key Words: untrue advertisement, website, brand

Reference: Fair Trade Commission Decision of September 7, 2006 (the 774th Commissioners’ Meeting); Disposition (95) Kung Ch'u Tzu No. 095136

Industry: Other Clothing Accessories Manufacturing (1239)

Relevant Laws: Article 21 of the Fair Trade Law

Summary:

1. This case originated from a complaint filed by the public stating that: Guei Ting International Fashion Garment Ltd. (hereinafter called “Guei Ting”), knowing that its own brand “NATURALLY JOJO” was registered in Taiwan and was neither an American brand nor a trademark registered in the US, appended “NEW YORK” under its trademark published on store signs, advertisement, website, tags and magazines. Guei Ting also stated in its website that “(the company) introduced NATURALLY JOJO from the US to Taiwan in 1993,” which misled the consumer into believing that “NATURALLY JOJO” was an American brand. Guei Ting may have violated Article 21 of the Fair Trade Law (FTL) by making false and untrue representations regarding product quality both on the product and in the advertisement.

2. Findings of the Fair Trade Commission (FTC)’s investigation:

Guei Ting obtained the registered trademark of “Guei Ting NATURALLY JOJO” in Taiwan in August, 1994. Later on, Guei Ting separately obtained the registered trademark of “NATURALLY JOJO” in Taiwan, Canada, Japan, China, Singapore, and Hong Kong. Therefore, “NATURALLY JOJO” is surely a domestic brand owned by Guei Ting with approved registration. The trademark was not registered in the US or any other countries.
3. Grounds for Disposition:

(1) Guei Ting stated in the company Chronology on the website of NATURALLY JOJO that “(the company) introduced NATURALLY JOJO from the US to Taiwan in 1993” to introduce the history of this brand. Based upon the wording, it should literally mean that Guei Ting introduced a foreign brand called “NATURALLY JOJO” to Taiwan in 1993. However, this is inconsistent with the actual fact learned by the FTC after investigation. Moreover, in the fashion industry, the origin of a brand is one of the important factors that would affect the consumer’s decision to trade. Guei Ting's external representation made on its website caused the website viewers to wrongly believe that “NATURALLY JOJO” was an American brand and that the products they bought were imported from the US. Furthermore, Guei Ting appended “NEW YORK” to the trademark “NATURALLY JOJO,” also misled the consumer. In conclusion, Grui Ting has in violation of Article 21(1) of the FTL by making false, untrue and misleading representations.

(2) After considering the motivation, purpose, and expected improper benefit of the unlawful act of Guei Ting; the degree of the act’s harm to market order; the duration of the act’s harm to market order; benefits derived on account of the unlawful act; the scale, operating condition, sales and market position of the enterprise; whether or not the type of unlawful act involved in the violation has been corrected or warned by the Central Competent Authority; types and number of and intervals between past violations, and the punishment for such violations; remorse shown for the act and attitude of cooperation in the investigation; and other factors, the FTC ordered Guei Ting to immediately cease the unlawful act and imposed an administrative fine of New Taiwan Dollars (NT$) 350,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:
Guei Ting International Fashion Garment Ltd.'s Uniform Invoice Number: 22445132
Ai-Fan-Ta Digital Co., Ltd.

776th Commissioners' Meeting (2006)

Case: The sales prices of CASIO digital cameras sold on PC Home’s website was complained by the public to be untrue and constituted a violation of the Fair Trade Law

Key Words: PC Home, Ai-Fan-Ta, untrue advertisement

Reference: Fair Trade Commission Decision of September 20, 2006 (the 776th Commissioners’ Meeting); Disposition (95) Kung Ch'u Tzu No. 095145

Industry: Retail Sale of Photographic Equipments (4645)

Relevant Laws: Article 21 of the Fair Trade Law

Summary:

1. This case originated from email forwarded by the Premier of the Executive Yuan stating that: PChome Online Inc. (hereinafter called “PChome”) labeled the sales price of “CASIO EX-Z110 Digital Cameras” as New Taiwan Dollars (NT$) 790 on its web page under the directory of PChome Online/Store Street on April 1, 2006. However, said company did not deliver the product according to the aforementioned price. Therefore, this case was submitted to the Fair Trade Commission (FTC) for further investigation. Additionally, the Consumer Protection Commission, Executive Yuan, also submitted the dispute regarding the wrongfully labeled price of digital cameras to the FTC for investigation. The FTC therefore combined both requests under one investigation.

2. Findings of the FTC’s investigation:

   The website of PChome Online/Store Street established by PChome is a platform for general businesses to lease cyber space to open online stores. On April 1, 2006, the sales price of the camera “CASIO EX-Z110” listed on PChome Online/Store Street was labeled as New Taiwan Dollars (NT$) 790. The said product, however, was not sold according to such a sales price. It was found that Ai-Fan-Ta Digital Co., Ltd. (hereinafter called “Ai-Fan-Ta”) leased online space from PChome to open an online store. The trading and payment mechanism was provided by PChome to online stores
to receive payments on behalf of store owners; however, Ai-Fan-Ta was the one in charge of issuing invoices to online purchasers. Additionally, the contents of web pages and product sales prices were produced, decided and uploaded to the online store by Ai-Fan-Ta. PChome merely charges a payment service fee and 3% of the sales amount.

3. Grounds for Disposition:

   (1) Since the advertisement of the digital camera in question was uploaded or published by Ai-Fan-Ta instead of PChome, and the invoices for the sales of aforesaid product were issued by Ai-Fan-Ta instead of PChome, PChome shall not be deemed as the advertiser in this case; though PChome charged Ai-Fan-Ta 3% of the monthly sales amount as the service fees. Therefore, the advertiser in this case shall be duly Ai-Fan-Ta.

   (2) Ai-Fan-Ta admitted that the advertisement in question was produced by itself. Ai-Fan-Ta also admitted that the sales price, NT$790, was a mistake and that Ai-Fan-Ta did not deliver the products after the orders were placed. Therefore, it is confirmed that Ai-Fan-Ta failed to sell the aforesaid digital camera for the price stated in the advertisement. Ai-Fan-Ta's act therefore constituted a making of false, untrue and misleading representations in the advertisement and in violation of Article 21(1) of the Fair Trade Law (FTL). Though Ai-Fan-Ta provided a sales plan to sell the same camera for NT$7,900 with one complimentary (1G SD memory card) after the incident, only one camera was purchased. It shows that consumers placed the orders originally for the low price stated in the advertisement in question. Moreover, as for online trade, employing low prices to promote products is not very rare. In addition, according to the purchase list, not all of the purchasers maliciously placed huge orders. For example, 1,695 out of 2,058 non-repetitive purchase orders were for fewer than 5 cameras. 997 consumers were attracted by the advertisement and decided to purchase one camera. Therefore, it is hard to say that all of the consumers had known of the mistake or negligence of the price before they placed orders. The untrue representation was sufficient to affect trading counterparts' decisions and cause them to proceed with the transactions. In conclusion, since the advertiser shall have the
responsibility regarding the advertisement contents, Ai-Fan-Ta shall not be exempt from its responsibility for the aforesaid untrue advertisement.

(3) Conclusion: Ai-Fan-Ta labeled the sales price of the camera CASIO EX-Z110 as NT$790 in the product advertisement but failed to carry out the representation stated therein by not delivering the goods after consumers placed orders. Such an action led the representation of the advertisement to be false, untrue and misleading in violation of Article 21(1) of the FTL.

Appendix:
Ai-Fan-Ta Digital Co., LTD.’s Uniform Invoice Number: 27882202

Summarized by Mai, Huei-Li; Supervised by Lu, Li-Na

Chunghwa Telecom Co., Ltd.

777th Commissioners’ Meeting (2006)

Case: Chunghwa Telecom Co., Ltd. was complained for violating the Fair Trade Law by externally disseminating false, untrue and misleading advertisement
Key Words: mobile phone, radiation power
Reference: Fair Trade Commission Decision of September 28, 2006 (the 777th Commissioners’ Meeting), Disposition (95) Kung Ch’u Tzu No. 095146
Industry: Telecommunications (6000)
Relevant Laws: Article 21(3) applied mutatis mutandis to Article 21(1) of the Fair Trade Law

Summary:

1. Chunghwa Telecom Co., Ltd. was complained for infringing the complainant's interest and violating Article 21 of the Fair Trade Law (FTL) by employing comparison advertisement in their mobile phone applications and statements to
disseminate false, untrue and misleading information such as 3G “has super low power and is healthier than PHS,” and “has low radiation power, far lower than PHS and GSM, and is the best choice for your health!”

2. Findings of the FTC’s investigation:

The degree of the radiation power given by PHS system devices and 3G system devices (mobile phones) is based upon the technology and regulation of each mobile phone system (PHS, GSM, 3G). According to the “Technology Regulations for 1900 MHz PHS Devices,” the highest radiation power given by a PHS device is 10mW (equal to 10dBm). In addition, according to the “Technology Regulations for the Third Generation System Device,” the radiation power given by a 3G device can range from 21dBm to –50dBm. It is sufficient to prove that the radiation power given by a 3G system device can be 10 times greater than that given by a PHS device. Provided, however, that the distance between a device and a base established by the mobile phone system operator, base coverage and communication quality can affect the actual radiation power. In the event that a 3G system device is closer to a base or that a 3G system base has more coverage, the radiation power given by such a 3G system device could be lower than that given by a PHS device. Therefore, no certain standard can be taken to determine the radiation power given by these two systems. Based on the various test results produced by the Directorate General of Telecommunications, it is shown that in certain areas, the radiation power given by a 3G system device can be higher than that given by a PHS device. Moreover, according to the evaluation opinions given by the Directorate General of Telecommunications, in an area that is not fully covered by a base, a 3G system device might give higher radiation power than a PHS device.

3. Grounds for Disposition:

(1) In light of the keen competitions between each mobile phone system (PHS, GSM, 3G), business operators strive for trading counterparts through not only favorable prices and communication quality, but also the degree of radiation power given by the mobile phones. Due to the concern for human health, the radiation power
has always been given high attention by consumers and been the key point of competition among mobile phone systems. The radiation power is affected by the distance between a device and a base established by the mobile phone system operator, base coverage and communication quality. Therefore, the system establishment can be rather relevant, but no specific standard can be used to determine the degree of radiation power. However, Chunghwa's business places located in the east and south districts employed in their mobile phone applications delivered to random customers and statements information that is sufficient to mislead consumers into believing that Chunghwa's 3G system devices have lower radiation power than PHS devices at all time and that those devices are the best choices for consumers' health. Such an advertisement made misleading representations regarding the service quality provided.

(2) Taking into consideration the motivation, purpose, and expected improper benefit of the unlawful acts of Chunghwa; the degree and duration of the acts’ harm to trading order, the FTC ordered Chunghwa to immediately cease the aforesaid unlawful acts and imposed an administrative fine of New Taiwan Dollars (NT$) 2,720,000.

Appendix:
Chunghwa Telecom Co., Ltd.'s Uniform Invoice Number: 96979933

Summarized by Chen, Haw-Kae; Supervised by Liou, Chi-Jung
Summary:

1. This case originated from a complaint filed by the public stating that DAAI Detective Co., Ltd. (hereinafter called “DAAI”) was established on April 11, 2002 but claimed its “formation to be in 1998” and that it was “the largest credit reference agency in the world.” DAAI’s representations were possibly exaggerated, untrue and misleading and in violation of Article 21 of the FTL.

2. It was found that DAAI’s formation was approved on April 16, 2002. DAAI also admitted that its computer engineer mistakenly thought that the company was founded in 1998 due to the responsible person and partial employees had been in this line of work for 8 to 10 years and therefore input 1998 as the formation year on the website. However, advertisers shall bear the responsibility to assure the truthfulness and accuracy of the advertisement when employing data and relevant information in the advertisement to strive for trading counterparts. DAAI shall not be exempt from its negligence though the data used in the advertisement in question was a mistake made by its computer engineer. Thus, DAAI certainly made false, untrue and misleading representation regarding its formation time.

2. It was also found that DAAI claimed that it shared cases with detective agencies located in Japan, China, and Singapore. Other countries in the world mainly have
detective businesses. Only companies in Taiwan employ “credit reference” in their company names. Therefore, DAAI claimed itself as “the largest credit reference agency in the world.” Furthermore, since there are currently three credit reference agencies in Taiwan, which are DAAI, E-Tong! Taiwan Inc., and Taiwan World Class Inc, with service locations nationwide, and DAAI has more service locations and staff the other two companies, therefore it called itself “the largest credit reference agency nationwide.” However, DAAI did not have objective observation regarding the aforesaid wordings and merely used its speculation without any objective data to prove so. These descriptions would mislead the general consumer making wrong trading decisions. Thus, the representations in question are false, untrue and misleading, in violation of Article 21(3) of the Fair Trade Law. After considering the motivation and purpose of the unlawful act; the business scale; and remorse shown for the act, the FTC ordered DAAI to immediately cease the unlawful act and imposed an administrative fine of New Taiwan Dollars (NT$) 180,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:
DAAI Detective Co., Ltd.’s Uniform Invoice Number: 13104176

Summarized by Chen, Jen-Ying; Supervised by Yeh, Tien-Fu

ShopNet Co., Ltd.
Shuan Cheng Enterprises Ltd.

784th Commissioners' Meeting (2006)

Case: An ex officio investigation initiated by the Fair Trade Commission into VIVA TV Shopping Channel’s untrue advertisement of “Electricity Saving Warrior”, which was in violation of Article 21 of the Fair Trade Law

Key Words: advertiser, testing report, sales revenue
Reference: Fair Trade Commission Decision of November 16, 2006 (the 784th Commissioners' Meeting); Disposition (95) Kung Ch’u Tzu No. 095154
Industry: Electronic Shopping and Mail-Order Houses (4871)
Relevant Laws: Article 21(1) of the Fair Trade Law

Summary:

1. This case originated from a complaint filed by the public stating that on May 11, 2006, VIVA Shopping Channel claimed that the product “Electricity Saving Warrior” sold by this channel had “20% to 30% savings in electricity.” However, said electricity saver should only be a capacitor (power compensator). The advertisement might be exaggerated. The Fair Trade Commission (FTC) therefore initiated an investigation to follow up the case.

2. Advertiser of this case:
   It was found that ShopNet Co., Ltd. (hereinafter called “ShopNet”) was the operator of VIVA Shopping Channel, and Shuan Cheng Enterprises Ltd. (hereinafter called “Shuan Cheng”) was the supplier of the aforementioned product, “Electricity Saving Warrior.” According to the production and review of the advertisement in question, the allocation of revenues, overall transaction and invoicing procedure between ShopNet and Shuan Cheng, said companies shared a cooperative relation in terms of the sales and advertisement production of the product, “Electricity Saving Warrior.” Also, due to the marketing effects of said advertisement, both companies increased their own trading opportunities and respectively obtained sales revenues from the product. Therefore, both ShopNet and Shuan Cheng shall be the advertisers of the advertisement in question.

3. As for the effect of “saving 20% to 30% in electricity” claimed in the advertisement of “Electricity Saving Warrior,” both ShopNet and Shuan Cheng claimed that the statement was based upon the data contained in the “High Power Saving Testing Report” provided by Taiwan Electric Research and Testing Center. The FTC requested Taiwan Electric Research and Testing Center to comment on the
testing report in question. However, said Center stated that page 2 of the testing report in question contained different data from that of the original report provided by the Center. Additionally, after referring to the professional opinions given towards the testing report in question by Taiwan Electric Research and Testing Center, Taiwan Power Company, and the Bureau of Standards, Metrology and Inspection, M.O.E.A., no sufficient evidence was able to prove the effect claimed in the advertisement in question. Furthermore, ShopNet and Shuan Cheng claimed that during the test on the TV program, the test result did show that the product yielded savings of 20% to 30% in electricity and that they did not make any false or untrue statement. However, both Taiwan Electricity Research and Testing Center and Taiwan Power Company stated that the video of the test was not sufficient to prove such effect. Moreover, Taiwan Power Company and the Bureau of Standards, Metrology and Inspection stated that an electricity saver could only yield limited effect and might cause the opposite effect as well. Both ShopNet and Shuan Cheng failed to provide any sufficient evidence to support the claimed electricity saving effect. Thus, based upon the existing evidence, ShopNet and Shuan Cheng shall have made false, untrue and misleading representation in their advertisement in violation of Article 21(1) of the Fair Trade Law (FTL).

4. After considering the motivation and purpose of the unlawful act; the business scale; and remorse shown for the act, the FTC ordered ShopNet and Shuan Cheng to immediately cease the unlawful act and imposed an administrative fine of New Taiwan Dollars (NT$) 440,000 on ShopNet and NT$270,000 on Shuan Cheng in accordance with the fore part of Article 41 of the FTL.

Appendix:
ShopNet Co., Ltd.’s Uniform Invoice Number: 27252350
Shuan Cheng Enterprise Ltd.’s Uniform Invoice Number: 16029236

Summarized by Lin, Yu-Ching; Supervised by Wu, Lieh-Ling
Taiwan 24hrs Electronic Information Co., Ltd.

786th Commissioners' Meeting (2006)

Case: Taiwan 24hrs Electronic Information Co., Ltd. violated the Fair Trade Law by employing untrue advertisement

Key Words: product selling rights, nationwide price comparison, regional agency

Reference: Fair Trade Commission Decision of November 30, 2006 (the 786th Commissioners’ Meeting); Disposition (95) Kung Ch’u Tzu No. 095159

Industry: Other Information Supply Services Not Elsewhere Classified (6399)

Relevant Laws: Article 21(1) and Article 21(3) of the Fair Trade Law

Summary:

1. According to the complainant of this case, the complainant paid New Taiwan Dollars (NT$) 630,000 in January 2005 to become a regional agent of the electronic commerce website system of Taiwan 24hrs Electronic Information Co., Ltd. (hereinafter called “24hrs”). However, the complainant later on found that 24hrs entirely focused on the recruitment of franchisers instead of the development of products. When 24hrs was initially recruiting, it claimed that it had “thousands of products for selling agents” on the website when it actually had about 170 products only. Moreover, the complainant joined 24hrs due to its system of “regional agency,” which was surely contained in the materials for the “Conference on Special Contracted Merchants/Judicial Persons.” However, 24hrs later on stated that the system was “assessed to be unfeasible” and was never commenced with regard to the operational stage.

2. Findings of the Fair Trade Commission (FTC)’s investigation:

In order to widely recruit non-specific franchisers to join its electronic commerce website system, 24hrs stated on its website during 2004 and 2005 that: “(24hrs) has gathered more than ten famous companies and thousands of products for selling agents;” “(24hrs) matches the product selling rights for major companies, such as Synnex, Xander and Kolin;” and “(24hrs) obtained the product selling rights with
several major companies, such as Synnex, Xander, Kolin and Jazz Speakers.” Based upon the aforesaid contents, 24hrs referred itself as the agent for tens of famous companies, such as Synnex, Xander, Kolin, and Jazz Speakers and obtained the selling rights for thousands of products. However, it was found that the contracts signed between 24hrs and BestCom Infotech Corporation and other 113 enterprises were partially payment commitments and other types of contracts unrelated to the obtainment of product selling rights. No contract of product selling rights signed by 24hrs and Synnex was found. Also, when the aforementioned contents were published on 24hrs’ website, the contracts signed between 24hrs and Xander, Kolin and Jazz Speakers had already been expired. Moreover, according to the website overview of the product information, there were only 307 products to be sold. It is obvious that those representations made by 24hrs as mentioned before were false, untrue and misleading.

3. According to the flyer of electronic catalog printed and issued in 2005 by 24hrs, 24hrs employed the trademarks of 56 famous companies including Synnex. 24hrs also marked below the photos that “the above represented are the trademarks of products brands to be sold.” However, 24hrs did not have the selling rights from the most of the 56 companies mentioned in the flyer. Even though some contract were signed with several companies, such as Xander, these contracts were already expired. It was also mentioned in said flyer that “as long as you call, we will not only compare 3 companies for prices but nationwide!” and that “regional agency website’s profit special contracted merchants’ main profit resource comes from the receipt and handling services through service offices.” However, according to the product overview, the prices provided by 24hrs were higher than those of other websites and there was no price comparison at all. Through marketing its electronic commerce website system and falsely stating that it had a cooperative relationship with famous companies and that its participants would obtain better prices than other channels, 24hrs attempted to attract non-specific persons to pay a large amount of franchising fees. Though it had no intention and was unable to carry out the contents of the contracts or representations in the advertisement. For the regional agency system,
24hrs merely claimed that “it was assessed to be unfeasible” without providing any evidence to prove its actual operation. Therefore, it is proved that the aforesaid representation contained in said flyer was false, untrue and misleading.

4. After considering the motivation, purpose, and expected improper benefit of the unlawful act of 24hrs; the degree of the act's harm to market order; the duration of the act's harm to market order; benefits derived on account of the unlawful act; the scale, operating condition, sales and market position of the enterprise; whether or not the type of unlawful act involved in the violation has been corrected or warned by the Central Competent Authority; types and number of and intervals between past violations, and the punishment for such violations; remorse shown for the act and attitude of cooperation in the investigation; and other factors, the FTC imposed an administrative fine of NT$3,420,000 on 24hrs in accordance with the fore part of Article 41 of the Fair Trade Law (FTL).

Appendix:
Taiwan 24hrs Electronic Information Co., Ltd.’s Uniform Invoice Number: 16982056

Summarized by Wang, Horng-Shiuan; Supervised by Yeh, Tien-Fu
Reference: Fair Trade Commission Decision of November 30, 2006 (the 786th Commissioners’ Meeting); Disposition (95) Kung Ch’u Tzu No. 095160
Industry: Electronic Shopping and Mail-Order Houses (4871)
Relevant Laws: Article 21(1) of the Fair Trade Law

Summary:

1. This case originated from a statement of the public saying that: On UNIMALL’s flyers regarding GIGABYTE Communications Co., Ltd.’s (hereinafter called “GIGABYTE”) “SNOOPY 55th Anniversary Memorial Cellular Phones,” it was stated that “only 500 phones worldwide UNIMALL now accepts pre-orders for its worldwide premier sales.” However, it was found that there were more than 500 cellular phones manufactured, and the advertisement might be untrue. The Fair Trade Commission (FTC) therefore initiated an ex officio investigation.

2. Judging from the appearance of the advertisement in question, the style of expression “only 500 phones worldwide” is much bolder and bigger than the one of other expression, “UNIMALL now accepts pre-orders for its worldwide premier sales.” Therefore, the advertisement might impress consumers that UNIMALL exclusively sells this new cellular phone. Also, the representation of “only 500 phones worldwide” emphasizes the rareness of this new cellular phone to cause trading counterparts to make urgent decisions. However, it was found that the advertisement in question was jointly produced and disseminated by President Direct Marking Co., Ltd. (hereinafter called “President”) and GIGABYTE. According to President, it started accepting pre-orders on September 14, 2005 and had received more than 500 orders as of September 23, 2005 (total 511 orders). A total of 1,414 cellular phones were sold during the pre-order period. Additionally, according to GIGABYTE, more than 500 cellular phones in question were manufactured worldwide. Therefore, the contents of the advertisement were inconsistent with the facts. Since the sales volume is more than the one shown in the advertisement, the advertisement has gone beyond the general degree of the public's recognition and caused the consumer into having wrong understanding about the rareness of the
product. Said advertisement employed false, untrue and misleading representations and violated Article 21(1) of the Fair Trade Law (FTL).

3. After considering the motivation and purpose of the unlawful act; the business scale; and remorse shown for the act, the FTC ordered President and GIGABYTE to immediately cease the unlawful act and imposed an administrative fine of new Taiwan Dollars (NT$) 440,000 on President and NT$180,000 on GIGABYTE in accordance with the fore part of Article 41 of the FTL.

Appendix:
President Direct Marketing Co., Ltd.’s Uniform Invoice Number: 89608280
GIGABYTE Communications Co., Ltd.’s Uniform Invoice Number: 27283662

Summarized by Tsai, Shueh-Chiu; Supervised by Wu, Lieh-Ling

**Wyeth Pharmaceuticals (Asia)**

787th Commissioners’ Meeting (2006)
Case: Wyeth Pharmaceuticals (Asia) violated Article 21 of the Fair Trade Law by employing untrue advertisement to sell “S-26 Gold Formula”
Key Words: α lactalbumin, no burden on infants’ digestion, acid test, scientific basis, untrue advertisement
Reference: Fair Trade Commission Decision of December 7, 2006 (the 787th Commissioners’ Meeting); Disposition (95) Kung Ch’u Tzu No. 095165
Industry: Dairy Products Manufacturing (0850)
Relevant Laws: Article 21 of the Fair Trade Law

Summary:

1. Wyeth Pharmaceuticals (Asia) (hereinafter called “Wyeth”) was complained for violating the Fair Trade Law (FTL) by disseminating the “‘Acid Test Result’
Training Information” which claimed that the “S-26 Gold Formula” contains $\alpha$-lactalbumin which forms very fine curds and causes no burden on an infant’s digestion. On the other hand, the information indicated that the formula of Wyeth’s competitor, “Abbott Similac Advance Infant Formula” and “Abbott Similac Infant Formula”, contain casein which forms larger curds that are more difficult for infants to digest to express the idea that Abbott's formula has a certain degree of difference from breast milk.

2. The origin of the “‘Acid Test Result’ Training Information” was the photos and descriptions regarding the acid test results of adding vinegar to S-26 Gold formula, Abbott Silimac Advance Infant Formula, and Abbott Similac Infant Formula. Wyeth’s salespersons used the abovementioned information in their briefs represented at its mother classroom and diagramed the same at the hospitals to disseminate such information. Since the non-specific or relevant public was able to learn about the messages contained in such information, it was determined that Wyeth employed a way making known to the public as prescribed in Article 21 of the FTL.

3. According to the materials provided by Wyeth: The research report by Professor Hsieh, Ming-Cheh of Taipei Medical University shows that Wyeth’s infant formula forms smaller curds than other formulas sold by other companies in the market; and in the book “Essentials of Nutrition” written by Professor Huang, Po-Chao of the Biochemistry Graduate School of Taipei Medical University and Associate Professor Yo, Su-Ling of National Taipei College of Nursing provides that “lactalbumin is easier for infants to digest,” “curds formed from breast milk are fine and soft while those from cow milk are bigger and hard which are not suitable for infants.” However, these materials did not mention that infants would have no digestion problem if they took infant formula that forms fine curds. As for the statement that “Breast milk contains more $\alpha$ lactalbumin than cow milk; and breast milk contains no $\beta$-lactoglobulin but cow milk does,” the Department of Health, Executive Yuan, forwarded it to Taiwan Pediatric Medical Association for its professional opinions. It was determined that lactalbumin forms fine curds but currently no medical evidence
proving that lactalbumin causes no burden on an infant's digestion. In other words, the lactalbumin in breast milk is different from that in cow milk. Cow milk contains large amount of β-lactoglobulin which can easily cause infant to be allergic to such lactalbumin and damage an infant’s digestion system. Since Wyeth employed the size of curds formed by its formula containing lactalbumin as its important training contents for its trainees, Wyeth should not avoid providing a complete and truthful representation regarding the subject matter. Without other constructively explanation about the definition of “burden,” the advertisement in question could easily mislead consumer into believing that their infants would not have any digestion issues by using “S-26 Gold Formula.” Moreover, Wyeth claimed that “no burden” was only a general term but could not provide any medical or scientific proof to support its aforesaid claim. Therefore, the contents of the advertisement are determined to be false, untrue and misleading representations and in violation of Article 21(1) of the FTL.

4. After taking into account Wyeth’s revenue, motive, degree of damage to trading order, expected improper benefits, duration of the actions, and remorse shown after the violation, the FTC ordered Wyeth to immediately cease such unlawful act and imposed an administrative fine of New Taiwan Dollars (NT$) 440,000 in accordance with the forepart of Article 41 of the FTL.

Appendix:
Wyeth Pharmaceuticals (Asia)’s Uniform Invoice Number: 23984410

Summarized by Lai, Mei-Hua; Supervised by Shen, Li-Yu
Holy Stone Enterprises Co., Ltd.

790th Commissioners' Meeting (2006)

Case: Holy Stone Enterprise Co., Ltd. violated Article 21(1) of the Fair Trade Law by publishing untrue advertisement

Key Words: false and untrue, digital photo printing machine, uninterrupted power system

Reference: Fair Trade Commission Decision of December 28, 2006 (the 790th Commissioners’ Meeting); Disposition (95) Kung Ch’u Tzu No. 095176

Industry: Other Optical Instruments and Equipment Manufacturing (2779)

Relevant Laws: Article 21(1) of the Fair Trade Law

Summary:

1. Holy Stone Enterprises Co., Ltd. (hereinafter called “Holy Stone”) advertised that its D1008III Digital Photo Printing Machine is “Photo/Paper Printing Machine with Uninterrupted Power System: The paper and photo printing machine with built-in uninterrupted power system (UPS) can function normally when power outage occurs.” However, said UPS function was unable to be activated in the event of power outages and caused the machine to shut down. The above advertisement statement might be untrue and in violation of Article 21 of the Fair Trade Law (FTL).

2. Findings of the Fair Trade Commission (FTC)’s investigation: Upon the inspection by the FTC, both parties to the complaint, and the statements of digital photo printing business operators, it is proved that the digital photo printing machine was unable to activate the UPS function after the power was shut off and failed to normally output the photos used in the inspection.

3. Grounds for Disposition:

(1) According to the investigation, it is proved that the digital photo printing machines sold by Holy Stone were unable to activate the UPS function during a power outage and therefore failed to function properly. Thus, Holy Stone's representations of the UPS function employed in the abovementioned advertisement
of these printing machines, tens of which had been sold, were false, untrue and misleading in terms of product quality and contents in violation of Article 21(1) of the FTL.

(2) After considering the motivation, purpose, and expected improper benefit of the unlawful act of Holy Stone; the degree of the act's harm to market order; the duration of the act's harm to market order; benefits derived on account of the unlawful act; the scale, operating condition, sales and market position of the enterprise; whether or not the type of unlawful act involved in the violation has been corrected or warned by the Central Competent Authority; types and number of and intervals between past violations, and the punishment for such violations; remorse shown for the act and attitude of cooperation in the investigation; and other factors, the FTC ordered Holy Stone to immediately cease the unlawful act and imposed an administrative fine of New Taiwan Dollars (NT$) 500,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:
Holy Stone Enterprises Co., Ltd.’s Uniform Invoice Number: 20891326

Summarized by Tai, Mei-Chin; Supervised by Lu, Li-Na
7.2 JUDICIAL CASES

Huang Hsiang Construction Corporation

Taipei High Administrative Court Judgment (2006)

Case: Taipei High Administrative Court’s decision on administrative action filed by Huang Hsiang Construction Corporation for a Fair Trade Law violation

Key Words: pre-sold house, infrastructure, false advertisement

Reference: Taipei High Administrative Court Judgment (95) Su-Tzu No. 02338

Industry: Buildings Construction (4100)

Relevant Laws: Article 21 of the Fair Trade Law

Summary:

1. The defendant, Fair Trade Commission (Defendant) initiated an investigation upon complaint and found that the plaintiff, Huang Hsiang Construction Corporation (Plaintiff) advertised several infrastructures in the floor plan for the first floor which was designed to be the parking space for automobiles and motorcycles in the floor plan approved by 92 Chien-Tzu No. 186 Construction. Such infrastructures included an exercising room, recreation pavilion, children's playground, etc. The Defendant found that the Plaintiff made obvious false, untrue and misleading representations regarding the contents of its product, in violation of Article 21(1) of the Fair Trade Law (FTL). Therefore, the Defendant, upon Disposition Kung Ch'u Tzu No. 094141, ordered the Plaintiff to immediately cease said unlawful act after said Disposition was served and imposed an administrative fine of New Taiwan Dollars (NT$) 6,150,000 in accordance with the fore part of Article 41 of the FTL. The Plaintiff was dissatisfied with the decision and filed an appeal which was denied. The Plaintiff therefore filed this administrative action.

2. Pursuant to Article 21(1) of the FTL and the fore part of Article 41 of the same law, “no enterprise shall make or use false or misleading representations or
symbol as to price, quantity, quality, content, production process, production date, valid period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, or place of processing on goods or in advertisements, or in any other way making known to the public;” and “the Fair Trade Commission (FTC) may order any enterprise that violates any of the provisions of this Law to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may impose upon such enterprise an administrative penalty of not less than 55,000 nor more than 25,000,000 New Taiwan Dollars (NT$).” Whether an advertisement of pre-sold houses is false, untrue or misleading shall depend upon the actual conditions when the advertiser uses the advertisement. In the event that an advertiser of a pre-sold house advertisement foresees or is able to know that the performance in the future will not match the contents of such advertisement, such advertisement shall be false, untrue or misleading. The Plaintiff, without being approved by the Public Work Department of Taipei City Government, promoted many unlawful infrastructures in its construction advertisement and caused the general consumer to wrongfully believe that the design of said infrastructures was legal and would be available upon completion. The consumer might further decide to trade with the Plaintiff. In light of the overall impression and effectiveness, the advertisement in question caused sufficient impact on the judgment and decision of the general public with regular knowledge and experience to trade. Furthermore, the advertisement also affected the economic benefits of other competitors and their trading counterparts respectably. Upon aforesaid circumstances, this Court also found that the Plaintiff made false, untrue and misleading advertisement regarding its product.

3. After considering the motive, purpose and anticipated improper profits of the unlawful acts of Plaintiff; 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 concluded that the Defendant’s acts of
finding the Plaintiff's representation false, untrue and misleading in violation of Article 21(1) of the FTL, reviewing the unlawful acts in accordance with Article 36 of the Enforcement Rules to the FTL, and ordering the Plaintiff to immediately cease the unlawful act after the original Disposition was served and imposed an administrative fine of NT$6,150,000 in accordance with the fore part of Article 41 of the FTL. The Appeal Court also made a correct ruling to uphold the original decision. It shall be groundless for the Plaintiff to employ the aforesaid statements to request for revocation of the original decision.

Appendix:
Huang Hsing Construction Corporation's Uniform Invoice Number: 86379024

Summarized by Lai, Chia-Ching; Supervised by Lee, Wen-Show
Chapter 8
Damage to Business Reputation

Chinese Educational Development and Cooperation Association (CEDCA)

755th Commissioners’ Meeting (2006)

Case: Chinese Educational Development and Cooperation Association (CEDCA) was complained for violating Article 19, Paragraph 1, Subparagraph 3, Article 22 and Article 24 of the Fair Trade Law by disseminating fliers “BELI is not equivalent to the Language Center of University of California, Berkeley” and “Don’t Forget Your Rights and Interests”

Key Words: study tour service, improper means, coercion and inducement, business reputation


Industry: Other Educational Services (7990)

Relevant Laws: Article 19, Paragraph 1, Subparagraph 3, Article 22, and Article 24 of the Fair Trade Law

Summary:

1. This case originated from a complaint indicating that Chan Heng-Jui, was the actual responsible person of Chinese Educational Development and Cooperation Association (CEDCA). In order to harass and captivate the parents of the complainant’s student, Chan has pretended as the parent of a student and disseminated the false accusation fliers “BELI is not equivalent to the Language Center of University of California, Berkeley” to the complainant’s second batch students of BELI Language Institute in August 2004. Furthermore, Chan has traveled to the school in US together with the complainant’s students. He continued to engage in the acts of harassment there. In addition, CEDCA in virtue of malicious slander has
disseminated the false fliers of “Don’t Forget Your Rights and Interests”, such fliers were sufficient to affect the wills of student parents when they were thinking of whether to allow their children attending the courses of BELI Language Institute arranged by the complainant. In addition, the fliers were sufficient to mislead the student parents into believing that the aforementioned courses of the complainant were not legally offered and their children were exposed to the risks of being repatriated. As a result, the goodwill of the complainant was damaged seriously.

2. Findings of the Fair Trade Commission (FTC)’s investigation from the objective viewpoint, Chan Heng-Jui was entity of the conduct in this case; that is, Chan has disseminated the fliers at issue for the purpose of CEDCA’s competition in the market. The dispute of this case was that the complainant criticized CEDCA for making and disseminating the fliers at issue. Several questions were found in the fliers; such as the students in the study tour group were not arranged to attend classes with students from other countries, the intentional concealment of Language Center of University of California, Berkeley has already been closed in May 2004, the cost of study tour group was too high, the trading counterparts were unable to get official student visa, the completion certificates for the program were not issued by Language Center of University of California, Berkeley, an arrangement was made for the students to attend classes at BELI Language Center that was unable to issue Form I-20. Even more, the complainant has let its students to enter the US with Form I-20 of the other language center and thus they were confronting with the risks of forced to transfer to another school or been sent back home.

3. Grounds of Disposition:

(1) By means of disseminating fliers to the trading counterparts of the complainant, Chan Heng-Jui, the responsible person of CEDCA has questioned about the quality, fare and legality of the study tour groups arranged by the complainant. The ordinary conduct of disseminating fliers in fact did not have any nature of coercion or inducement, the purpose of such conduct inherently can be conceived as an intention to compete for trading counterparts. However, the fliers at issue did not include the
name, address and telephone number of CEDCA. Also, the said means were unlike coercion or inducement that can either force or cause trading counterparts to have business activities with an enterprise, or distort the choices of trading counterparts. Except for the subjective judgment of reasonableness of group fare, the other points stated in the fliers at issue were originated from disputes arose from the policy change of Language Center of University of California, Berkeley. Such points should be explained to the trading counterparts spontaneously by the complainant at the beginning of the trading. Therefore, it is still difficult to conclude on these grounds that CEDCA has caused the trading counterparts of its competitor to do business with itself by improper means that have same degree of compulsion as coercion or inducement, and thus has act that was likely to lessen competition or to impede fair competition. It is still difficult to deem that CEDCA has in violation of the provision of Article 19(iii) of the Fair Trade Law (FTL).

(2) The business data of CEDCA and the complainant showed that both parties were engaging in the business of study tour service and located at Taipei city. Therefore, it can be said that the fliers at issue were disseminated for the purpose of competition. As for the fliers at issue that were disseminated by CEDCA on the campus of University of California, Berkeley, there were some allegations. Amongst were “the official language center of University of California, Berkeley was closed in May of this year, do you know this when you signed up the program? Or the fact has been intentionally concealed?” and “the language center of University of California, Berkeley was closed in May of this year, Merica still enrolled students in the name of University of Berkeley, when were you informed about this fact? At the time of signing up? Or prior to the departure?” The complainant expressed that its company has announced the said messages with relevant advertisements in the enrollment forums. Therefore, the complainant was not in the condition of purposely concealing the said facts. However, the matters inquired by CEDCA in the fliers at issue were merely questions raised on the relevant issues and it was difficult to conclude that such questions were false messages. Regarding to the paragraph of BELI Language Institute was unable to issue the Form I-20, the Ministry of Education indicated, “In accordance with the regulations, any students who goes to school that is different
from that recorded in the Form I-20 must leave the US or the entry will be denied. Taking the examples of BELI and ECIW, the students may be requested to leave the US.” Therefore, it is still difficult to regard the statements of the fliers at issue, “BELI is not related to the University of Berkeley at all. Hence, as a matter of fact your children are unable to obtain official student identification cards!” and “Merica ignored the rights and interests of the students, made arrangement for them to attend classes at BELI Language Center that was unable to issue Form I-20. Even more, it has let its students to enter the US with Form I-20 of the other language center. Who shall bear the risk of the students being forced to transfer to another school or been sent back home?” were false. Regarding to the paragraph of whether the conduct of CEDCA was sufficient to damage the business reputation of another, the relevant fact must be deliberated in order to make judgment of whether the damage of business reputation has been resulted. The judgment was not made solely on the subjective view of the party concerned. The complainant claimed that the fliers at issue have led to difficulty in student enrollment, damage in business reputation, losses of students’ trusts, and the teachers’ complaints that their reputations were affected in relation to the said fliers. However, the statements given by both parties did not show any case of student has rescinded contract with the complainant due to the fliers at issue and transferred to CEDCA. Furthermore, there was no positive evidence to prove that the number of student enrollment has declined or a drastic drop of sales volume. In addition, the complainant stated that it has spent huge amount of money to hold a press conference and run advertisement to clarify rumors made by CEDCA. However, the investigation found that Yang Chun-Kuo has revealed the controversies recorded in the fliers at issue to the reporter of China Times Weekly, not Chan Heng-Jui or CEDCA. According to the available evidences, it is still difficult to deem that the conduct of CEDCA was sufficient to damage the business reputation of the complainant. To sum up, the act of CEDCA in disseminating the fliers at issue for the purpose of competition still did not meet the condition of constitution, and hence it is difficult to conclude that CEDCA has in violation of the provision of Article 22 of the FTL.

(3) Next, Chan Heng-Jui was the responsible person of CEDCA, both CEDCA and
the complainant were engaging in the business of study tour service and located at Taipei city. Therefore, it can be deemed that both companies were competitor to another. The conduct of Chan Heng-Jui in disseminating the fliers at issue and the content of the fliers were related to the business of both parties concerned. Thus, it is substantiate to conclude that the said conduct and the fliers at issue were for the purpose of competition. In addition, both CEDCA and the complainant have expressed that no trading counterpart has rescinded contract with the complainant and signed contract with CEDCA due to the fliers at issue. Furthermore, the content of the fliers at issue were not groundless and not at the level that would coerce and harass the trading counterparts. The nature of fair market competition was not violated and thus there was no deceptive or obviously unfair circumstance. Hence, in accordance with the available evidences, it is still not substantiate to conclude that there was in violation of the provision of Article 24 of the FTL.

Summarized by: Mai, Huei-Li; Supervised by: Lu, Li-Na

American Genesis Microchip Corporation

757th Commissioners’ Meeting (2006)

Case: American Genesis Microchip Corporation was complained for violating the Fair Trade Law by improperly disseminating false accusation letters that affect the business reputation of another

Key Words: display controller chips, TSU series products, exclusion order, warning letter


Industry: Semi-conductors Manufacturing (2710)

Relevant Laws: Article 19, Paragraph 1, Subparagraph 1 and Subparagraph 3, Article 22, and Article 24 of the Fair Trade Law
Summary:

1. This case originated from a complaint filed by MStar Semiconductor, Inc., indicating that its company and the American Genesis Microchip Corporation are competitors in display controller chips market. Genesis filed an accusation with the U.S. International Trade Commission (hereinafter called “ITC”) earlier alleging that the complainant has infringed upon its patented product. The ITC issued an order to embargo imports of the aforementioned products of MStar into the US in the preliminary determination of April 2004 and the final determination of August 2004. MStar redesigned the disputed products after learning about the preliminary determination in April 2004 and successfully researched and manufactured new products that were not related to the patent at issue. Also, the said new products have complied with the certification methods indicated in the ITC’s order, passed US Customs’ certification and could be imported into the U.S. Unexpectedly, Genesis by means of attaching PDF files to electronic mails sent out false accusation letters in December 2004. Without any references, Genesis alleged in the letters that the complainant’s display controller chips have infringed its patent and the complainant should prove that the new designed chips did not infringe its patent rights. Therefore, it can be deemed that Genesis may have in violation of the provisions of Article 19(i) Article 19(iii), Article 22 and Article 24 of the Fair Trade Law (FTL).

2. Findings of the Fair Trade Commission (FTC)’s investigation that the first, second and forth paragraph of the letters at issue were indeed statements of facts. The main contention of the first paragraph was that Genesis is the patentee of US patent number 5739867, the stipulations of ITC’s determination and exclusion order. The second paragraph was statements concerning the report and successive clarification made by DigiTimes on TSU series products of MStar. A list of authorized representative companies was included in the forth paragraph. Genesis contended in the third paragraph that MStar has burden of proof that its new products were excluded from patent infringement and responsible for the application of exclusion order’s alteration. The third paragraph was subjective view of Genesis on the patent litigation. A deliberation of the letters showed that the said letters were Genesis’s response to clarify market rumors. The letters at issue in this case is different from the
nature of “warning letter” as defined in the aforementioned decision guidelines. Genesis as the party concerned of this case sent out letters explaining the relevant details of ITC’s litigation and the successive developments to its clients. Based on its subjective recognition about facts, Genesis as the patentee feared that the relevant news reports may harm its rights and interests, and thus sent out the letters at issue to personal e-mail. It is still difficult to conclude that Genesis has intentionally sent out the letters because of “for the purpose of injuring such particular enterprise” or “causing the trading counterpart(s) of its competitors to do business with itself by other improper means”. Hence, it is yet difficult to conclude that Genesis has in violation of the provisions of Article 19(i) and Article 19(iii) of the FTL.

3. Exactly as above-mentioned, the contents of the letters at issue were probably for the protection of the patentee’s rights and interests of patent, or a response to the report of DigiTimes, or explanations of the case to the clients, or expression of opinions on the relevant patent litigation. Hence, with regard to the statement of facts that made from the subjective recognition, it is still difficult to say that the letters were sent out “on account of the purpose of competition”, thus it is still different from the requirement stipulated in Article 22 of the FTL. Additionally, it is found that this case was a transnational patent litigation. Furthermore, both newspapers and the Internet had reported and given comments on the said patent right litigation beforehand. The relevant parties concerned may obtain information through public channels or inquired both parties involved in the accusation before the letters at issue were written. Considering the act of Genesis as an opportunity to give the public an explanation on the relevant dispute and necessarily to safeguard the company, it is still difficult to say that such act of issuing the letters was obviously unfair. Moreover, the FTC found that the recipients of the letters at issue were all individual staffs of particular departments. The companies of these staffs may not know about the said e-mails. The letters will not affect trading between both parties even if their companies knew about it. Therefore, it is still difficult to conclude that there is in violation of Article 24 of the FTL.

Summarized by: Ma, Ming-Ling; Supervised by: Lin, Gin-Lan
Taiyen Biotech Co., Ltd.

765th Commissioners’ Meeting (2006)

Case: Taiyen Biotech Co., Ltd. was complained for violating Article 22 of the Fair Trade Law by stating and disseminating untrue statements that were sufficient to damage the business reputation of another

Key Words: table salt, industrial salt, business reputation, counterfeit

Reference: Fair Trade Commission Decision of July 6, 2006 (the 765th Commissioners’ Meeting); Disposition (95) Kung Ch’u Tzu No. 095105

Industry: Table Salt Manufacturing (0872)

Relevant Laws: Article 22 of the Fair Trade Law

Summary:

1. This case originated from a complaint letter submitted by Chuan Yi Enterprise Co., Ltd. (hereinafter called “Complainant”) complaining that:

   After the Rules of Salt Affairs were abolished on January 20, 2004 and table salt and industrial salt fully open for importation, the Complainant has been importing salt from Mainland China which can be proved by the import declaration sheet, imported food inspection certificate and the approval of random inspection conducted by the Department of Health. However, Taiyen Biotech Co., Ltd. (hereinafter called “Respondent”) disseminated untrue statements at the press conference held on May 14, 2004. During the said press conference, the Respondent stated that counterfeits of Taiyen's salt products, worth only New Taiwan Dollars (NT$) 15, had been discovered in the market. The Respondent had found said counterfeits at many supermarkets and outlets in Taipei, Kaohsiung, etc. since April 2004 and many of these counterfeits were industrial salt imported from China and Southeast Asia countries. It was stated by the Respondent that these products counterfeited Respondent's packaging and trademark and had chemical anti-caking agents added with excess copper, cadmium and mercury. On May 15, 2004, the China Times reported on its newspaper, section A10, with a headline “Good Grief! Industrial Salt Packaged to Counterfeit Taiyen Products,” “Mostly From China & Southeast Asia With Less Clarity and Anti-Caking Agents Added Excess Chemical
MetalsLong-Term Usage Will Cause Danger To Citizens' Health," and a subheading “Taiyen Criticizes CounterfeitsChuan Yi Steps Up.” Additionally, the news reported by Ettoday News can also serve as proof. After the Respondent disseminated the said untrue information, the Complainant's table salt took a dramatic fall in sales and was returned by consumers. Moreover, the Respondent held and displayed Complainant's product during the aforementioned press conference for the press to take photos and publish the same on the newspapers distributed to the public. The Respondent's acts led Complainant's trading counterparts to cease or terminate trade with Complainant and blocked any possible trading relations. Such acts might constitute in violation of Article 22 of the Fair Trade Law (FTL).

2. Grounds for Disposition:

(1) Article 22 of the FTL provides that “no enterprise shall, for the purpose of competition, make or disseminate any false statement that is able to damage the business reputation of another.” Based on the said provision, the requirements shall be that an enterprise engages in “making or disseminating any false statement” for “the purpose of competition,” and that such a statement shall “be able to damage the business reputation of another enterprise.” Therefore, in the event that an enterprise makes or disseminates a false statement by holding a press conference and that such a statement is able to damage the business reputation of another, such an act of this enterprise should constitute a violation of the aforesaid provision.

(2) Was the press conference held for “the purpose of competition”

Both parties of the case are the sellers of table salt and compete in the same domestic market. Therefore, both parties shall have a competitive relationship. It was found that the Respondent collected table salt sold in the market by the Complainant and other companies for tests and employed the test result to hold a press conference called “Feeling Safe in Using Salt” on May 14, 2004 participated by Respondent's president Pao Ching Cheng, General Manager, Yun An Chiou, Director of Miaoli Tongshiao Salt Factory, Wu Long Lin, etc. During the said press conference, the Respondent displayed other competitors' products (including Complainant's) and its test result to the press and made its comments. It was also found that in the “quality
comparison table of commercially available salt products” provided by the Respondent at the press conference, the Respondent compared its product, Taiyen Salt, with the competing product imported from Southeast Asia and China. Additionally, the Respondent labeled its product to be “completely qualified with national sanitation standard for table salt,” while the other six competing products were “disqualified.” Furthermore, the news article released by the Respondent said, “after the Rules of Salt Affairs were abolished, a lot of industrial salt or table salt products imported from India, Thailand or China can be often seen in the market, most of which are disqualified with the CNS' sanitation standard or Health Department's safety regulations for table salt and have far lower quality than Taiyen's products. Consumers should select Taiyen's salt products which are safe and liable and should not choose money over their health!” Upon the facts stated above, it can be found that the Respondent purposely compared its own product with others and provided a chart with information only in favor of the Respondent to emphasize its superiority and devalue other competitors' products or imply their poor quality. Therefore, it is certain that the press conference was held for the purpose of competition.

(3) Did the Respondent hold the press conference to “make or disseminate false statements”

It was found that the quality comparison table of commercially available salt products prepared by the Respondent was insufficient to prove whether the Complainant's salt product contained excess heavy metals, or sodium ferroyanide, or insufficient potassium iodate or excess water insoluble substances or insufficient sodium chloride and was disqualified with the “Table Salt Sanitization Standard” as claimed by the Respondent. Furthermore, the Respondent alleged that Complainant's salt product was imported from China with a lower than normal price and should therefore be industrial salt. However, according to the professional opinions provided by the Department of Health, based on the Food Sanitation and Management Law, table salt shall conform to the sanitation standard for table salt, and that food additives shall conform to the Scope and Application Standards of Food Additives set by the Department of Health. Furthermore, imported table salt shall also conform to
the aforementioned regulations and could only be imported when it was tested and found to conform to the relevant regulations on food sanitation by the Bureau of Standards, Metrology and Inspection, Ministry of Economic Affairs, commissioned by the Department of Health. Thus, based upon the import declaration sheet, imported food inspection certificate and import information from January to May 2004 provided by the Bureau of Foreign Trade, Ministry of Economic Affairs, it can be proved that the table salt imported by the Complainant met all the abovementioned requirements. Moreover, according to the random inspection enforced by the Department of Health on the six table salt products sold in the market in 2004 (including Complainant's salt product), the inspection result did not show any disqualification. Therefore, the Respondent did not possess any specific evidence to support its statement saying that the Complainant substituted table salt with industrial salt. In addition, neither did the Respondent obtain any court decision or authentication report by any accredited institution to support the infringement of trademark claimed by the Respondent, nor properly exercise its rights to the trademark. Without any supporting evidence, the Respondent accused other enterprise of counterfeiting its trademark and displayed the products of the Complainant and other enterprises for the press to take photos. By doing so, the Respondent had disseminated false statements about the counterfeit. Based on the aforesaid facts, the table salt imported by the Complainant in accordance with relevant laws and regulations is not as disqualified with the “CNS’ sanitation standard or Health Department's safety regulations” as claimed by the Respondent, or replaced with industrial salt or counterfeiting Respondent's product. On the other hand, the aforesaid facts also prove that the Respondent did “make or disseminate false statements.”

(4) Did the statement made or disseminated by the Respondent during the press conference “damage the business reputation of another enterprise”

In light of the significant impact of the quality of table salt on human health, if the salt product sold in the market had had the negative effects as claimed by the Respondent during its press conference, general consumers would have had serious distrust with these products. Moreover, the Respondent has been in the leading
position in the domestic market. With its exclusive professional image and goodwill, its false statement made and disseminated at the press conference “Feeling Safe in Using Salt” could have respectably high influence on the general public. Therefore, once the public had known of the negative information about the salt products imported from China and Southeast Asia (including Complainant's salt product) provided by the Respondent, objectively, the general public or trading counterparts would depreciate Complainant’s business or have distrust against the Complainant and furthermore refuse to trade or decrease the possibility of trade with the Complainant. Thus, based upon the aforesaid facts, the Respondent's acts are able to damage the Complainant’s business reputation.

(5) In conclusion, the Respondent hereof had violated Article 22 of the FTL by making or disseminating a false statement that was able to damage the business reputation of another for the purpose of competition through hosting a press conference. The FTC therefore imposed an administrative fine of NT$780,000 on the Respondent.

Appendix:
Taiyen Biotech Co., Ltd.’s Uniform Invoice Number: 89397503

Summarized by Liu, Keh-Hae; Supervised by Shen, Li-Yu
Chapter 9
Multi-level Sales

Surplus International Corp.

762nd Commissioners’ Meeting (2006)

Case: An ex officio investigation initiated by the FTC into Surplus International Corp. for engaging in multi-level sales
Key Words: multi-level sales, handling of returned goods, written participation contract
Reference: Fair Trade Commission Decision of June 15, 2006 (the 762nd Commissioners’ Meeting), Disposition (95) Kung Ch’u Tzu No. 095066
Industry: Direct Selling Establishments (4812)
Relevant Laws: Article 23-4 of the Fair Trade Law Article 12, Paragraph 1, Article 14, and Article 18 of the Supervisory Regulations Governing Multi-level Sales

Summary:

1. This case originated from the Fair Trade Commission (FTC)’s initiative to dispatch personnel to the principal place of business of Surplus International Corp. (hereinafter called “Surplus”) to carry out business inspection. It is found that the written participation contracts signed between the said company and its participants did not specify laws and regulations relevant to multi-level sales, the methods of handling returned goods for reasons attributable to the participants, and specific violations of the participants.

2. Grounds for Disposition:
   In accordance with the provision of Article 12, Paragraph 1 of the Supervisory Regulations Governing Multi-level Sales, the written participation contract signed between a multi-level sales enterprise and its participants shall include the “laws and regulations relevant to multi-level sales” prescribed in Article 11(1)(iii) of the same
Regulations. In addition, according to Article 14 and Article 18 of the same Regulations, the written participation contract signed between a multi-level sales enterprise and its participants shall specify the method of handling returned goods for reasons attributable to the participant. The participation contract must include the following five breaches of contract by the participant; (1) promoting or selling goods or services, or recruiting participants to the sales organization, by deceptive or misleading means; (2) raising funds from other persons in the name of the multi-level sales enterprise or through its organization; (3) engaging in sales activities by means that run counter to public order or good morals; (4) affecting the market trading order or creating heavy losses to consumers by improper in-person solicitations; and (5) engaging in sales activities that violate the Criminal Code or other laws or regulations governing industry and commerce.

3. Taking into consideration the motivation, purpose and expected improper benefit of the unlawful acts of Surplus; the degree and duration of the act’s harm to market order; benefits derived on account of the unlawful act; scale of the enterprise; remorse shown for the act and attitude of cooperation in the investigation, therefore, a fine of New Taiwan Dollars (NT$) 110,000 is imposed on Surplus according to Article 42(3) and the anterior paragraph of Article 41 of the Fair Trade Law (FTL).

Appendix:
Surplus International Corp.’s Uniform Invoice Number: 13027283

Summarized by: Li, Shih-Che; Supervised by: Hsu, Hung-Jen
Summary:

1. Pursuant to the Supervision Program of Multi-Level Sales Enterprises included in the administrative plan for 2005, the Fair Trade Commission (FTC) shall list several multi-level sales enterprises for inspection. Reasons for such selection of inspection shall include selling intangible products, setting excessively high bonus, having abnormal sales amounts and failing to receive regular inspections. Fun & Love Corporation (hereinafter called “Fun & Love”) was selected for an inspection due to its failure to receive regular inspections.

2. Findings of the FTC’s investigation:

   It was found that Fun & Love violated Article 23-2 of the Fair Trade Law (FTL) by deducting fees not provided in the law from the refunds requested by participants when these participants withdrew from the direct sales organization and requested for refunds. Furthermore, the participation contract entered by the participants was incompliant with Articles 14, 18 and 15 of the Supervisory Regulations Governing Multi-Level Sales respectively by failing to provide refund methods in the event of reasons attributable to a participant; failing to provide statutory breaches of contract and corresponding handling methods; and failing to prepare financial statements for the previous fiscal year certified by a CPA at the main place of business. Therefore, the FTC initiated an ex-officio investigation.
3. Grounds for Disposition:

(1) It was found that Fun & Love deducted 10% of the refund amount when participants applied for withdrawal and refunds and could not provide original invoices for the goods. Fun & Love admitted that it had handled more than 10 cases in the same way. This act had constituted in violation of Article 23-2(2) of the FTL.

(2) The participation contracts entered into by and between Fun & Love and its participants did not contain the refund methods in the event of reasons attributable to a participant or statutory breaches of contract and corresponding handling methods. Also, the financial statements for 2004 kept at Fund & Love's places of business were not certified by a CPA. Therefore, Fun & Love violated Article 23-4 of the FTL by failing to comply with Articles 14, 15 and 18 of the Supervisory Regulations Governing Multi-Level Sales.

(3) Taking into consideration the motivation, purpose, and expected improper benefit of the unlawful acts of Fun & Love; the degree and duration of the acts' harm to trading order; benefits derived on account of the unlawful acts; scale of the enterprise; whether or not the type of unlawful act involved in the violation has been the subject to correction or warning by the Central Competent Authority; types and number of and intervals between past violations, and the punishment for such violations; remorse shown for the act and attitude of cooperation in the investigation and other factors, the FTC ordered Fun & Love to immediately cease the unlawful acts and imposed an administrative fine of New Taiwan Dollars (NT$) 470,000 in accordance with Articles 42(2) and (3) and the fore part of Article 41 of the FTL.

Appendix:
Fun & Love Corporation’s Uniform Invoice Number: 80140502

Summarized by Hsu, Chen; Supervised by Hsu, Hung-Jen
Chunghwa United Telecom Co., Ltd.

774th Commissioners’ Meeting (2006)

Case: Chunghwa United Telecom Co., Ltd. was complained for violating the
Fair Trade Law by engaging in unlawful multi-level sales
Key Words: multi-level sales, refund process, credit card service fee
Reference: Fair Trade Commission Decision of September 7, 2006 (the 774th
Commissioners’ Meeting); Disposition (95) Kung Ch’u Tzu No. 095134
Industry: Direct Sales (4812)
Relevant Laws: Article 23-3(2) applied mutatis mutandis to Article 23-1(2)
and Article 23-2(2) of the Fair Trade Law

Summary:

1. The Fair Trade Commission (FTC) was informed by two of the participants of
Chunghwa United Telecom Co., Ltd. (hereinafter called “Chunghwa United”) that
Chunghwa United failed to make any response after said two participants mailed a
cease-and-desist letter to inform said company of contract termination and request for
refunds in December 2005. After these two participants initiative made contact with
Chunghwa United, they were informed that they could apply for withdrawal and
refunds with Chunghwa United's place of business in Taipei. However, these
participants were rejected by said Taipei office.

2. It was also found by the FTC at Chunghwa United's main place of business that
Chunghwa United deducted a credit card service fee of various amounts from the
refunds applied by the participants who requested to rescind or terminate the contract
with Chunghwa United.

3. Grounds for Disposition:

   (1) Pursuant to the relevant provisions set forth in the Fair Trade Law (FTL)
regarding a multi-level sales participant's withdrawal and refund right after the
contract is terminated, a multi-level sales enterprise shall buy back the goods or
services possessed by the participant and handle relevant refund affairs within thirty
(30) days after the effective date of the contract termination. Chunghwa United claimed that one of the complainants failed to apply for the refunds before the deadline and refused his/her request. However, Chunghwa Unite did not accept the other complainant's refund application on the spot as well, and the thirty-day threshold as mentioned above has already lapsed.

(2) Furthermore, pursuant to the provisions of the FTL regarding payments returned to participants who withdraw or return the goods to a multi-level sales enterprise, the multi-level sales enterprise may only deduct “any bonus or remuneration already paid to the participant for purchase of such goods,” “the value decreased due to the damage or loss attributable to the participant,” and “the shipping costs required for such collection, if the returned goods are collected by the enterprise.” Credit card service fee, however, is not provided in the law.

4. Taking into consideration the motivation, purpose, and expected improper benefit of the unlawful acts of Chunghwa United; the degree and duration of the acts' harm to trading order; benefits derived on account of the unlawful act; scale of the enterprise; and remorse shown for the acts and attitude of cooperation in the investigation, the FTC imposed an administrative fine of New Taiwan Dollars (NT$) 510,000 in accordance with Article 42(2) of the FTL.

Appendix:
Chunghwa United Telecom Co., Ltd.'s Uniform Invoice Number: 12724254

Summarized by Li, Shih-Che; Supervised by Hsu, Hung-Jen
Chapter 10
Other Deceptive or Obviously Unfair Conducts

10.1 DECISIONS

Hsi Chi Enterprise Co., Ltd.

741st Commissioners’ Meeting (2006)

Case: Hsi Chi Enterprise Co., Ltd. violated the Fair Trade Law by not giving the “stub copy for client” of signed “Purchase Agreement” immediately to some of its consumers, an obviously unfair act that is sufficient to affect trading order

Key Words: agreement, trial period

Reference: Fair Trade Commission Decision of January 19, 2006 (the 741st Commissioners’ Meeting); Disposition Kung Ch’u Tzu No. 095004

Industry: Book Publishers (8430)

Relevant Laws: Article 24 of the Fair Trade Law

Summary:

1. The complainant in this case indicated that at the time of selling language learning teaching materials, Hsi Chi Enterprises Co., Ltd. (hereinafter called “Hsi Chi”) has first explained the products and member services, then expressed that the products were offered for trial. After that, the consumers were instructed to put their signatures on “Purchase Agreement” for the said products. Upon signing, Hsi Chi Company for the reason of submitting the agreements to offices for verification had taken back the signed agreements immediately without giving consumers the stub copies. The copies were mailed to the consumers several days later.

2. Findings of the Fair Trade Commission (FTC)’s investigation that Hsi Chi Company has mainly invited consumers visiting the company through lucky draws, questionnaires, exhibitions, online promotion and holding activities together with the suppliers. When consumers visited the company, Hsi Chi Company gave them more
Other Deceptive or Obviously Unfair Conducts

explanations on the products, member services, the English learning environment and activities provided by the company. Hsi Chi would give detailed explanations on products’ characteristics, activities and services descriptions, contents of “Purchase Agreement” and member handbook when consumers were interested in purchasing the products. Hsi Chi collected deposits from consumers after they had gone through and signed the agreements. Upon signing the “Purchase Agreement”, Hsi Chi gave consumers the forth copies of “stub copy for client” (not affixed with the Company’s seal). The remaining three copies were delivered to the Company’s office for verification. After verification of consumers’ credit records and contents of agreements, the third copies of “copy for client’s file” that affixed with the seals of company and its responsible person were mailed to consumers. The FTC conducted a sampling survey of consumers that had signed agreements with Hsi Chi, and discovered that 30.3% of the samples indicated that Hsi Chi neither gave them “stub copy for client” nor “copy for client’s file “ immediately after they signed “Purchase Agreement”. The Company mailed them the said duplicate copies several days later (only one consumer indicated that he/she had never received the duplicate copy). The remaining 69.7% surveyed consumers indicated that Hsi Chi immediately gave them the duplicate copies of “Purchase Agreement” after signing.

3. Grounds of Disposition:

(1) Hsi Chi first showed the “Purchase Agreement” to consumers, then collected deposits and gave the forth copies of “stub copy for client” that were not affixed with the seals of the company and responsible person to consumers after they went through and signed the agreements. Hsi Chi took back the remaining three copies and verified consumers’ credit records through telephone. If the said agreements were accepted and processed, Hsi Chi, then mailed the third copies of “copy for client’s file” that affixed with the seals of company and its responsible person to consumers. However, the complainant and the party involved, Mr. A expressed that Hsi Chi took back the “Purchase Agreement” immediately after he signed it without giving him any duplicate copy. Furthermore, the results of sampling survey showed that 30.3% of surveyed consumers answered that Hsi Chi neither gave them “copy for client’s file”
nor “stub copy for client” immediately after they signed “Purchase Agreement”; the Company mailed them the said duplicate copies several days later. Because Hsi Chi did not immediately give its consumers the “stub copy for client” after they signed the “Purchase Agreement”, the consumers were unable to verify the content of agreements, in addition to this; they also had difficulties and hindrances in exercising their rights. Furthermore, the consumers were unable to exercise their rights of agreement cancellation as early as possible due to not having the agreements and thus unable to find out the seven days trial period stipulated in the agreement. Hsi Chi took advantage of its dominant position in trading and the relative weaker position of consumers in trading to carry out obviously unfair conduct that is sufficient to affect trading order. Such conduct has in violation of the provision of Article 24 of the Fair Trade Law (FTL).

(2) Taken into consideration the motivation, purpose and expected improper benefit of the unlawful acts of Hsi Chi; the degree and duration of the act’s harm to market order; benefits derived on account of the unlawful act; scale, operating condition and market position of the enterprise; past violations; remorse shown for the act and attitude of cooperation in the investigation, therefore, Hsi Chi is ordered to cease the unlawful acts immediately and a fine of New Taiwan Dollars (NT$) 1,850,000 is imposed.

Appendix:
Hsi Chi Enterprises Co., Ltd.’s Uniform Invoice Number: 23931759

Summarized by Yang, Chung-Lin; Supervised by Chen, Yuhn-Shan
Land Administration Agents

742nd Commissioners’ Meeting (2006)

Case: Several real estate agencies violated the fair Trade Law by designating Land Administration Agents to handle real estate’s transfer registration in the standardized contract

Key Words: agency, standardized contract, land administration agent, real estate


Industry: Real Estate Agencies (6612)

Relevant Laws: Article 24 of the Fair Trade Law

Summary:

1. This case originated from a complaint received from the Association of Real Estate Attorney, Taiwan, ROC, indicating that most real estate agencies have stipulated in the standardized contract that the agencies shall designate a land administration agent to handle the registrations of ownerships transfer after the signing of sales and purchase agreement. Such stipulation has deprived the rights and interests of consumers to select land administration agent according to their wishes and impeded the fair market competition for land administration agents.

2. Findings of the Fair Trade Commission (FTC)’s investigation that in practice, there were various instances of land administration agent designated by a real estate agency through special agreement. Some real estate agencies have requested that in the case that performance guarantee or similar kind of trading security system has been used; the real estate’s transfer registration must be handled by the designated land administration agent. Some real estate agencies generally designate or recommend a land administration agent, but agree that consumers can make requests to appoint other land administration agent. The small-scale agencies in general did not involve in the selection of land administration agents. The relevant competent
authority of Ministry of Interior expressed that because different land administration agents have different professional trainings and service qualities, the assurance of trading security, protection of consumers’ rights and interests and trading efficiency seemed not affected by whether the registrations of ownership transfer were handled by the designated land administration agents of the real estate agencies.

3. Grounds for Disposition:

   (1) Standpoints from the land administration agents’ market trading order:

   (i) In accordance with the current laws and regulations, both real estate agency and land administration agent must acquire licenses respectively, and their legal scopes of business are different as well. The real estate agency primarily provides intermediary service in real estate negotiation between the seller and the purchaser prior to the signing of sales and purchase agreement. The land administration agent primarily provides the service of processing registration of ownership transfer after the signing of sales and purchase agreement. The services provided by the real estate agency and the land administration agent constitute two markets that are not competing with each other. Therefore, the conduct in this case indeed is question of cross-market cooperation for both enterprises. From the real estate agency’s viewpoint, it has nominally provided complete services to consumers, starting from the contract discussion until the conclusion of contract performance because of the said cooperation. Hence, the said cooperation will increase its competitiveness. From the land administration agent’s viewpoint, it will have more sources of business and reduce the cost of soliciting for customers because of the cooperation. In another word, the said cross-market cooperation has increased the competitiveness of both enterprises in their respective markets. In addition to the reduction of costs for consumers, the cooperation also improves the service efficiency and quality of real estate trading as a whole. It is deemed that such cooperation is beneficial.

   (ii) The Association of Real Estate Attorney has raised the question that at present the overwhelmingly majority of sales and purchases of real estate are concluded through real estate agencies. Each real estate agency does not have many special land
administration agents, and thus may lead to the market monopolization by a small number of land administration agents. However, there are many designated land administration agents in the market and hence may lead to price war among them. Nevertheless, such scenario is a result of industry and service transformation, and market competition. In other words, because of the competition from many other land administration agents, and in order to continue the business operation, the individual land administration agent has either reduced the service charge or looked for cooperation with the real estate agency to increase his or her competitiveness. It is indeed reasonable for an enterprise to adopt the aforementioned measures when it faces competition. Furthermore, other than the real estate agency, the land administration agent also has other sources of soliciting for clients. Therefore, it is difficult to deem that the cooperation between the real estate agency and some selected land administration agents has adversely influenced the market competition of land administration agents.

(2) Standpoints from the consumers’ rights and interests

(i) Presently, most real estate agencies in practice do not enforce the designation of land administration agent. Furthermore, the real estate agencies that have enforced such requirement gave reasons that they have adopted the performance guarantee trading security system. When consumers have selected the said system, the real estate agencies requested that the designated land administration agents must handle the complementary measures because the seller, buyer, real estate agency, land administration agent, financial institution or building manager and company are parties involved in the said system. Therefore, it is still difficult to deem that the said requirement is unjustifiable. Furthermore, as the said system has included responsibility of indemnification, hence there is no reason that the consumers must personally select the land administration agent.

(ii) Even though the designation of land administration agents by the real estate agency may have impeded the consumers’ freedom to choose, but in essence it is not necessarily that their rights and interests will be adversely affected. After signing the sales and purchase agreement, the real estate agency will not have any interests in the matters of contract performance, but the interests for the buyer are contrary to that of
the seller. Thus, the designation of land administration agent by either party alone inevitably may raise doubts that the other party is not protected. Therefore, it is not easy for both parties to reach a consensus on the candidate of land administration agent. As a result, an appointment of the designated land administration agent by the real estate agency to handle the registration of ownership transfer at this time shall generally be deemed impartial under these circumstances.

(3) Nevertheless, even though some real estate agencies did not enforce the designation of land administration agent in effect, but its contract has included the consumer consent clause. Moreover, the contract was not supplemented with the clause that an appointment of land administration agent other than the designated one is permissible. Consequently, it is likely that the consumers did not know that they could appoint other land administration agent. Therefore, the FTC has written to every real estate agencies notifying them that they should duly add the relevant clauses in the contracts. Such clauses include a notice to consumers about their exercises of options related to the selection of land administration agents or the performance guarantee system, and a disclosure of the remunerations and expenses charged for service provided which consumers will take into consideration in their decision of trading. The addition of such clauses at the same time will ensure the opportunities for the land administration agents to take part in competition are not affected indirectly.

Summarized by: Lin, Hsin-Wen; Supervised by: Chen, Yuhn-Shan

Happy Holidays International Co., Ltd.

745th Commissioners’ Meeting (2006)

Case: Happy Holidays International Co., Ltd. was complained for violating the Fair Trade Law in its sale of membership cards for overseas vacation resorts
Summary:

1. The Fair Trade Commission (FTC) received three complaints against Happy Holidays International Co., Ltd (hereinafter called “Happy Holiday”), indicating that Happy Holidays has collected the public’s information through conducting questionnaires at the streets first. After that, Happy Holidays notified the public by telephone that the questionnaires filled by them have been drawn out from a lottery draw, and they will receive accommodation premium or a free overseas tour. Upon receiving the calls, the public thus has gone to attend a prearranged seminar, only then they found out the seminar was a membership cards promotion for an overseas vacation resort. Furthermore, Happy Holidays had requested the public to pay deposits before the public read through the contract. This might constitute an act of violating the Fair Trade Law (FTL).

2. Findings of the FTC’s investigation that Happy Holidays alluded to the complainants that they have won prizes or lucky draws in telephone calls, and invited them to attend a seminar, without disclosing the purpose of selling membership cards. Consequently, the consumers had attended the said promotion without any prior knowledge of anticipated trading. Next, the Thailand QVC vacation resort of which Happy Holidays is the sales agent for its memberships is located at overseas and managed by the foreign enterprise. Therefore, the consumers were at positions of asymmetrical trading information with regard to the profile of the said vacation resort and the content of membership rights. Under this situation, the consumers became more disadvantageous in trading if the seller still requested them to pay deposits before they can read the contracts. Even though Happy Holidays argued that it had not carried out the aforementioned conducts, but admitted that it had first collected
reservation fees from consumers that intended to become the advertisement spokespersons at the seminar. Then, the consumers were brought to another room to go through the agreements after they have filled in membership application forms. In addition, Happy Holidays had alleged that the consumers could enjoy the preferential prices of advertisement spokespersons on the day becoming members, and the collection of reservation fees in advance were to ensure that the consumers were qualified for the member discounts, and thus such fees in essence were tantamount to deposits. Moreover, the investigation found that Happy Holidays had frequently given long hours of seminar to make consumers became exhausted and then promoted the sales of membership cards. The fact of requesting consumers to pay deposits before they were allowed to read agreements was verified. To sum up, Happy Holidays had intentionally solicited consumers that did not have prior knowledge of anticipated trading to attend its sales activities, and then given them long hours of speeches. Happy Holidays abused its dominant position in trading information and requested its consumers to pay deposits in advance before they can read agreements. Happy Holidays had used these improper means of selling overseas vacation resort’s membership cards, causing its trading counterparts to make trading decision under the situation of information non-transparency. Such conducts were obviously unfair and sufficient to affect trading order and thus in violation of the provision of Article 24 of the FTL.

3. Taken into consideration the motivation, purpose and expected improper benefit of the unlawful acts of Happy Holidays; the degree and duration of the act’s harm to market order; benefits derived on account of the unlawful act; scale, operating condition, sales volume and market position of the enterprise; whether or not the type of unlawful act involved in the violation has been the subject of correction or warning by the Central Competent Authority; types of, number of, and intervening time between past violations, and the punishment for such violations; remorse shown for the act and attitude of cooperation in the investigation, and other factors, therefore, Happy Holidays is ordered to cease the unlawful acts and a fine of New Taiwan Dollars (NT$) 3,000,000 is imposed according to the anterior paragraph of Article 41
of the FTL.

Appendix:
Happy Holidays International Co., Ltd.’s Uniform Invoice Number: 70380382

Sunonwealth Electric Machine Industry Co.,

745th Commissioners’ Meeting (2006)

Case: Sunonwealth Electric Machine Industry Co., violated the Fair Trade Law by publishing false messages in the patent litigation announcement on its website, a deceptive and obviously unfair conduct that is able to affect trading order.

Key Words: patent infringement, injunction, network messages

Reference: Fair Trade Commission Decision of February 16, 2006 (the 745th Commissioners’ Meeting); Disposition Kung Ch‘u Tzu No. 095011

Industry: Other Electronic and Appliances Manufacturing and Repairing (2890)

Relevant Laws: Article 24 of the Fair Trade Law

Summary:

1. After the Court issued an injunction ruling in favor of Delta, Sunonwealth Electric Machine Industry Co. (hereinafter called “Sunonwealth”) announced false messages on its US subsidiary company’s website (www.sunonusa.com). The said messages alleged “An injunction filed by Delta Electronics in our own country against selective Sunon fans and blowers was dismissed on July 17, 2003 allowing Sunon to resume production of the products affected by the injunction; (2) A similar case filed by Delta last year in the U.S. was immediately dismissed as having no
merit.” On November 28, 2003, Sunonwealth posted on its company website “Delta clearly knows it only has patent number 154690 that is currently under impeachment, and announcement number 488497 and announcement number 501907 that patent certificates are not yet issued and have been challenged. However, Delta referred to the aforementioned numbers and filed an injunction against Sunonwealth with the Kaohsiung District Court without explaining that the said patents have been impeached and challenged. The Kaohsiung District Court did not summon Sunonwealth for its opinion and issued injunction ruling due to misunderstanding. However, the Kaohsiung District Court gave a ruling to rescind the aforementioned injunction on July 15, 2003 after Sunonwealth filed a petition with it.” With regard to messages published by Sunonwealth, a complaint was filed against it in violation of the Fair Trade Law (FTL).

2. Findings of the Fair Trade Commission (FTC)’s investigation:

   (1) The Kaohsiung District Court issued an injunction ruling on May 21, 2003 with regard to the injunction filing made by Delta on the infringement of patent number 154690, announcement number 488497 and announcement 501907. Although Sunonwealth had filed an appeal for this ruling and the Court had approved the rescission of the said injunction on condition that Sunonwealth provided guarantee, but Delta again had filed an appeal against this ruling of injunction rescission. Therefore, the injunction was still valid at that time. In addition, Sunonwealth admitted that there were mistakes in the statement “A similar case filed by Delta last year in the U.S. was immediately dismissed as having no merit”.

   (2) The investigation found that the announcement number 488497 and announcement number 501907 of Delta were actually being challenged and put under trials before the Kaohsiung District Court’s injunction ruling made on May 21, 2003. There was no impeachment on the new patent number 154690 before Sunonwealth impeached it on June 19, 2003. Therefore, there were actually no impeachment cases before Delta filed injunction and the Kaohsiung District Court issued the injunction ruling on May 21, 2003. The circumstances were not consistent with the statements made by Sunonwealth against Delta, alleging that Delta with respect to the
aforementioned three numbers “has not explained the said patents have been impeached and challenged, and filed an injunction against Sunonwealth with the Kaohsiung District Court.”

3. Grounds of Disposition:

(1) The investigation showed the messages in webpage of www.sunonusa.com, announcing that Sunon was allowed to resume production of fans and blowers at issue was not only inconsistent with the facts, but also might mislead the public or the trading counterparts into believing that the lawsuit between Sunonwealth and Delta has been revoked, the patent rights of Delta were suspicious. Such messages were deceptive to the possible receivers of the relevant messages, whereas, obviously unfair to the competitor Delta. The acts of Sunonwealth had harmed fair market competition and in violation of the provision of Article 24 of the FTL.

(2) In addition, the messages on www.sunon.com.tw website would mislead the public or the trading counterparts into believing that Delta has won the injunction because it did not explain about the challenges and impeachment. In addition, the said injunction has been dismissed after Sunonwealth filed an appeal and the patent rights of Delta were suspicious. The acts of Sunonwealth had harmed fair market competition and in violation of the provision of Article 24 of the FTL.

(3) Taken into consideration the motivation, purpose and expected improper benefit of the unlawful acts of Sunonwealth; the degree and duration of the act’s harm to market order; benefits derived on account of the unlawful act; scale, operating condition, sales volume and market position of the enterprise; past violations; and attitude after violating the laws, therefore, Sunonwealth is ordered to cease the unlawful acts and a fine of New Taiwan Dollars (NT$) 200,000 is imposed.

Appendix:
Sunonwealth Electric Machine Industry Co.’s Uniform Invoice Number: 81448796

Summarized by Chiou, Shwu-Fen; Supervised by Wu, Pi-Ju
Taichung County and Taichung City Cylinder Gas Enterprises

746th Commissioners’ Meeting (2006)

Case: Taichung County and Taichung City Cylinder Gas Enterprises was complained for the joint price hikes and violated the Fair Trade Law

Key Words: increase transportation and packaging charges, increase the selling prices of cylinder gas, non-competition with one another for the customers

Reference: Fair Trade Commission Decision of February 23, 2006 (the 746th Commissioners’ Meeting), Disposition Kung Ch’u Tzu No. 095012

Industry: Gas Supply (3520)

Relevant Laws: Article 24 of the Fair Trade Law

Summary:

1. Beginning from November 2005, the Fair Trade Commission (FTC) has received complaints from Taichung County Government, Taichung City Government, and several people indicating that the price of a 20-kg cylinder gas has increased by the amount of New Taiwan Dollars (NT$) 50 to NT$ 100 per cylinder in Taichung area. In addition, several legislators have held press conferences to concerns about the legitimacy of such pricing behaviors. Accordingly, the FTC conducted spot investigations of the cylinder gas market in Taichung County and Taichung City.

2. Findings of the FTC’s investigation that the competitions of downstream gas distributors in the townships and towns of Taichung County were very intense; the gas filling stations have maintained the transportation and packaging charges at a pretty low level of NT$0.30 per kg for many years. For this reason, the gas filling stations in Taichung area have failed to increase the said transportation and packaging charges after several meetings since 2003. However, by taking advantage of the incident of liquefied petroleum gas shortage in October 2005, the said gas filling stations reached a preliminary consensus when they had a meeting at Lu Yuan Recreational Garden, Shengkang Township in the middle of October. Beginning from October 23, the gas filling stations visited each township and town, informing the gas
distributors of increases of transportation and packaging charges, along with the issue of cylinder gas prices. They also conciliated the gas distributors not to cut price. Furthermore, the gas filling stations and gas distributors were invited to discuss the aforementioned matters at Lu Yuan Recreational Garden around October 26. Consequently, the price of a 20-kg household-use cylinder gas at townships and towns of Taichung County has been raised from approximately NT$ 500 to NT$ 580 since November 2005, whilst the price for a 20-kg business use cylinder gas was raised from NT$ 450 to NT$ 550. Meanwhile, the transportation and packaging charges for the upstream enterprises smoothly increased to about NT$ 1.50 per kg. In addition, the cylinder gas market in Taichung City is quite competitive in recent years. The price of a 20-kg business use cylinder gas has even dropped to about NT$ 450 per cylinder and the household-use cylinder gas were mostly priced at NT$ 550. However, the Taichung City Liquefied Gas Fuel Trade Association convened the sixth extraordinary joint meeting of the 15th term Board of Directors and Supervisors at the night of October 28, 2005, and resolved that the pricing of each gas distributor should reflect the cost and profit. Beginning from November 1, the maximum selling price of a household use cylinder gas was NT$ 630 and the maximum for a business use cylinder gas was NT$ 550. Moreover, the said price hikes message was broadcasted ten times on cable TV Channel 21, 22 and 68 from November 2, 2005 to November 4, 2005.

3. Grounds of Disposition:

(1) The aforementioned conducts of jointly increase the transportation and packaging charges and the conciliation for gas distributors to increase their selling prices and mutually not competing for one another customers, such conducts of mutually restrain one another business activities are sufficient to affect the market function of cylinder gas transportation and packaging market in Taichung area. These conducts have in violation of the prohibitive provision of Article 14(1) of the Fair Trade Law (FTL) that “no enterprise shall have any concerted action”.

(2) Taken into consideration the motivation, purpose and expected illegal benefit of the unlawful acts; the degree and duration of the act’s harm to market order; benefits
derived on account of the unlawful act; scale, operating condition and market position of the enterprise; past violations; remorse shown for the act and attitude of cooperation in the investigation, the said enterprises are ordered to cease the unlawful acts and subject to a fine between NT$ 200,000 to NT$ 500,000 is imposed according to the anterior paragraph of Article 41 of the FTL.

Appendix:
Feng Yuan Liquefied Gas Filling Station’s Uniform Invoice Number: 55638525
Chin Yuan Yu Enterprise Co., Ltd.’s Uniform Invoice Number: 12837721
Ou Kai Gas Filling Station Co., Ltd.’s Uniform Invoice Number: 97544388
Chun Hsin Enterprise Co., Ltd.’s Uniform Invoice Number: 51613777
Taichung Liquefied Gas Filling Station Co., Ltd.’s Uniform Invoice Number: 52332043
Ta Li Liquefied Petroleum Gas Filling Station Co., Ltd.’s Uniform Invoice Number: 52857645
Chu Chou Enterprise Co., Ltd.’s Uniform Invoice Number: 89647158
Taitung Enterprise Co., Ltd.’s Uniform Invoice Number: 16413610
Ta Chan Hsing Co., Ltd.’s Uniform Invoice Number: 59068814
Pei Yu Co., Ltd.’s Uniform Invoice Number: 86927084
Ping Sheng Liquefied Gas Filling Station Co., Ltd.’s Uniform Invoice Number: 61909567
Ma Wang Co., Ltd.’s Uniform Invoice Number: 80086660
Chun Kang Chu Co., Ltd.’s Uniform Invoice Number: 97077449

Summarized by Huang, Chung-Chieh; Supervised by Sun, Ya-Chuan
Far Glory Life Insurance Company

750th Commissioners’ Meeting (2006)

Case: Far Glory Life Insurance Company was complained for violating the Fair Trade Law by improperly exercising acceleration clause

Key Words: life insurance, accelerated clause

Reference: Fair Trade Commission Decision of March 23, 2006 (the 750th Commissioners’ Meeting); Disposition Kung Ch’u Tzu No. 095029

Industry: Personal Insurance (6410)

Relevant Laws: Article 24 of the Fair Trade Law

Summary:

1. This case originated from the complaint filed by Global Opto Technology Corporation (hereinafter called “the complainant”) against Far Glory Life Insurance (hereinafter called “the punished”) because the punished refused to provide contract to the complaint. In addition, the punished, based on the reason that the complainant did not pay interests pursuant to the agreement, has abruptly demanded to auction the collateral without prior notification to the complainant. Such conduct has involved a deceptive act in violation of the provision of Article 24 of the Fair Trade Law (FTL).

2. Findings of the Fair Trade Commission (FTC)’s investigation that Article 8 and Article 22 of the standard credit facility agreement signed between the punished and the complainant stipulated that when the borrower has any of insufficient credit circumstances specified in Article 8(6) to (9) the lender might proceed to exercise the acceleration clause without prior notification to the borrower. It was unquestionable that the lender had exploited the clauses of standard contract to deprive the opportunity for borrower to take remedy actions if they knew the matters beforehand. The clauses were obviously unfair to borrowers in terms of their rights and interests protections. Although the punished argued that the Company has never exercised the clause at issue, but the clauses in an agreement were basis for borrower and lender to exercise their respective rights and obligations. Regardless of the exercise of such
clauses, they were binding on the borrower and the punished cannot shirk its responsibility. In addition, even though the punished argued that house loan was not the major business for the Company, however, the punished did not deny the said credit facility agreement was indeed a standard loan contract. Furthermore, there were more than hundreds auctions being completed for overdue loans until now. In conclusion, more than one occasional trading dispute has resulted from the clauses of the credit facility agreement at issue. The said clauses were deceptive acts able to affect trading order. To sum up, the punished has improperly stipulated the exercise of acceleration clause in Article 8 and Article 22 of the credit facility agreement, deprived the opportunity of the borrower to take remedy action beforehand. It is apparent that both parties of the agreement did not have equal rights and interests. Far Glory has exploited the information asymmetry disadvantage of its trading counterparts and engaged in obviously unfair conduct that is able to affect trading order. Such conduct has in violation of the provision of Article 24 of the FTL.

3. Taken into consideration the motivation, purpose and expected improper benefit of the unlawful acts of the punished; the degree and duration of the act’s harm to market order; benefits derived on account of the unlawful act; scale, operating condition, sales volume and market position of the enterprise; whether or not the type of unlawful act involved in the violation has been the subject of correction or warning by the Central Competent Authority; types of, number of, and intervening time between past violations, and the punishment for such violations; remorse shown for the act and attitude of cooperation in the investigation, and other factors, therefore, the punished is ordered to cease the unlawful acts and a fine of New Taiwan Dollars (NT$) 500,000 is imposed according to the anterior paragraph of Article 41 of the FTL.

Appendix:
Far Glory Life Insurance Co., Ltd.’s Uniform Invoice Number: 84703052

Summarized by Yen, Chia-Lin; Supervised by Tai, Pei-Yi
Far Eastern Electronic Toll Collection Co., Ltd.

751st Commissioners’ Meeting (2006)

Case: Far Eastern Electronic Toll Collection Co., Ltd. was complained for violating the Fair Trade Law by making false ETC advertisement on television, and the information was not completely disclosed and asymmetric

Key Words: Electronic Toll Collection (ETC), on-board unit (OBU), information asymmetry, false advertisement

Reference: Fair Trade Commission Decision of March 30, 2006 (the 751st Commissioners’ Meeting), Letter Kung San Tzu No. 0950002763

Industry: Other Information Supply Services (7329)

Relevant Laws: Article 21 and Article 24 of the Fair Trade Law

Summary:

1. This case originated from a complaint filed by elected representatives in March 2006, indicating that Taipei High Administrative Court has rendered a verdict to revoke the National Freeway Bureau’s screening announcement that Far Eastern Alliance was the “priority applicant” of the establishment and operation of electronic collection system. However, Far Eastern Electronic Toll Collection Co., (hereinafter called “Far Eastern”) has made promotional advertisements on television intensively between March 1, 2006 and March 7, 2006 without performing the responsibility of reminding its consumers the risk of installing OBU. Far Eastern may have made false advertisements that did not disclose full information and also were asymmetric, thus has in violation of the provisions of the Fair Trade Law (FTL).

2. Findings of the Fair Trade Commission (FTC)’s investigation:

Far Eastern has intensively broadcasted seven advertisements on television between March 1, 2006 and March 7, 2006. Amongst, six advertisements did not show any misleading representations on the future operation of the electronic collection system and its influence on the rights and interests of consumers. The content of said advertisements were only the sharing of experiences given by users of the electronic collection system. The other television advertisement announced, “The
service of electronic collection will nonetheless continue. It is guaranteed that the OBU can be returned and the original purchase price will be refunded if there is any problem.” Such announcement was made according to the agreement signed between Far Eastern and Taiwan Area National Freeway Bureau, MOTC (hereinafter referred to as National Freeway Bureau) on February 25, 2006, and the National Freeway Bureau’s letter of March 3, 2006 demanded the users of OBU must reach 100,000 by March 9, 2006. Therefore, the television advertisements showed the experiences of electronic collection users and explained the measures used to protect the rights and interests of consumers. It is obvious that Far Eastern did not have any intention to make false representation on purpose. Furthermore, in addition to notify consumers the messages related to the future operation of electronic collection and its influence on the rights and interests of consumers through the broadcasting of television advertisements, Far Eastern has held a press conference on February 26, 2006. Then, Far Eastern published an open letter on newspaper on February 27 and the same letter was exhibited at the company’s own retail outlets. The said letter stated clearly, “in coordination with the government’s instruction, our company (refer to Far Eastern, similarly hereafter) will continue to operate normally”, and “in the case that consumer wishes to return the OBU and card, we will handle the return willingly” and “our company promised to buy back the OUB at the original selling price if we loose the lawsuit in the court’s ruling.” Actually, in accordance to the official declaration issued by the Ministry of Transportation with regard to the verdict of Taipei High Administrative Court, Far Eastern was permitted to continue the operation and totally liable for the trading disputes related to OBU and IC cards. Such permission was to ensure the continuation of ETC operation and the rights and interests of the users. The consumers without doubts will receive refunds for their returned OBU or cards when they filled up the return application forms at any Far Easter’s own retail outlets. Therefore, it is still difficult to conclude that there was false or misleading representation in the conduct of Far Eastern.

3. In addition, it is found that according to the “Electrical Toll Collection’s Establishment and Operating Contract” signed between Far Eastern and National
Freeway Bureau, the future operation of electrical toll collection system is determined by the policy decision of the transportation competent authority. Far Eastern did not have any need of concealing the messages related to the future operation of electronic collection system and its influence on the rights and interests of consumers. Furthermore, the verdict of Taipei High Administrative Court was known across the country after reported by the media. Therefore, there was no structural asymmetry in the consumers’ acquisition of important trading information. Moreover, when Far Eastern carried out promotions in order to coordinate with the contract, agreement or instruction of National Freeway Bureau, it has published open letters several times as well as exhibited the said open letter at all of its own retail outlets. Far Eastern did not conceal the Taipei High Administrative Court’s verdict of revoking Far Eastern Alliance as the “priority applicant” of the bidding of establishment and operation of electronic collection system. According to the official declaration issued by the Ministry of Transportation with regard to the Taipei High Administrative Court’s verdict, Far Eastern was permitted to continue the operation but was completely liable for the trading disputes related to OBU and IC cards in order to ensure the continuation of ETC operation and the rights and interests of the users. Certainly, the consumers will receive refunds for their returned OBU or cards when they filled up the return application forms at any Far Easter’s own retail outlets. Therefore, with regard to the future operation of electronic collection system and its influence on the rights and interests of consumers, Far Eastern did not engage in any deceptive conduct.

4. The FTC’s 751st Commissioners’ Meeting reached a decision on March 30, 2006 that in accordance with the available evidences, it is still not substantiate to conclude that the advertising and promotion activities conducted by Far Eastern in the electronic toll collection have in violation of the provisions of Article 21 and Article 24 of the FTL. As to whether a warning notice should be included in the ETC television advertisement, the inclusion of warning notice is for reminding consumers to take into consideration the potential risk (or loss) before their purchases. However, as explained earlier, Far Eastern did not purposely conceal the result of Taipei High
Administrative Court’s verdict in its trading with consumers. Furthermore, the National Freeway Bureau has guaranteed in its official declaration that the government is prepared to continue the ETC operation if Far Eastern looses the lawsuit. The rights and interests of users who have already installed the ETC system also will be protected. Comparing to the potential hazard of tobacco and liquor product to human’s health, the degree of risk for ETC is rather insignificant. However, the policy consideration of including the warning notice is within the authority of National Freeway Bureau, thus the FTC has submitted this issue to the competent authority, the Ministry of Transportation, for decision.

Appendix:
Far Eastern Electronic Toll Collection Co., Ltd.’s Uniform Invoice Number: 98770235

Summarized by: Lai, Mei-Hua; Supervised by: Shen, Li-Yu

**NTUDOCTOR Co, Ltd.**

752nd Commissioners’ Meeting (2006)

Case: NTUDOCTOR Co, Ltd. was complained for violating the Fair Trade Law by publishing “the nation’s largest tutoring network”, “NTUDOCTOR Tutoring Center is the nation’s largest tutoring web” on the webpage, exploiting the meta tag function of website design and improperly using the “104” symbol of 104 Corporation

Key Words: webpage, the nation’s largest, metatag, trademark, false advertisement

Reference: Fair Trade Commission Decision of April 6, 2006 (the 752nd Commissioners’ Meeting), Disposition (95) Kung Ch’u Tzu No. 095035

Industry: Other Educational Services (7990)

Relevant Laws: Article 21, Paragraph 1 of the Fair Trade Law, applied mutatis mutandis to Paragraph 3, Article 24 of the Fair Trade Law
Summary:

1. This case originated from a complaint filed by 104 Corporation (hereinafter called “104 Co.”), indicating the following points:

   (1) NTUDOCTOR Co., Ltd. (hereinafter called “NTUDOCTOR”) announced on its “NTUDOCTOR Tutoring Center” webpage (http://www.ntudoctor.com.tw) that its tutoring center was “the nation’s largest tutoring network”, “NTUDOCTOR Tutoring Center is the nation’s largest tutoring web”, without any objective data or evidences. Such announcement may have in violation of Article 21(1) of the Fair Trade Law (FTL), applied mutatis mutandis to Paragraph 3.

   (2) When NTUDOCTOR designed its webpage, it has exploited the metatag function of website design and by means of metatag has written the mark or symbol “104 Tutoring Web” and “104 Tutoring” of 104 Co. to the program of NTUDOCTOR’s website. Such design led to the ease and promptness for web users to find a specific webpage of NTUDOCTOR’s website when they keyed in the aforementioned keywords into the search engine. In addition to this, NTUDOCTOR also designed another new webpage (http://www.ntudoctor.com.tw/new-ntudoctor/tutorall/index.asp), the representations “104 Tutor Nationwide DOCTOR TUTOR” and “104 NTUDOCTOR Tutoring Center” were separately posted on the said webpage and the web page title at the top of browser. The intention of the said webpage’s design was to increase the number of person visiting the NTUDOCTOR’s website, rate of exposure and trading opportunity through search engine. Such conduct was an attempt to free ride the goodwill of 104 Co. and exploited the efforts of 104 Co., hence, it is ethically reprehensible in business competition and has in violation of the provision of Article 24 of the FTL.

2. It is found that NTUDOCTOR has made representations of “the nation’s largest tutoring network” and “NTUDOCTOR Tutoring Center is the nation’s largest tutoring web” on its webpage in September 2004. NTUDOCTOR argued that it has searched from the websites and found there were five tutoring websites provided statistics of their tutors. After comparing these statistics with the total tutors from its center, NTUDOCTOR thus has made the aforementioned representations. As for the
104 Tutor Web of 104 Co., no comparison can be made because the webpage of 104 Co. did not provide any tutor statistic. However, it is found that there are many enterprises engaged in domestic tutor network. When NTUDOCTOR published the aforementioned webpage advertisement, it did not obtain the objective and concrete statistics of tutors for each domestic tutor network. NTUDOCTOR only provided total tutors of five tutor networks that it can find, hence, it is really difficult to deem that NTUDOCTOR already has concrete and objective statistics that were able to prove that it was “the nation’s largest tutoring network”. Furthermore, the 104 Co. has presented a statistical data of tutors at that time, showing that there were 98,816 tutors for 104 Co., and NTUDOCTOR only has 29,688 tutors at the same time. The number of tutors for 104 Co. was far greater than that of NTUDOCTOR. It is more evidence that the credibility of the representations of NTUDOCTOR’s advertisement in this case is questionable. The operating scales of network tutor agents and its number of tutors have always been the important reference data when enterprises strive for the opportunity of electronic commerce trading. NTUDOCTOR confessed that it was unable to know the number of tutors for the “104 Tutor Web” of 104 Co., and did not state clearly in the webpage the basis of its comparison and the sources of the relevant statistics. It has regarded itself as “the nation’s largest tutoring network” based directly on the number of tutors for five tutor networks that it has investigated. The web users were unable to verify or confirm the accuracy of the aforementioned announcement, and they were misled into believing that NTUDOCTOR has the largest scale of operation in the business. Therefore, the announcements of “the nation’s largest tutoring network”, “NTUDOCTOR Tutoring Center is the nation’s largest tutoring web” in the said advertisement of NTUDOCTOR are false and misleading representations, in violation of the provision of Article 21(1) of the FTL, applied mutatis mutandis to Paragraph 3.

3. The 104 Co. was founded in 1996 as the first domestic job search website in the Internet. After that, 104 Co. was granted the exclusive rights to use the series of “104” trademarks in 1998. Furthermore, the Intellectual Property Office, Ministry of Economics has deemed the “104” trademark as the well-known trademark. It is found
that the operation of tutor agency websites were the major business items for both the complainant and the respondent. Thus the complainant and the respondent are competing with each other in the operation of tutor agency websites. While there was no relation at all between the content of NTUDOCTOR’s website and the words “104”, NTUDOCTOR has keyed in the symbol “104” of 104 Co. in metatag to exploit the said symbol so that the search engine can easily find NTUDOCTOR, and led the potential clients to visit its website. The conduct of NTUDOCTOR by means of free riding the effort of 104 Co. in market achievement, has increased the exposure rate or visiting rate of its website as well as to increase its trading opportunity, a conduct to exploit the efforts and free ride the business reputation of another. Such conduct was sufficient to affect the trading order that emphasizes on the efficient competition of price, quality and service, and obviously unfair to the honest competitors that have abided by the essence of fair competition. Therefore, it is ethically reprehensible in business competition. The conduct of NTUDOCTOR in this case has in violation of the provision of Article 24 of the FTL.

4. Taking into consideration the motivation of the unlawful acts of NTUDOCTOR; the degree of the act’s harm, circumstances of the unlawful act, scale of the enterprise; and attitude shown for the act, NTUDOCTOR is ordered to cease the unlawful acts and a fine of New Taiwan Dollars (NT$) 140,000 is imposed according to the anterior paragraph of Article 41 of the FTL.

Appendix:
NTUDOCTOR Co, Ltd.’s Uniform Invoice Number: 80583772

Summarized by: Tsai, Shueh-Chiu; Supervised by: Wu, Lieh-Ling
Jung Shing International Co., Ltd.

753rd Commissioners’ Meeting (2006)

Case: Jung Shing International Co., Ltd. was complained for violating Article 21 and Article 24 of the Fair Trade Law by making false advertisement of debt coordination

Key Words: false, misleading, debt coordination

Reference: Fair Trade Commission Decision of April 13, 2006 (the 753rd Commissioners’ Meeting), Disposition (95) Kung Chʻu Tzu No. 095042

Industry: Other Financing and Auxiliary Financing Not Elsewhere (6299)

Relevant Laws: Article 21 and Article 24 of the Fair Trade Law

Summary:

1. This case originated from the public’s complaint and the letter of the Financial Supervisory Commission, Executive Yuan (hereinafter called “the FSC”) indicating that Jung Shing International Co., Ltd. (hereinafter called “the respondent”) had made following announcements on the website and in the newspaper’s advertisement. The advertisement announced “After paying the debt, the client will be assisted to restore his/her on credit record at Joint Credit Information Center”, “Helping the client to reduce his/her total debt by approximately 30% to 50%”, and publishing “A comparison table of the Bankers Association’s coordination mechanism and OK Jung Shing International’s coordination mechanism”. The aforementioned letters indicated that such announcements and publication might have made false advertisements.

2. With regard to “After paying the debt, the client will be assisted to restore his/her on credit record at Joint Credit Information Center” announced in the advertisement, it is found that the Joint Credit Information Center (hereinafter referred to as JCIC) has separately prescribed an announcement period to disclose the credit fault of each party concerned. Such announcement period is determined according to the seriousness of fault made by the party concerned. After the party concerned has settled the debt, there is no possibility for him or her to either shorten or alter the announcement period of his/her credit record because of the respondent’s
assistance. Furthermore, the respondent also did not deny that the on credit record at JCIS must be handled according to the regulations of JCIS after the client paid back the debt. The credit fault will be announced continuously for at least six months after the settlement of debt. The personal credit history recorded by JCIS concerns with the terms of correspondence between an individual with the financial institution and has been valued generally. The credit record at JCIS will continue to be announced for at least six months after the settlement of debt, and there is no possibility at all that the record can be canceled immediately after the settlement of debt. The Bankers Association and the FSC replied in their letters that the aforementioned advertisements and publication indeed were misleading. The advertisements in this case did not state the JCIS on credit information’s announcement period. The representations of the said advertisement will mislead ordinary person into believing that the respondent can assist him/her to restore his/her on credit record at the JCIS after he/she paid back the debt, and thus made erroneous trading decision. Therefore, according to the available evidences, it is deemed that the aforementioned advertisements have made false and misleading representations.

3. With regard to “Helping the client to reduce his/her total debt by approximately 30% to 50%” announced in the advertisement, it is found that the figures stated in the announcement were estimated according to the operating experience of the respondent and the common practices of debt collection companies. The respondent did not have any concrete and objective data prior to this advertisement. Next, it is found that although the respondent has provided the 50.45% average reduction of total debt for clients that have succeeded debt coordination in January and February of 2006 as evidence, however, the respondent has calculated the percentage of total debt reduction differently from the practices of ordinary banks. Therefore, a further examination is needed to ascertain the attainability of the claim of reducing “30% to 50% of total debt”. Maybe there were clients of the respondent reducing their total debt by 30% to 50% as a result coordination, however, in accordance with the banks’ practices, there were not many debtors who can successfully reduce his/her debt by 30% to 50%. In a report presented to the Fair Trade Commission, the Bankers
Association expressed that “In practice, the possibility of reducing total debt by approximately 30% to 50% in the debt coordination shall be considered as an exception; it is not a common practice.” The report was enclosed for examination. To sum up, it is insufficient to conclude from the evidences provided by the respondent that most debtors who have commissioned the respondent to handle coordination will achieve the claim of “Helping the client to reduce his/her total debt by approximately 30% to 50%” as printed in the advertisement. Therefore, according to the available evidences, it is deemed that the expression “Helping the client to reduce his/her total debt by approximately 30% to 50%” are false and misleading representations, and thus has in violation of Article 21(1) of the Fair Trade Law (FTL), applied mutatis mutandis to paragraph 3.

4. With regard to the publishing of “A comparison table of the Bankers Association’s coordination mechanism and OK Jung Shing International’s coordination mechanism”, the following findings are found:

(a) The subjects of comparison for “A comparison table of the Bankers Association’s coordination mechanism and OK Jung Shing International’s coordination mechanism” were “The Bankers Association’s coordination mechanism” and “OK Jung Shing International’s coordination mechanism”. “The Bankers Association’s coordination mechanism” adopts a free-of-charge collective coordination, which the debtor does not have to pay any fees. Moreover, the debtor can make debt coordination with several creditor banks in the same debt coordination and attain similar terms of debt payment with all creditor banks. However, for the debt coordination provided by the respondent, the respondent was commissioned by its client to carry out the coordination of debt settlement with a creditor bank (including debt collection company). When the client has several creditor banks, the respondent must carry out debt settlement coordination and sign contract individually with each creditor bank. At the time of accepting the commission and after completing the debt coordination, the respondent collected relative membership fee and service charges from the debtor. A comprehensive examination of both debt coordination mechanisms shows that, regardless of the content design, coordination
process, coordination subject, and the total of creditor banks that were bound by the result of coordination, they are different. The extra cost of coordination, such as money and time that were needed in debt coordination, was also incommensurate. The advertisement in this case compared both coordination mechanisms directly without making any specific description of their differences. Such act of comparing debt coordination mechanisms of different levels after all was a marketing of one’s debt coordination service. In case of the content of comparison was not objective and unfair, the standard of comparison was not consistent, then the credibility of the advertisement is questionable. In addition to this, the said advertisement also will distort the debtor’s choices of making objective trading decision. Thus, it is likely that the advertisement will deceive the debtor into making erroneous trading decision. Furthermore, the Bankers Association with the supervision of the FSC carries out the collective coordination mechanism, and hence the mechanism is accountable. If the respondent was not objective, fair and true in making comparison to the coordination mechanism of the Bankers Association, then the respondent in virtue of the accountability of “coordination mechanism” carried out by the Bankers Association has strived for the trading opportunity. It is deemed that the respondent has deceptive or obviously unfair conduct that was able to affect trading order.

(2) The additional payment required for the service of debt coordination was important trading information that would be taken into consideration by the respondent in the decision of debt coordination. It is found that at the time of accepting the debtor’s commission, the respondent would collect New Taiwan Dollar (NT$) 2,000 membership fee for each commissioned debt coordination service. Upon the completion of coordination, the respondent, depending on the types of debt being successfully coordinated, would collect a service charge that ranged from New Taiwan Dollars (NT$) 2,500 to NT$ 5,000 per case. However, there was no charges for the debt coordination provided by “the Bankers Association’s coordination mechanism”. The advertisement in this case did not announce any information of the said charges for debt coordination, thus causing the debtor unable to make objective decision of choosing the manner of debt coordination that is more favorable to him/her and in consequence would made erroneous trading decision. The respondent
has concealed important trading information in the advertisement that there was a charge for the coordination mechanism provided by it whereas that provided by the Bankers Association coordination mechanism was free. The debtors thus were misled into believing that there were charges for both coordination mechanisms, regardless of provided by the Bankers Association or the respondent. Consequently, the respondent would have more chances of being selected by the debtors in their trading decisions. The conduct of the respondent has in violation of the provision of Article 24 of the FTL.

(3) In the comparison table, the “Terms of Coordination” for “OK Jung Shing International’s coordination mechanism” was written as such “In addition to unsecured debt, commission was also accepted for collateralized debt (including house and car loans).” The “Terms of Coordination” for “The Bankers Association’s coordination mechanism” was written as “unsecured debt (including cash card, credit card and unsecured loan).” It is found that the “house loan and car loan” indicated in the aforementioned “In addition to unsecured debt, commission was also accepted for collateralized debt (including house and car loans)” of “OK Jung Shing International’s coordination mechanism”, referred to the debt coordination carried out by the respondent for the balance of debt after the collaterals for bank were auctioned. Next, it is found that the debt handled by “The Bankers Association’s coordination mechanism” also included the debt that could not be paid off due to insufficient amount received from the execution of the property rights of security for the secured loans. Therefore, for the secured loan of “house loan and car loan”, the balance of loan that still could not be paid off after the execution of the real rights of security was still within the scope of debt coordination handled by “The Bankers Association’s coordination mechanism”. The respondent has unilaterally intercepted the scope of debt coordination handled by “The Bankers Association’s coordination mechanism”, thus misled the debtors into believing that the scope of debt coordination provided by the respondent’s “OK Jung Shing International’s coordination mechanism” was broader than that provided by “The Bankers Association’s coordination mechanism”. Therefore, in accordance with the available evidences, it is obvious that the respondent has engaged in deceptive and obviously unfair conduct that is sufficient to
affect trading order.

(4) In the comparison table, the “Balance Due” and “Annual Amortization” items for “The Bankers Association’s coordination mechanism” were separately printed with the representations of “NT$ 300,000 and above” and “not less than 15% of total debt”. However, it is found that in the debt coordination of “The Bankers Association’s coordination mechanism”, besides the terms “NT$ 300,000 and above” and “15% or more of total debt”, the qualification of NT$ 300,000 and above for total debt was inapplicable in the case that the debtor is a student. In addition, due to special factors, a loan of interest rate as low as 0% and as long as 10 years can be given to a debtor depending on his or her actual condition. Furthermore, such loan was not subjected to the restriction of not less than 15% of total debt must be paid back each year. The respondent has unilaterally intercepted parts of qualifications and regulations of debt coordination handles by “The Bankers Association’s coordination mechanism”, thus misled students or debtors in special conditions into making erroneous trading decision. Then, the trading opportunity for the respondent would increase. The conduct of the respondent has in violation of the provision of Article 24 of the FTL.

5. Taking into consideration the motivation of the unlawful acts of the respondent; the degree of the act’s harm, circumstances of the unlawful act, scale of the enterprise; and attitude shown for the act, the respondent is ordered to cease the unlawful acts immediately and a fine of NT$ 1,850,000 is imposed according to the anterior paragraph of Article 41 of the FTL.

Appendix:
Jung Shing International Co., Ltd.’s Uniform Invoice Number: 27337105

Summarized by: Lee, Wan-Chun; Supervised by: Wu, Lieh-Ling
Koninklijke Philips Electronics, N.V.

754th Commissioners’ Meeting (2006)

Case: Koninklijke Philips Electronics, N.V. violated the Fair Trade Law by setting improper clauses in its patent licensing contracts
Key Words: CD-R, technology licensing
Reference: Fair Trade Commission Decision of April 20, 2006 (the 754th Commissioners’ Meeting), Disposition Kung Ch’u Tzu No. 095045
Industry: Data Storage Media Units Manufacturing and Reproducing (2640)
Relevant Laws: Article 24 of the Fair Trade Law

Summary:

1. This case originated from a complaint filed against Koninklijke Philips Electronics, N.V. (hereinafter called “Philips”) for violating the Fair Trade Law (FTL) in its new licensing agreement. In March 2001, Philips introduced a new licensing agreement for the CD-R patented technology and unilaterally determined the licensing agreement terms. The manners of conduct that have been accused of violating the FTL are as such:

   (1) Determination of royalty: In the new licensing agreement, Philips requested every licensee to pay US$ 0.06 or US$ 0.045 to Philips for every CD-R produced. The ex-factory price for each CD-R was approximately US$ 0.18. Therefore, the cost of royalty ranged between 25% and 33% of the ex-factory price, and beyond the industry’s standards. Hence, it is deemed that Philips has acquired huge improper profits and restricted the resale price of CD-R. Furthermore, the prohibition of preferential treatment clause was deleted in the licensing agreement at issue. Such deletion has thus permitted Philips to give favorable terms of royalty to the larger scale CD-R companies. It is deemed that Philips has adopted differential treatments on different companies.

   (2) Obtaining confidential information: In the licensing agreement at issue, Philips requested the licensees to provide a manufacturing equipment list. The said list must include the model, serial number, supplier and installation date of each machine and
facility used in the manufacturing of CD-R. In addition, the licensees were also requested to provide a written sales report within 30 days after the end of each season. The buyer’s identification and its trademark were recorded in the report according to its country and product model. However, there was no direct relation between the aforementioned request and the collection of royalty. Furthermore, Philips also sold OBM CD-R. Hence, there is a doubt that Philips has taken advantage of its market position and compelled the licensees to provide information irrelevant to the licensing.

(3) Grant-Vback provisions: Philips demanded the licensees, within ten years from the agreements become effective, must grant back any rights that they currently possess or rights related to manufacturing, sales or other disposition that they will acquire from any country in the future to Philips. In addition to Philips, such grant-back must be given to the affiliated companies of Philips, and any third party that signs licensing agreement for the relevant licensed product with Philips or its affiliated companies. Therefore, it is deemed that the said “Grant-back provisions” has impeded the wills of the licensees to research, develop and innovate, hence causing anti-competition effect.

2. Findings of the Fair Trade Commission (FTC)’s investigation:

(1) From the product and technology standpoints, there were no logical substitution relations between CD-R and CD-RW, DVD, MD, DCC. Therefore, the technology market in this case referred to “the technology required for producing CD-R discs”.

(2) Concerning the technology required for manufacturing CD-R discs, Philips and Sony have formulated specifications jointly. In order to produce CD-R that meets the specifications of “Orange Book”, the local companies must first acquire patent licensing from Philips, Sony and Taiyo Yuden. Therefore, Philips does not have ability to eliminate competition in the said relevant market, and thus not a monopoly enterprise defined in the FTL.

3. Grounds for Disposition:

Although Philips does not have monopolistic position in “the market of technology
required for producing CD-R discs”, but Philips and Sony have formulated specifications jointly and hence the local companies that want to produce CD-R meets the specifications of “Orange Book” still have to first acquire patent licensing from Philips. Therefore, the licensees, in the process of acquiring CD-R patent licensing agreements actually do not have other alternative sources of licensing besides Philips. Relative to the licensees, Philips indeed is in the advantage position. However, Philips has requested the licensees to provide “manufacturing equipment list” and “written sales report” in the licensing agreements. The contents of the said list and report included the licensees’ production capacities, utilization rates, outputs; clients name list, and trading volume with individual client, the operating cost of licensees and important information concerning market competition, but such information has nothing to do with the computation of royalty charges. Therefore, it is difficult to conclude that the provision of the aforementioned information requested by Philips is a rational business goal to guarantee the royalty collection. Philips is the holder of the patent at issue, Philips also grants licensing to other manufacturers to produce CD-R discs and engages in the sales of OBM CD-R discs. Thus, Philips is a competitor to the licensees in the market of CD-R products. Philips takes advantage of its dominant position in the process of signing CD-R patent licensing agreement to acquire the material information of the licensees’ operating costs. Therefore, such conduct may caused unfair competition between the complainant and the respondent in CD-R product market and in violation of the provision of Article 24 of the FTL. Hence, a fine of New Taiwan Dollars (NT$) 6,000,000 is imposed on Philips.

Summarized by: Lai, Shu-Ching; Supervised by: Liou, Chi-Jung
Chinese Educational Development and Cooperation Association (CEDCA)

755th Commissioners’ Meeting (2006)

Case: Chinese Educational Development and Cooperation Association (CEDCA) was complained for violating Article 19, Paragraph 1, Subparagraph 3, Article 22 and Article 24 of the Fair Trade Law by disseminating fliers “BELI is not equivalent to the Language Center of University of California, Berkeley” and “Don’t Forget Your Rights and Interests”

Key Words: study tour service, improper means, coercion and inducement, business reputation


Industry: Other Educational Services (7990)

Relevant Laws: Article 19, Paragraph 1, Subparagraph 3, Article 22, and Article 24 of the Fair Trade Law

Summary:

1. This case originated from a complaint indicating that Chan Heng-Jui, was the actual responsible person of Chinese Educational Development and Cooperation Association (CEDCA). In order to harass and captivate the parents of the complainant’s student, Chan has pretended as the parent of a student and disseminated the false accusation fliers “BELI is not equivalent to the Language Center of University of California, Berkeley” to the complainant’s second batch students of BELI Language Institute in August 2004. Furthermore, Chan has traveled to the school in US together with the complainant’s students. He continued to engage in the acts of harassment there. In addition, CEDCA in virtue of malicious slander has disseminated the false fliers of “Don’t Forget Your Rights and Interests”, such fliers were sufficient to affect the wills of student parents when they were thinking of whether to allow their children attending the courses of BELI Language Institute arranged by the complainant. In addition, the fliers were sufficient to mislead the
student parents into believing that the aforementioned courses of the complainant were not legally offered and their children were exposed to the risks of being repatriated. As a result, the goodwill of the complainant was damaged seriously.

2. Findings of the Fair Trade Commission (FTC)’s investigation that from the objective viewpoint, Chan Heng-Jui was entity of the conduct in this case; that is, Chan has disseminated the fliers at issue for the purpose of CEDCA’s competition in the market. The dispute of this case was that the complainant criticized CEDCA for making and disseminating the fliers at issue. Several questions were found in the fliers; such as the students in the study tour group were not arranged to attend classes with students from other countries, the intentional concealment of Language Center of University of California, Berkeley has already been closed in May 2004, the cost of study tour group was too high, the trading counterparts were unable to get official student visa, the completion certificates for the program were not issued by Language Center of University of California, Berkeley, an arrangement was made for the students to attend classes at BELI Language Center that was unable to issue Form I-20. Even more, the complainant has let its students to enter the US with Form I-20 of the other language center and thus they were confronting with the risks of forced to transfer to another school or been sent back home.

3. Grounds of Disposition:
   (1) By means of disseminating fliers to the trading counterparts of the complainant, Chan Heng-Jui, the responsible person of CEDCA has questioned about the quality, fare and legality of the study tour groups arranged by the complainant. The ordinary conduct of disseminating fliers in fact did not have any nature of coercion or inducement, the purpose of such conduct inherently can be conceived as an intention to compete for trading counterparts. However, the fliers at issue did not include the name, address and telephone number of CEDCA. Also, the said means were unlike coercion or inducement that can either force or cause trading counterparts to have business activities with an enterprise, or distort the choices of trading counterparts. Except for the subjective judgment of reasonableness of group fare, the other points
stated in the fliers at issue were originated from disputes arose from the policy change of Language Center of University of California, Berkeley. Such points should be explained to the trading counterparts spontaneously by the complainant at the beginning of the trading. Therefore, it is still difficult to conclude on these grounds that CEDCA has caused the trading counterparts of its competitor to do business with itself by improper means that have same degree of compulsion as coercion or inducement, and thus has act that was likely to lessen competition or to impede fair competition. It is still difficult to deem that CEDCA has violated the provision of Article 19(iii) of the Fair Trade Law (FTL).

(2) The business data of CEDCA and the complainant showed that both parties were engaging in the business of study tour service and located at Taipei city. Therefore, it can be said that the fliers at issue were disseminated for the purpose of competition. As for the fliers at issue that were disseminated by CEDCA on the campus of University of California, Berkeley, there were some allegations. Amongst were “the official language center of University of California, Berkeley was closed in May of this year, do you know this when you signed up the program? Or the fact has been intentionally concealed?” and “the language center of University of California, Berkeley was closed in May of this year, Merica still enrolled students in the name of University of Berkeley, when were you informed about this fact? At the time of signing up? Or prior to the departure?” The complainant expressed that its company has announced the said messages with relevant advertisements in the enrollment forums. Therefore, the complainant was not in the condition of purposely concealing the said facts. However, the matters inquired by CEDCA in the fliers at issue were merely questions raised on the relevant issues and it was difficult to conclude that such questions were false messages. Regarding to the paragraph of BELI Language Institute was unable to issue the Form I-20, the Ministry of Education indicated, “In accordance with the regulations, any students who goes to school that is different from that recorded in the Form I-20 must leave the US or the entry will be denied. Taking the examples of BELI and ECIW, the students may be requested to leave the US.” Therefore, it is still difficult to regard the statements of the fliers at issue, “BELI is not related to the University of Berkeley at all. Hence, as a matter of fact your
children are unable to obtain official student identification cards!” and “Merica ignored the rights and interests of the students, made arrangement for them to attend classes at BELI Language Center that was unable to issue Form I-20. Even more, it has let its students to enter the US with Form I-20 of the other language center. Who shall bear the risk of the students being forced to transfer to another school or been sent back home?” were false. Regarding to the paragraph of whether the conduct of CEDCA was sufficient to damage the business reputation of another, the relevant fact must be deliberated in order to make judgment of whether the damage of business reputation has been resulted. The judgment was not made solely on the subjective view of the party concerned. The complainant claimed that the fliers at issue have led to difficulty in student enrollment, damage in business reputation, losses of students’ trusts, and the teachers’ complaints that their reputations were affected in relation to the said fliers. However, the statements given by both parties did not show any case of student has rescinded contract with the complainant due to the fliers at issue and transferred to CEDCA. Furthermore, there was no positive evidence to prove that the number of student enrollment has declined or a drastic drop of sales volume. In addition, the complainant stated that it has spent huge amount of money to hold a press conference and run advertisement to clarify rumors made by CEDCA. However, the investigation found that Yang Chun-Kuo has revealed the controversies recorded in the fliers at issue to the reporter of China Times Weekly, not Chan Heng-Jui or CEDCA. According to the available evidences, it is still difficult to deem that the conduct of CEDCA was sufficient to damage the business reputation of the complainant. To sum up, the act of CEDCA in disseminating the fliers at issue for the purpose of competition still did not meet the condition of constitution, and hence it is difficult to conclude that CEDCA has in violation of the provision of Article 22 of the FTL.

(3) Next, Chan Heng-Jui was the responsible person of CEDCA, both CEDCA and the complainant were engaging in the business of study tour service and located at Taipei city. Therefore, it can be deemed that both companies were competitor to another. The conduct of Chan Heng-Jui in disseminating the fliers at issue and the content of the fliers were related to the business of both parties concerned. Thus, it is
substantiate to conclude that the said conduct and the fliers at issue were for the purpose of competition. In addition, both CEDCA and the complainant have expressed that no trading counterpart has rescinded contract with the complainant and signed contract with CEDCA due to the fliers at issue. Furthermore, the content of the fliers at issue were not groundless and not at the level that would coerce and harass the trading counterparts. The nature of fair market competition was not violated and thus there was no deceptive or obviously unfair circumstance. Hence, in accordance with the available evidences, it is still not substantiate to conclude that there was in violation of the provision of Article 24 of the FTL.

Summarized by: Mai, Huei-Li; Supervised by: Lu, Li-Na

American Genesis Microchip Corporation

757th Commissioners’ Meeting (2006)

Case: American Genesis Microchip Corporation was complained for violating the Fair Trade Law by improperly disseminating false accusation letters that affect the business reputation of another

Key Words: display controller chips, TSU series products, exclusion order, warning letter


Industry: Semi-conductors Manufacturing (2710)

Relevant Laws: Article 19, Paragraph 1, Subparagraph 1 and Subparagraph 3, Article 22, and Article 24 of the Fair Trade Law

Summary:

1. This case originated from a complaint filed by MStar Semiconductor, Inc., indicating that its company and the American Genesis Microchip Corporation are competitors in display controller chips market. Genesis filed an accusation with the
U.S. International Trade Commission (hereinafter called “ITC”) earlier alleging that the complainant has infringed upon its patented product. The ITC issued an order to embargo imports of the aforementioned products of MStar into the US in the preliminary determination of April 2004 and the final determination of August 2004. MStar redesigned the disputed products after learning about the preliminary determination in April 2004 and successfully researched and manufactured new products that were not related to the patent at issue. Also, the said new products have complied with the certification methods indicated in the ITC’s order, passed US Customs’ certification and could be imported into the U.S. Unexpectedly, Genesis by means of attaching PDF files to electronic mails sent out false accusation letters in December 2004. Without any references, Genesis alleged in the letters that the complainant’s display controller chips have infringed its patent and the complainant should prove that the new designed chips did not infringe its patent rights. Therefore, it can be deemed that Genesis may have in violation of the provisions of Article 19(i), Article 19(iii), Article 22 and Article 24 of the Fair Trade Law (FTL).

2. Findings of the Fair Trade Commission (FTC)’s investigation that the first, second and forth paragraph of the letters at issue were indeed statements of facts. The main contention of the first paragraph was that Genesis is the patentee of US patent number 5739867, the stipulations of ITC’s determination and exclusion order. The second paragraph was statements concerning the report and successive clarification made by DigiTimes on TSU series products of MStar. A list of authorized representative companies was included in the forth paragraph. Genesis contended in the third paragraph that MStar has burden of proof that its new products were excluded from patent infringement and responsible for the application of exclusion order’s alteration. The third paragraph was subjective view of Genesis on the patent litigation. A deliberation of the letters showed that the said letters were Genesis’s response to clarify market rumors. The letters at issue in this case is different from the nature of “warning letter” as defined in the aforementioned decision guidelines. Genesis as the party concerned of this case sent out letters explaining the relevant details of ITC’s litigation and the successive developments to its clients. Based on its
subjective recognition about facts, Genesis as the patentee feared that the relevant news reports may harm its rights and interests, and thus sent out the letters at issue to personal e-mail. It is still difficult to conclude that Genesis has intentionally sent out the letters because of “for the purpose of injuring such particular enterprise” or “causing the trading counterpart(s) of its competitors to do business with itself by other improper means”. Hence, it is yet difficult to conclude that Genesis has in violation of the provisions of Article 19(i), and Article 19(iii) of the Fair Trade Law.

3. Exactly as above-mentioned, the contents of the letters at issue were probably for the protection of the patentee’s rights and interests of patent, or a response to the report of DigiTimes, or explanations of the case to the clients, or expression of opinions on the relevant patent litigation. Hence, with regard to the statement of facts that made from the subjective recognition, it is still difficult to say that the letters were sent out “on account of the purpose of competition”, thus it is still different from the requirement stipulated in Article 22 of the FTL. Additionally, it is found that this case was a transnational patent litigation. Furthermore, both newspapers and the Internet had reported and given comments on the said patent right litigation beforehand. The relevant parties concerned may obtain information through public channels or inquired both parties involved in the accusation before the letters at issue were written. Considering the act of Genesis as an opportunity to give the public an explanation on the relevant dispute and necessarily to safeguard the company, it is still difficult to say that such act of issuing the letters was obviously unfair. Moreover, the FTC found that the recipients of the letters at issue were all individual staffs of particular departments. The companies of these staffs may not know about the said e-mails. The letters will not affect trading between both parties even if their companies knew about it. Therefore, it is still difficult to conclude that there is in violation of Article 24 of the FTL.

Summarized by: Ma, Ming-Ling; Supervised by: Lin, Gin-Lan
Hung Chen Sandstone Company

757th Commissioners’ Meeting (2006)

Case: Eleven sandstone companies from the central region, including Hung Chen Sandstone Company, violated the Fair Trade Law by maliciously hoarding sandstone to drive prices up

Key Words: hoarding, drive prices up, dredging at the source of material

Reference: Fair Trade Commission Decision of May 11, 2006 (the 757th Commissioners’ Meeting), Disposition (95) Kung Ch’u Tzu No. 054 to 064, a total of 11 dispositions

Industry: Construction (3802)

Relevant Laws: Article 24 of the Fair Trade Law

Summary:

1. This case originated from the impact of an announcement made by the Mainland China in April 2006 that it would ban the export of natural sand starting May 1, 2006 on domestic sandstone market (an announcement was made at the end of April to postpone the enforcement of the said measure). The said announcement has received public concerns because there were supply/demand imbalance and price rise in the domestic market due to short-term supply fluctuation after its announcement. Soon after, the Fair Trade Commission (FTC)’s “Task Force for the Prevention of the Price Manipulation of Necessary Commodities” stepped in to understand whether there were malicious hoardings to drive prices up in the sandstone market, a market of daily necessity. Therefore, the FTC, in accordance with Article 26 of the Fair Trade Law (FTL), initiated an ex officio investigation on circumstance that harms the public interest.

2. Between April 22, 2006 and May 18, 2006, the FTC dispatched several groups of personnel to the major sources of sandstone to conduct in-depth investigations. Upon the investigations, it is found that:

   (1) The sandstone inventory at Nantou’s Chenyulan River and Jhuoshuei River was originally around 500,000 cubic meters in the beginning of 2006. The 4th River Basin Management Bureau, Water Resources Agency opened up the extraction and dredging
of sandstone for around 3 million cubic meters at the end of 2005, and hence the occurrence of supply shortage was unlikely. The sandstone companies, Tseng Kuang Yi Enterprise Co., Ltd., Shang Ting Sandstone Co., Ltd., Ming Wei Development Co., Ltd., Ting Hsing Sandstone Company, Miao Pu Sandstone Company, Shun Yi Sandstone Company, Chen Feng Co., Ltd. and Hung Chen Sandstone Company, have abundant inventories. The accumulated inventory of material sources exceeded 1.3 million cubic meters. The aforementioned suppliers took advantage of the critical supply/demand situation in domestic sandstone market caused by the earlier Mainland China’s announcement in April 2006 to ban the export of natural sand starting May 1, 2006. Under the circumstances that no increments of other costs except that for inventory, the aforementioned suppliers with the reason that the tender price for dredging material sources has increased and thus insisted that they would only supply materials at the increased prices. Such conducts obviously were means to drive the prices up with the sandstone inventories. In addition, at the end of March 2006, the estimated sandstone inventory of Taichung County was around 2 million cubic meters. Amongst were Chan Chuan Sandstone Co., Ltd., Min Feng Enterprises Co., Ltd. and Tseng Tai Sandstone Co., Ltd. also adopted the same hoarding measures to drive the prices of sandstone up. The total sandstone inventories for the aforementioned three companies exceeded 750,000 cubic meters.

(2) The conducts of the aforementioned eleven sandstone companies hoarding sandstone to drive the prices up indeed have seriously affected the trading order because Jhuoshuei River and Dajia River are the important sources of domestic sandstone. The selling prices of sandstone from Chichi and Shuili of Nantou County have increased from New Taiwan Dollars (NT$) 360 - NT$ 390 per cubic meter in March 2006 to NT$ 430 - NT$ 460 per cubic meter by the end of April 2006. As for the sandstone from Tungshih and Shihkang area of Taichung County, the selling prices have increased from below NT$ 400 per cubic meter to NT$ 500 - NT$ 550 per cubic meter. In the nation’s central region, the cost of sandstone for each unit of pre-mixed concrete production, after conversion from the total payment to sandstone company and transportation charge (estimated as 1.22 times of the original price), has increased to NT$ 680 - NT$ 750 per cubic meter since April, or approximately 13%
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to 23% increase.

3. Grounds for Disposition:

(1) The sufficient supply of sandstone has huge impact on the nation’s economic development because the sandstone is a significant daily necessity, and the sufficiency of its supply will influence the progress of infrastructure and residential construction. In order to resolve the said demand/supply imbalance, the government has established a “Joint Task Force on Sandstone’s Demand and Supply”, a task force made up of several ministries and departments. The said Task Force coordinates the relevant competent authorities and enterprises from the industry to solve the shortage crisis of sandstone together. On this occasion, all enterprises must confront such difficult time together and coordinate with the government’s countermeasures. They should fully supply the market and not engage in any improper and malicious hoarding to drive the prices up. The legislative purposes of the FTL are stipulated in Article 1, “maintaining trading order, protecting consumers’ interests” and “promoting economic stability and prosperity”. It is obvious that the conduct of an enterprise is contrary to the legislative purposes of the FTL when the said enterprise takes advantage of the product market’s supply/demand imbalance and critical situation to decline supply or engage in improper sales conducts which seriously damage public interest and harm the economic benefits of society as a whole. Article 24 of the FTL stipulates, “In addition to what is provided for in this Law, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order”. The “obviously unfair” as used in Article 24 refers to unfair competitive conduct contrary to business competition ethics, engaging in trade by means contrary to social ethics, and abusing an advantageous market position to engage in unfair trade. Therefore, an enterprise is violating the provision of Article 24 of the Fair Trade Law if it takes advantage of the occasion of market failure and supply/demand imbalance and by means of contrary to business ethnics or public order and good moral to maliciously hoard the daily necessity so as to drive the price up.

(2) The eleven punished companies in this case have individually hoarded around
100,000 cubic meters to 400,000 cubic meters of sandstone during this period. Furthermore, there was a fact that the selling prices has increased tremendously. The Mainland China announced that it would ban the export of natural sand starting May 1, 2006, the government has adopted relevant emergency measures and there was no problem with the supply of sandstone in domestic market. Under such circumstances, the aforementioned companies were unable to explain the tremendous increase of their inventories in April 2006 as compare with the earlier or the corresponding period. They were also unable to give evidences to justify the reasons of their selling price increases. Therefore, the punished indeed have obviously unfair conducts of driving up the prices by means of malicious hoarding at the time that the supply/demand of domestic sandstone market was in critical situation. Their conducts have damaged market mechanism and seriously affected the market trading order; reprehensible in terms of business ethnics and harmed public interests, and violated the provision of Article 24 of the Fair Trade Law. Therefore, a fine ranges from NT$ 1,000,000 and NT$ 5,500,000 is separately imposed on the aforementioned 11 companies in accordance with the anterior paragraph of Article 41 of the FTL. The total fines imposed on the eleven companies are NT$ 33,080,000.

Summarized by: Liu, Chin-Chih; Supervised by: Sun, Ya-Chuan

CnYes Co. Ltd.

758th Commissioners’ Meeting (2006)

Case: CnYes Co. Ltd. was complained for violating the Fair trade Law by exploiting other’s efforts
Key Words: high degree of plagiarism, exploitation of other’s efforts, obviously unfair
Reference: Fair Trade Commission Decision of May 18, 2006 (the 758th Commissioners’ Meeting), Disposition Kung Ch’u Tzu No. 095068
Summary:

1. This case originated from a complaint filed by Sys Just Information Co., Ltd. (hereinafter called “Sys Just”), indicating that CnYes Co., Ltd. (hereinafter called “CnYes”) without its authorization, has downloaded the financial and economics news published on its MoneyDJ website and used the said news on CnYes website, a website that is operated by CnYes. Such conduct was an exploitation of other’s efforts and thus violated the Fair Trade Law (FTL).

2. Findings of the Fair Trade Commission (FTC)’s investigation that CnYes has browsed the financial and economics news of Sys Just published on the Internet. CnYes downloaded the said news to its internal work platform to be used by its editing staffs. A comparison of the financial and economics news at issue of the complainant and the respondent showed that CnYes has published the financial and economics news at issue closely two to three hours after Sys Just. Furthermore, the financial and economics news at issue of CnYes, regardless of headlines, contents, sources, styles, predictions of sales, business gains and losses, and profits data, phrases and words used, were patently different from the commentaries for the same financial and economics written by its own reporter and the other newspaper and media, but were identical to the financial and economics news at issue of Sys Just. There were only minor differences between the financial and economics news at issue of the complainant and the respondent, including changing the order, additions, deletions, omissions and rewrite of certain paragraphs and sentences, and insert a few writings and sentences that have identical meanings. Both financial and economics news at issue indeed were highly similar as a whole. Moreover, it is found that CnYes has continued using the errors found in the financial and economics news at issue of Sys Just. It can be deemed that the financial and economics news at issue of CnYes has plagiarized greatly from the financial and economics news at issue of Sys Just.
3. Grounds for Disposition:

(1) CnYes, without contributing substantial efforts, has exploited the information of Sys Just accomplished from its great efforts and passed it off as information published by its own website. The purpose of such conduct was to obtain internet advertisement income by means of enhancing the website content and increasing the number of website viewers. At the same time, the said conduct also would mislead the ignorant readers or the trading counterparts in the market into believing that CnYes possessed the ability of making interview, editing and analysis for news published by its company. Such misconception would cause the said readers and trading counterparts to give up browsing and reading Sys Just’s website. As a result, the promotion of the relevant business in membership solicitation, users’ authorizations and internet advertisements for Sys Just Company will be affected, and its competitive advantage and market opportunity will decrease as well. Therefore, CnYes has exploited the great efforts of Sys Just by means of extensive plagiarism and passed it off as content of its own website to lure the potential consumers into trading with CnYes. Such conduct was sufficient to affect the trading order that emphasizes on the efficient competition of price, quality and service. From the viewpoints of Sys Just and other competitors that have abided by the essence of fair competition, the said conduct is ethically reprehensible for violating business competition. Such conduct is deemed as obviously unfair conduct that is able to affect trading order, and in violation of the provision of Article 24 of the FTL.

(2) Sys Just has filed a criminal lawsuit against CnYes in this case because the conduct of CnYes has violated the Copyright Law, and the prosecutor has issued an indictment against CnYes. In accordance with the Article 26 of the Administrative Penalty Act,”If one and single act constitutes simultaneously criminal offense or offenses as well as breach of duty under administrative law, it shall be punishable under the criminal law; provided, however, that an administrative penalty may be imposed additionally if the act is punishable by any other type of administrative penalty or no forfeiture is pronounced by the court of the thing which may be forfeited because of the act. In the case of an act described in the preceding paragraph, sanction may be imposed under the provisions with respect to breach of duty under
administrative law if the case is ruled not to prosecute or is, by an irrevocable final decision of the court, adjudged not guilty, exempt from prosecution, dismissed or not to be put on trial.”, the administrative penalty is not imposed in the meantime. CnYes is ordered to cease the unlawful act immediately according to the anterior paragraph of the Article 41 of the FTL.

Appendix:
CnYes Co. Ltd.’s Uniform Invoice Number: 70790528

Summarized by: Wang, Kuo-Liang; Supervised by: Tai, Pei-Yi

The American 3Com Corporation

763rd Commissioners’ Meeting (2006)

Case: The American 3Com Corporation was complained for violating the Fair trade Law by abusively sending of warning letters
Key Words: warning letter, ethernet controller, patent licensing
Reference: Fair Trade Commission Decision of June 22, 2006 (the 763rd Commissioners’ Meeting), Disposition Kung Ch’u Tzu No. 0950965
Industry: Semi-conductor Manufacturing (2710)
Relevant Laws: Article 24 of the Fair Trade Law

Summary:

1. This case originated from a complaint filed by Realtek Semiconductor Corp. (hereinafter called “Realtek”). Realtek and American 3Com Corporation are manufacturers of network chipsets and have competition relations. However, 3Com Corporation began to send a warning letter to the American D-Link System Inc., a trading counterpart of Realtek without enclosing any relevant evidences on October 21, 2002. 3Com Corporation sent another letter again on December 18, 2002, warning
D-Link System Inc., that the Realtek’s component that it used in its products have infringed 3Com’s patent. Repeatedly, on August 26, 2003, 3Com Corporation sent warning letters to the trading counterparts of Realtek; Chaintech, Gigabyte, Biostar and DFI. Following after, on December 8, 2003, 3Com Corporation has also sent warning letters to Abit, Elitegroup, Asus and MSI. Without enclosing any relevant evidences in the aforementioned letters, 3Com Corporation claimed that the products of the aforementioned companies have infringed its US patent number 5307459, 5434872 and 5732094 (hereinafter called “US patents at issue”). Soon after, 3Com Corporation dispatched staffs from the legal affair department (Don Drinkwater, Bill Becker, Sibyl Wong) to visit the aforementioned companies between the end of March and the beginning of April in 2004. They indicated that the products of Realtek have infringed its US patents at issue and urged them not to buy the products from Realtek anymore. In addition, the aforementioned companies were also asked to acquire licensing from 3Com Corporation. The conducts of 3Com Corporation in disseminating warning letters and performing face-to-face intimidations to companies within our nation’s boundary, have damaged the business reputation of Realtek.

2. Findings of the Fair Trade Commission (FTC)’s investigation:

(1) 3Com Corporation has sent representatives to visit the business sites of local companies between the end of March and the beginning of April in 2004. They have indicated in their visits that the products of local companies that used the RTL8101(L) chips of Realtek have infringed its patent right. Therefore, the local companies should acquire licensing from 3Com Corporation. However, 3Com Corporation did not present or show the assessment report of patent infringement issued by the impartial third party. It only provided the internal claim chart of 3Com Corporation, showing that the Ethernet chips of Realtek have infringed the US patents at issue of 3Com Corporation. At the same time, 3Com Corporation provided three options to the aforementioned companies: (1) Acquire licensing from 3Com Corporation, (2) Buy from the company that has 3Com Corporation’s licensing, for example, X company at overseas and (3) Buy Ethernet chips directly from 3Com Corporation because 3Com Corporation also manufactures Ethernet chips.
(2) After receiving letters from 3Com Corporation and being visited by its staffs, the trading counterparts of Realtek have successively requested Realtek to present assessment reports of the third party impartial infringement assessment institution that show the products do not have patent infringements. In addition, Realtek was also requested to sign “non-infringement opinion letter”, “notice of compensation for infringement”, “declaration of indemnification for damages” or “declaration of joint plea”.

3. Grounds for Disposition:

(1) Realtek and American 3Com Corporation have competition relations. Even though 3Com Corporation clearly knows that Realtek is the manufacturer of the Ethernet controller at issue, but it did not follow the proper judiciary process to protect its intellectual property rights. On August 27, October 10 and December 8 of 2003, 3Com Corporation had repeatedly sent letters to the trading counterparts or potential trading counterparts of Realtek, including Chaintech, Gigabyte, Biostar and DFI, Abit, Elitegroup, Asus and MSI. 3Com Corporation indicated in the letters that the products of the aforementioned companies have infringed its US patents at issue. In addition, the said letters also included notifications to the aforementioned companies that 3Com Corporation has already drafted patent licensing agreements for its US patents at issue recently, and it will give favorable terms of licensing to the aforementioned companies. Although the said letters did not explicitly state that the products of Realtek have infringed its patent rights, nevertheless, 3Com Corporation has later dispatched staffs from the legal affair department, Don Drinkwater, Bill Becker and Sibyl Wong, to visit business offices of the aforementioned companies in March and April of 2004. They alleged that the products of the aforementioned companies that used the Realtek’s series Ethernet controller have infringed its patents. Therefore, 3Com Corporation had asked the aforementioned companies to acquire licensing from 3Com Corporation or buy the relevant products directly from 3Com Corporation, or buy the relevant products from other competitor that has acquired licensing from 3Com Corporation. Such announcements have led the aforementioned local companies requesting Realtek to present assessment reports of the third party.
impartial infringement assessment institution that show the products do not have
depatent infringements. In addition, they also requested Realtek to sign
“non-infringement opinion letter”, “notice of compensation for infringement”,
declaration of indemnification for damages” or “declaration of joint plea”. Even
more, some companies have reduced their purchases from Realtek in the following
year.

(2) 3Com Corporation has directly sent letters and dispatched staffs to the business
offices of the trading counterparts of Realtek to carry out improper business
interference prior to the confirmation of infringement through necessary procedure.
Such conduct obviously has gone beyond the extent required for patent protection.
Hence, it is reprehensible in business ethnics and obviously unfair conduct that is able
to affect trading order. The said conduct has in violation of the provision of Article 24
of the Fair Trade Law (FTL) and a fine of New Taiwan Dollar (NT$) 2,430,000 is
imposed on 3Com Corporation.

Appendix:
Realtek Semiconductor Corp.’s Uniform Invoice Number: 22671299

Summarized by: Chen, Shu-Hua; Supervised by: Liou, Chi-Jung

Sunny Bank

766th Commissioners’ Meeting (2006)

Case: Sunny Bank was complained for violating the Fair Trade Law by
failing to concurrently provide two home loan plans, Anytime
Repayment and Repayment with Limited Terms for borrowers’ free
option when entering into contracts, a conspicuously unfair conduct
able to affect trading order
Summary:

1. This case originated from a complaint letter filed by the public saying that Sunny Bank violated the Fair Trade Law (FTL) by failing to concurrently provide two home loan plans, “Anytime Repayment” and “Repayment with Limited Terms”, for the complainant to select when the complainant was entering into a contract with Sunny Bank.

2. Findings of the Fair Trade Commission (FTC)’s investigation:

   Sunny Bank claimed that the plans of “Anytime Repayment” and “Repayment with Limited Terms” employed in 2004 were decided by the interest rate of about 3%. In other words, borrowers may choose “Anytime Repayment” with an interest rate of over about 3%, or they may choose “Repayment with Limited Terms” with an interest rate of lower than about 3%. However, based on the information of home loan borrowers between July and December, 2004, Sunny Bank's practice was inconsistent with what it claimed. In addition, Sunny Bank claimed that the only difference between the two programs as mentioned above was the interest rate, and that all other loan requirements were identical. It was found, however, that there were 6 different loan interest rates and interest rate adjustment methods and 4 principal and interest repayment methods, a.k.a. loan requirements. Whether or not a borrower had chose “Anytime Repayment” or “Repayment with Limited Terms,” he/she would have had different loan requirements. Therefore, it is proved that Sunny Bank's statement is untruthful. Moreover, Sunny Bank admitted that it only verbally explained the differences between the two loan plans and had not been able to submit any specific proof to support that it had provided the interest rate calculations and loan requirements of the two loan plans to the borrowers. Thus, it is certain that Sunny
Bank had in violation of Article 24 of the FTL by failing to truthfully provide the aforesaid two loan plans for borrowers' option.

3. Taking into consideration the motivation, purpose, and expected improper benefit of the unlawful acts of Sunny Bank; the degree and duration of the acts' harm to trading order; benefits derived on account of the unlawful acts; scale of the enterprise; types and number of and intervals between past violations; and remorse shown for the act and attitude of cooperation in the investigation, the FTC ordered Sunny Bank to immediately cease these unlawful acts and imposed an administrative fine of New Taiwan Dollars (NT$) 400,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:
Sunny Bank’s Uniform Invoice Number: 16091049

Summarized by Ho, Yin-Ju; Supervised by Tai, Pei-Yi

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**Pao-Tian-Hao Real Estate Agency**

768th Commissioners’ Meeting (2006)

Case: Pao-Tian-Hao Real Estate Agency violated the Fair Trade Law by engaging in deceptive conducts sufficient that were to affect trading order by concealing the fact that a buyer had signed a “Negotiation Fee Receipt” and paid NT$300,000 during the transaction.

Key Words: real estate agency, negotiation fee, advantageous position in information.

Reference: Fair Trade Commission Decision of July 27, 2006 (the 768th Commissioners’ Meeting); Disposition (95) Kung Ch’u Tzu No. 095119

Industry: Real Estate Agencies (6612)

Relevant Laws: Article 24 of the Fair Trade Law
Summary:

1. This case originated from a complaint letter filed by the public saying that Pao-Tian-Hao Real Estate Agency (hereinafter called “Pao-Tian-Hao”) in violation of the Fair Trade Law (FTL) by concealing relevant trading information regarding the sales of 3 adjacent plats of land.

2. Findings of the Fair Trade Commission (FTC)’s investigation:

After Pao-Tian-Hao entered into a “Commission Agreement of Real Estate Agent” with the complainant on November 29, 2004, it already knew that the sales price for the plats numbered 481 and 482-1 was New Taiwan Dollars (NT$) 18,600,000. On December 9, 2004, a potential buyer, Mr. Tang, expressed his willingness to pay NT$85,000 for every 36 square feet (equal to “1 ping” in Chinese language), in a total of NT$24,000,000. On the same day, Mr. Tang signed a “Negotiation Fee Receipt” and gave NT$300,000 as the negotiation fee to commission Pao-Tian-Hao to negotiate the sales price with the seller (namely the complainant). At this point, Pao-Tian-Hao possessed information regarding the offers of both parties to the sales and the fact that the potential buyer was offering NT$5,400,000 more than the sales price. On January 2, 2005, Pao-Tian-Hao additionally entered another Commission Agreement of Real Estate Agent with the complainant in regards to the plats numbered 481, 482 and 482-1, in a total sales amount of NT$27,600,000. According to the amount of said sales price less the buyer's offer of NT$24,000,000, the worth of plat 482 was only NT$3,600,000, which was NT$7,700,000 less than the original sales price. It is obvious that Pao-Tian-Hao failed to perform its service and act as a truthful intermediary between both parties to the trade and violated the general trading conventions. Moreover, had the complainant known of the offer provided by the buyer, Mr. Tang, that was NT$5,400,000 more than the sales price, the complainant would have never entered another Commission Agreement of Real Estate Agent to sell 3 plats of land for only NT$27,600,000. Although Pao-Tian-Hao claimed that it did inform the complainant of the fact that Mr. Tang signed a Negotiation Fee Receipt on the phone, and that because the leasing liability was left unsolved, it was designated upon both parties' consent to act as the responsible party.
for the lease affairs, it was found that the complainant only knew about the said Negotiation Fee Receipt and obtained the same from Mr. Tang few months after both parties signed the Real Estate Sales Contract. Pao-Tian-Hao never provided aforesaid information to the complainant. Additionally, the sales price paid by the buyer, Mr. Tang, was close to the offer stated on such a Receipt. Therefore, according to the existing evidence, it is certain that Pao-Tian-Hao concealed the fact that the buyer, Mr. Tang, had already offered a price and signed a Negotiation Fee Receipt.

3. Grounds for Disposition:
   
   (1) Based upon the investigation results, Pao-Tian-Hao exploited its advantageous position in information to employ deceptive measures to conceal the fact that a potential buyer had signed a Negotiation Fee Receipt and paid NT$300,000 from the complainant during the trade. Such an act is surely against real estate agencies' business rules of disclosing information and providing truthful services, as well as their business ethics. Pao-Tian-Hao in violation of Article 24 of the FTL by engaging in deceptive conducts able to affect trading order.

   (2) Taking into consideration the motivation, purpose, and expected improper benefit of the unlawful acts of Pao-Tian-Hao; the degree and duration of the acts' harm to trading order; benefits derived on account of the unlawful act; scale, operating condition, sales volume and market position of the enterprise; whether or not the type of unlawful act involved in the violation has been the subject of correction or warning by the Central Competent Authority and remorse shown for the act and attitude of cooperation in the investigation, the FTC ordered Pao-Tian-Hao to immediately cease these unlawful acts and imposed an administrative fine of NT$500,000 in accordance with the fore part of Article 41 of the FTL.

Appendix:
Pao-Tian-Hao Real Estate Agency's Uniform Invoice Number: 16682446

Summarized by Taur, Rong; Supervised by Chen, Yuhn-Shan
Standard Chartered Bank Co., Ltd., Taipei Branch

777th Commissioners’ Meeting (2006)

Case: Standard Chartered Bank, Taipei Branch, was complained for violating the Fair Trade Law by exploiting its advantageous position and rejecting to adjust agreed provisions related to the housing loan prepayment penalty

Key Words: bank, housing loan prepayment penalty

Reference: Fair Trade Commission Decision of September 28, 2006 (the 777th Commissioners' Meeting)

Industry: Banks (6412)

Relevant Laws: Article 24 of the Fair Trade Law

Summary:

1. Background: Standard Chartered Bank Co., Ltd., Taipei Branch (hereinafter called “Standard Chartered Bank”), provided an “Anytime Payoff” plan with no prepayment restrictions but charged the complainant an amount of service fees higher than that of the penalty set forth in the original housing loan contract which technically impeded the borrower from choosing this “Anytime Payoff” plan. Standard Chartered Bank constituted a conspicuously unfair act sufficient to affect trading order and violated Article 24 of the Fair Trade Law (FTL) by exploiting its advantageous position and rejecting to adjust agreed provisions pertaining to the housing loan prepayment penalty. Based on these facts, the Fair Trade Commission (FTC) came to a resolution during its 594th Commissioners' Meeting on March 27, 2003 and imposed relevant disposition on Standard Chartered Bank in accordance with the fore part of Article 41 of the FTL with Disposition (92) Kung Ch’u Tzu No. 092047 issued on April 8, 2003. Standard Chartered Bank was dissatisfied with the resolution and filed an administrative appeal to the Executive Yuan. The Executive Yuan decided to dismiss the original disposition with Decision Yuan-Tai-Su-Tzu No. 0930084154 on April 15, 2004. The FTC later on still found Standard Chartered Bank in violation of Article 24 of the FTL during its 672nd Commissioners’ Meeting on September 23, 2004 and disposed with Disposition (93) Kung Ch’u Tzu No. 093092 issued on September 30, 2004. Such disposition was dismissed by the Executive
Yuan with Decision Yuan-Tai-Su-Tzu No. 0940089058 on August 19, 2005. The FTC shall hereby clarify the proper handling method regarding this type of housing loan case.

2. One of the reasons of the Executive Yuan for the abovementioned cancellation of the FTC's decisions was that the FTC was not supposed to encompass existing cases with contracts signed before the promulgation of the "Fair Trade Commission Guidelines on the Charge of Penalty Fees for Prepayment of Housing Loans by the Financial Enterprises" (hereinafter called the "Guidelines on Prepayment of Housing Loans") into governance to avoid possible retrospective damage. However, according to the Judicial Yuan’s Interpretation Shih-Tzu No. 548, the “Fair Trade Commission Guidelines on the Reviewing of Cases Involving Enterprises Issuing Warning Letters for Infringement on Copyright, Trademark, and Patent Rights” promulgated by the FTC was an explanatory administrative rule enacted pursuant to Article 45 of the Fair Trade Law to handle acts of enterprises to issue warning letter to another person for infringement on the intelligent property rights. Based upon the same principle, the FTC’s Guidelines on Prepayment of Housing Loans should also be an explanatory administrative rule for Article 24 of the FTL and should come into effect as of the enforcement day of the FTL.

3. Findings of the FTC’s investigation upon the instructions of the Executive Yuan's decision: The complainant of this case requested Standard Chartered Bank to adjust the prepayment penalty on September 11, 2002. Standard Chartered Bank therefore submitted an adjusted plan for the complainant's reference on the 24th of the same month. However, before the three-month adjustment period expired, the complainant filed a complaint with the FTC in November, 2002. Additionally, after Standard Chartered Bank submitted the adjusted plan on September 24, 2002, the complainant did not continue the negotiation or revise the contract with Standard Chartered Bank. When the complainant repaid the housing loan, it was the original housing loan contract that applied. Since the three-year clause of prepayment penalty already expired when the complainant prepaid the loan, the complainant did not have
to pay for the prepayment penalty. Thus, since the loan contract was signed before the promulgation of the FTC’s Guideline on Prepayment of Housing loans, the complainant was supposed to negotiate with Standard Chartered Bank but failed to do so and filed a complaint with the FTC before the adjustment term expired. It is difficult to find Standard Chartered Bank in violation based upon the evidence obtained before the said expiration. Furthermore, based upon the evidence found from the FTC’s new investigation, the complainant did not request Standard Chartered Bank for adjustments after filing the complaint with the FTC. Instead, the complainant continued to fulfill the contractual obligations in accordance with the original loan contract. The complainant did not suffer from any infringement of rights and interests. Based on current evidence, it is hard to find Standard Chartered Bank in violation of Article 24 of the FTL.

Summarized by Yen, Chia-Lin; Supervised by Tai, Pei-Yi

Hon Hai Precision Industry Co., Ltd.

785th Commissioners’ Meeting (2006)

Case: Hon Hai Precision Industry Co., Ltd. violated the Fair Trade Law by improperly disseminating untrue website messages

Key Words: Market Observation Post System, web page, connector, patent

Reference: Fair Trade Commission Decision of November 23, 2006 (the 785th Commissioners’ Meeting); Disposition (95) Kung Ch’u Tzu No. 095158

Industry: Computers Manufacturing (2711)

Relevant Laws: Article 24 of the Fair Trade Law
Summary:

1. Hon Hai Precision Industry Co., Ltd. (hereinafter called “Hon Hai”) posted six messages on the Market Observation Post System exhibiting that the complainant infringed upon Hon Hai’s patent of connector products, such as CPU Socket and DDR, respectively on June 24, 2005, July 12, July 26, September 23, October 26, and November 7. Hon Hai was therefore involved with possible violation of Article 24 of the Fair Trade Law (FTL) by using massive negative words to libel and defame the complainant's business reputation and causing the complainant to lose trade with its trading counterparts and profits.

2. Findings of the Fair Trade Commission (FTC)’s investigation: It was found that from June 24 to November 7, 2006, Hon Hai posted a message on the Market Observation Post System saying that the complainant was involved in several lawsuits of patent rights infringement. After the investigation, it was found that the message in question consecutively alleged that the complainant was “counterfeiting,” “infringing upon intellectual property rights,” “maliciously competing,” “intentionally confusing the market,” “an illegally speculative company,” and “an unworthy counterfeiter.” These words are commonly known by the general public to be sufficient to libel and defame the complainant’s reputation. Since 2000, Hon Hai has not received any decisions issued by relevant court regarding such infringement upon the patent of Hon Hai’s connector products. However, the words that Hon Hai used in the message in question affirmatively claimed or implied that the complainant had infringed upon Hon Hai’s patent rights. Such a message was not just a statement of facts and was used consecutively and considerably. Therefore, the contents of such a message published by Hon Hai were obviously improper.

3. Grounds for Disposition:
   
   (1) The message in question stated that “the connector manufactured and sold (by the complainant) has infringed upon more than ten patents of our company.” However, it was found that the so-called “more than ten patents” by Hon Hai included 7 patents in China, 5 in the US, and 2 domestic patents. The infringement upon those 7 patents
in China was merely authenticated by Hon Hai’s internal legal department without any external professional institution's authentication. Therefore, Hon Hai’s allegation about the complainant's infringement of Hon Hai’s patents in China is doubtful. Additionally, Hon Hai posted said message on the Market Observation Post System was because Hon Hai filed for a provisional detainment and patent rights infringement litigation against the complainant during that period of time. However, the provisional detainment enforced by Hon Hai in conjunction with Keelung District Court on June 24, 2005 was for the two domestic patents. As a result, the message published by Hon Hai on the same day claiming that “the connector manufactured and sold by the complainant has infringed upon more than ten patents of our company” was obviously inconsistent with the messaged published on the Market Observation Post System and was improper as well.

(2) Due to Hon Hai’s advantageous position in the connector market, the message it published on the Market Observation Post System was broadly covered by newspaper, magazine and electronic media which quoted the contents of the message in the reporting. It made the trading counterparts or potential trading counterparts of the complainant to know of the message in question through the media. Hon Hai further published another message on November 25, 2006 not only to repeat the statements that Hon Hai filed for a provisional detainment and patent rights infringement litigation against the complainant but also to claim that "any and all relevant companies who are still using the product involved in the infringement shall be the next target deterred by us." Based on Hon Hai's market position, which is way more advantageous than the complainant, the complainant, Hon Hai’s action to publish such messages in question is sufficient to cause suspicion in the complainant's trading counterparts and potential trading counterparts and let them cease trading with the complainant. Upon the FTC's investigation, it was found that the trading relationship between some of the complainant's trading counterparts and the complainant was affected after these trading counterparts learned about these messages in question and decided to avoid being involved in the patent rights disputes to protect their own products. Thus, Hon Hai's act is sufficient to affect trading order.

(3) Although Hon Hai argued that the term “an illegally speculative company
infringing upon the intellectual property right” was used to refer to all companies that
had infringed upon Hon Hai’s patent rights and not just the complainant. However,
after reviewing the message, the contents of the message were meant to describe
specific facts regarding the provisional detainment and litigation against the
complainant. Right after this statement, some negative words, such as “plagiarizing,”
“copying,” and “counterfeiting”, were used in the following paragraph to describe an
infringement upon Hon Hai's patent rights. By the overall meaning of such a message,
such a message could cause the message receivers to think that the complainant had
done the foresaid “plagiarizing,” “copying,” and “counterfeiting.” Therefore, Hon
Hai’s statement shall not be taken into account.

(4) After taking into account the motive, objective, expected improper benefits,
degree of damage to trading order, duration of the actions, benefits obtained, scale of
business, business operations, the FTC ordered Hon Hai to immediately cease the
aforesaid unlawful acts and imposed an administrative fine of New Taiwan Dollars
(NT$) 1,560,000.

Appendix:
Hon Hai Precision Industry Co., Ltd.’s Uniform Invoice Number: 04541302

Summarized by Chen, Haw-Kae; Supervised by Liou, Chi-Jung

Wan Shieh Enterprises Co., Ltd.

785th Commissioners’ Meeting (2006)

Case: Wan Shieh Enterprises Co., Ltd. violated the Fair Trade Law by
requesting pre-construction home purchasers to render security deposit
prior to the provision of the contract which was a conspicuously unfair
action sufficient to affect trading order

Key Words: pre-construction homes, security deposit, contract review

Reference: Fair Trade Commission Decision of November 23, 2006 (the
785th Commissioners’ Meeting); Disposition (95) Kung Ch’u Tzu
Summary:

1. The complainant of this case stated that Wan Shieh Enterprises Co., Ltd. (hereinafter called “Wan Shieh”) claimed that the house procurement contracts had not been printed and failed to provide contracts to the purchasers when collecting the security deposit for the pre-construction homes, Duan Nan Fa La Lee (originally called “Duan Nan LOFT”).

2. Findings of the Fair Trade Commission (FTC)’s investigation:

   When the purchasers were present at the sales place of “Duan Nan Fa La Lee,” there were no contract samples displayed or prepared for the public to review or take. Wan Shieh claimed that the contracts were not yet printed or were placed at the office when collecting the security deposit from the purchasers before its construction license was obtained. Around the time when Wan Shieh obtained its construction license, it requested the purchasers to remit the security deposit before the contracts were able to be provided.

3. Grounds for Disposition:

   (1) Before Wan Shieh obtained the construction license, it had already built a sample home for the purchases to view and pre-order. In the event that a purchaser was interested in pre-ordering, both parties would immediately sign a “Temporary Home Purchase Certificate,” which explicitly contained the unit number, price, security deposit and the payment scheme. There was obviously a trading relationship between Wan Shieh and such a purchaser, though Wan Shieh failed to provide a contract before collecting the security deposit. Moreover, after Wan Shieh obtained the construction license, it requested the purchasers to remit the security deposit first in order to obtain the contract. Wan Shieh’s act of requesting the purchasers to pay a certain amount of money (whether such amount was called security deposit, deposit,
negotiation fee or pre-order fee) for the provision of contracts for review would cause the purchasers to be the disadvantaged party to the trade in terms of information accessibility and sustain the risks of losing said pre-paid amount. Such an act is certainly a conspicuously unfair act sufficient to affect trading order and in violation of Article 24 of the Fair Trade Law (FTL).

(2) After considering the motivation, purpose, and expected improper benefit of the unlawful act of Wan Shieh; the degree of the act’s harm to market order; the duration of the act's harm to market order; benefits derived on account of the unlawful act; the scale, operating condition, sales and market position of the enterprise; whether or not the type of unlawful act involved in the violation has been corrected or warned by the Central Competent Authority; types and number of and intervals between past violations, and the punishment for such violations; remorse shown for the act and attitude of cooperation in the investigation; and other factors, the FTC ordered Wan Shieh to immediately cease the unlawful act and imposed an administrative fine of New Taiwan Dollars (NT$) 430,000.

Appendix:
Wan Shieh Enterprises Co., Ltd.’s Uniform Invoice Number: 12483972

Summarized by Yang, Chung-Lin; Supervised by Chen, Yuhn-Shan
10.2 JUDICIAL CASES

Hsu Huei Ting Beauty Salon

Taipei High Administrative Court Judgment (2006)

Case: Huei Chi Hsu was dissatisfied with Executive Yuan's appeal decision Yuan Tai Su Tzu No. 0940092101 regarding Hsu Huei Ting Beauty Salon's violation of the Fair Trade Law and filed an administrative litigation which was overruled by Taipei High Administrative Court

Key Words: weight loss and beauty treatments, unequal positions in information

Reference: Taipei High Administrative Court Judgment (95) Su Tzu No. 00104

Industry: Barber and Beauty Shops (9620)

Relevant Laws: Article 24 of the Fair Trade Law

Summary:

1. The plaintiff herein, Huei Chi Hsu (for Hsu Huei Ting Beauty Salon) was complained for failing to disclose important information regarding programs and products of weight loss and beauty treatments and employees' professional qualifications in writing, and selling same types of programs to the complainant before the original programs were finished. Upon the findings of the Fair Trade Commission (FTC)'s investigation, the Plaintiff was determined to have engaged in conspicuously unfair conducts sufficient to affect trading order and in violation of Article 24 of the Fair Trade Law (FTL) by failing to provide its trading counterparts with sufficient opportunities to review contracts, failing to enter into a standardized written contract with the trading counterparts, and failing to display its written professional certificates at a obvious spot within the place of business. The FTC thereby ordered the plaintiff to immediately cease the aforesaid unlawful acts from the day after the disposition letter was served and imposed an administrative fine of New Taiwan Dollars (NT$) 100,000 in accordance with the fore part of Article 41 of the FTL. The plaintiff was dissatisfied with the disposition and filed this administrative litigation after its appeal was overruled.
2. Pursuant to Article 24 of the FTL, in addition to what is provided for in this Law, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order. Additionally, the fore part of Article 41 of the FTL provides that the FTC may order any enterprise that violates any of the provisions of this Law to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than NT$50,000 nor more than NT$25,000,000. Article 24 of the FTL is a supplementary provision for other provisions set forth in the same law and shall be applicable to areas not covered by other provisions. The term “trading order” set forth therein shall refer to the one satisfying social ethics and the principle of efficiency competition. The true spirit of trading order is what holds social ethics and freedom and fair competition together. In the event that any deceptive or conspicuously unfair conducts performed during a transaction between enterprises or between an enterprise and a consumer, these conducts should constitute a violation the aforementioned provision.

3. The cause for most beauty treatment disputes would be beauty treatment enterprises' failure to disclose important information relate to the consumption. Such failure usually leads to a vague relationship between enterprises and consumers. Moreover, due to information inequality between enterprises and consumers, enterprises might employ consumers' disadvantageous position to engage in deceptive and conspicuously unfair conducts that are able to affect trading order and are in violations of the FTL. Plaintiff stated on March 17, 2005 that the consumers who purchased its services were all its members who did not have to pay additional membership fees. The services provided were mainly prepaid in forms such as “Anniversary Celebration Value Stored Cards,” “Anniversary Celebration Preferential Cards,” and “Member's Discounts.” In other words, after a certain amount is prepaid, consumers may be entitled to services provided by the plaintiff in addition to the gifts or discounts. The price of consumption made each time will be deducted from the pre-paid value. Up to March 2005, about 100 members had received the continuous and combined services from the plaintiff by using the
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pre-paid payment method. It is confirmed that the services provided by the plaintiff meet the description of membership consumption and continuous or combined package programs. Furthermore, according to the records regarding the investigation on information disclosure done by the defendant's personnel on March 16, 2005, it was found that the plaintiff did not enter into any written contract with its members. The plaintiff also admitted that it ceased entering any standardized written contract with consumers for transactions from early 2002 to March 2005 and did not provide the same for review either. The plaintiff only recorded the purchased programs, amount of money, terms, products and unit price on the program order sheets. The plaintiff's program order sheets unilaterally stipulated that “the execution of this program order sheet shall be deemed as the execution of and consent to the terms and conditions provided in our standardized contracts.” By merely employing verbal explanation to state the rights and obligations of both parties to the trade without disclosing service providers' professional qualifications or providing written contracts for members who spent tens of thousands of money on continuous or combined package programs, the plaintiff did not only deprive trading counterparts of their rights to fully reviewing contracts, it would also impede trading counterparts from claiming their rights with such an ambiguous relationship between both parties to the trade. It is certain that the acts that the plaintiff failed to provide trading counterparts with a chance to fully review the terms and conditions of the contract and failed to enter into standardized written contracts with consumers are conspicuously unfair to consumers and are able to affect trading order of the weight loss and beauty treatment industry. This Court finds the original disposition is correct and the plaintiff’s petition groundless. Therefore, this Court will uphold the appeal decision and overrule the plaintiff's petition.

Appendix:
Hsu Huei Ting Beauty Salon’s Uniform Invoice Number: 18439144

Summarized by Lai, Chia-Ching; Supervised by Lee, Wen-Show
Other Deceptive or Obviously Unfair Conducts
Appendix I

THE FAIR TRADE LAW OF 1992

Promulgated on February 4, 1991

CHAPTER ONE
GENERAL PROVISIONS

Article 1

This Law is enacted to maintain order in transactions, to protect the interest of consumers, to ensure fair competition, and to promote the stability and prosperity of the national economy. For matters not provided in this Law, the relevant provisions of other laws shall govern.

Article 2

The term “enterprise” as used herein refers to:
1. a company;
2. an industrial or commercial firm owned by a sole owner or in the form of a partnership;
3. a trade association; or
4. any other persons or organizations engaged in transactions by providing goods or services.

Article 3

The term “trading counterpart” as used herein refers to a person who engages in or concludes transactions with an enterprise as its supplier or purchaser.

Article 4

The term “competition” as used herein refers to the acts whereby two or more
enterprises offer in the market more favorable price, quantity, quality, service or other terms in order to secure trading opportunities.

**Article 5**

The term “monopoly” as used herein refers to a condition wherein an enterprise faces no competition or has an overwhelming position to enable it to exclude other competitors in a particular market.

When two or more enterprises do not in fact compete with each other in pricing and their relations as a whole with other entities are such as specified in the preceding paragraph, such situation shall be deemed a monopoly.

The term “particular market” as used in the first paragraph of this Article refers to a geographic area or a sector wherein enterprises engage in competition in respect of a particular commodity or service.

**Article 6**

The term “combination” as used herein refers to any of the following circumstances where under an enterprise:

1. merges with another enterprise;
2. holds or acquires the shares or capital contributions of another enterprise to an extent of representing more than one-third of the total voting shares or the total capital stock of such other enterprise;
3. accepts a transfer of, or leases the whole or the major part of the business or properties of another enterprise;
4. frequently operates jointly with another enterprise or is entrusted by another enterprise to operate the latter’s business; or
5. directly or indirectly controls the business operation, or the employment and termination of the personnel, of another enterprise.

In computing the shares or capital contributions referred to in Item 2 of the preceding paragraph, the shares or capital contributions held or acquired by an enterprise(s) controlled by, controlling, or affiliated with the subject enterprise shall be included.
Article 7

The term “concerted action” as used herein refers to an act to mutually restrict the activities of enterprises, such as an act by an enterprise that enters into a contract, agreement or other form of mutual understanding with other enterprises with whom it competes to jointly determine the prices of goods or services, or to restrict quantities, technology, products, equipment, trading counterparts or trading territories.

Article 8

The term “multi-level sales” as used herein refers to a sales or marketing plan or organization in which a participant pays certain consideration in exchange for acquiring the right to sell or promote the sale of goods or services and the right to introduce other persons to join the plan or organization, and therefore obtains a commission, monetary award, or other economic benefits.

The phrase “to pay a certain consideration” refers to the payment of money, the purchase of goods, the provision of services or the assumption of indebtedness.

Article 9

The term “competent authority” as used herein refers to the Fair Trade Commission of the Executive Yuan where the central government is concerned, the Department of Reconstruction of a city or province where a municipality or province is concerned, and the city or county government where a city or county is concerned.

Those matters provided in this Law that fall within the jurisdiction of other ministries and agencies shall be entertained by the Fair Trade Commission in conjunction with such other ministries and agencies.
CHAPTER TWO
MONOPOLIES, COMBINATIONS AND CONCERTED ACTIONS

Article 10
A monopolistic enterprise shall not engage in any of the following acts:
1. using unfair methods directly or indirectly to prevent other enterprises from taking part in competition;
2. improperly determining, maintaining or changing the prices of goods or the remuneration for services;
3. without proper reason, causing a trading counterpart to provide preferential treatment; or
4. conducting other acts by abusing its market standing.

The names of monopolistic enterprises shall be periodically announced to the public by the central competent authority.

Article 11
If any of the following circumstances shall exist in respect of a combination of enterprises, an application for the approval thereof shall be filed with the central competent authority:
1. As a result of the combination, the surviving enterprise will acquire a market share reaching one third (1/3);
2. An enterprise participating in the combination holds a market share reaching one fourth (1/4); or
3. The amount of sales in the preceding fiscal year of an enterprise participating in the combination exceeds the amount publicly announced by the central competent authority.

The names of enterprises holding a market share reaching one fifth (1/5) shall be periodically announced to the public by the central competent authority.

The central competent authority shall make its decision on approval or disapproval within two months after receipt of an application referred to in paragraph
Article 12

The central competent authority may approve the application referred to in the preceding Article if the benefit of the combination to the overall economy outweighs the disadvantages of its restraining competition.

Article 13

Where an enterprise enters into a combination without filing an application for approval as required hereunder or after the disapproval of its application, the central competent authority may prohibit such combination, or by an order specify a time limit by which the said enterprise shall divide itself into separate enterprises, dispose of its shares in whole or in part, transfer a part of its business to others, order resignation from positions held, or adopt other necessary dispositions.

The central competent authority may order the dissolution, suspension of business, or the cessation of the business of an enterprise if it violates the disposition made by the central competent authority pursuant to the preceding paragraph.

Article 14

Enterprises may not engage in concerted actions, unless the concerted action satisfies any of the following circumstances, is beneficial to the national economy as a whole and to the public interests, and has been approved by the central competent authority:

1. to unify the specifications or models of goods in order to reduce cost, improve quality or increase efficiency;
2. to jointly research and develop goods or markets in order to upgrade technical skills, improve quality, reduce costs or increase efficiency;
3. to engage in specialized areas of business in order to achieve the enterprise’s rational operation;
4. to enter into an agreement in respect of the competition in overseas markets in order to secure or promote exports;
5. to take concerted action in respect of the importation of foreign goods in order to strengthen trading capability;
6. to take concerted action in imposing limitations restrictions on the quantity of production and sales, equipment or prices in order to adjust to orderly demand when the enterprises in a particular industrial sector suffer hardship to continue their business operations or over-production due to the fact that the market price of goods remains at a level below the average production cost during economic recession; or
7. to take concerted action in order to improve the operational efficiency or strengthen the competitiveness of the small and medium-sized enterprise concerned.

Article 15

In granting its approval pursuant to the preceding Article, the central competent authority may impose conditions, restrictions or encumbrances.

The approval shall be valid for a limited period not exceeding three (3) years. The enterprises involved may, with proper reasons, file a written application for an extension thereof with the central competent authority within three (3) months prior to the expiration of such period; provided, however, that the term of each extension shall not exceed three (3) years.

Article 16

In the event that after the approval of a concerted action, the cause for such approval is extinguished, or the economic condition has changed, or the conduct of the enterprises involved exceeds the scope of the approval, the central competent authority may revoke the approval, alter the contents of the approval, or order the enterprises involved to cease or rectify such conduct.

Article 17

The central competent authority shall maintain a specific registry to record the approvals, conditions, restrictions undertakings, time limit and relevant dispositions
referred to in the preceding three Articles and shall publish these matters in the government gazette.

CHAPTER THREE
UNFAIR COMPETITION

Article 18

An enterprise which supplies goods to its trading counterpart shall allow its trading counterpart to freely decide the prices at which such goods will be resold to a third party by the trading counterpart or at which such goods will be resold by the said third party. Any agreement contrary to this provision shall be null and void except for daily products to be used by general consumers, which are subject to free competition with similar kinds of goods available in the market.

The items of daily products referred to in the preceding paragraph shall be publicly announced by the central competent authority.

Article 19

An enterprise shall not commit any of the following acts which is likely to impede fair competition:

1. causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise with the intent to cause harm to such particular enterprise;
2. treating another enterprise discriminatively without due cause;
3. causing, by coercion, inducement with profit, or other improper means, the trading counterpart(s) of its competitors to transact business with itself;
4. causing, by coercion, inducement with profit; or other improper means, another enterprise to refrain from competing in price, or to take part in a combination or a concerted action;
5. acquiring, by coercion, inducement with profit, or other improper means, the secret of production and sales, information concerning trading counterparts or other relevant technical secret of any other enterprise; or
6. imposing improper restrictions on its trading counterparts’ business activities as a condition of transacting business with them.

**Article 20**

An enterprise shall not commit any of the following acts with respect to the goods or services provided by its business operation:

1. use in an identical or similar manner of the name of another person, the name of a business establishment, a corporate name, trademark, product container packaging, external appearance or other symbol signifying the goods of another persons that are commonly known to the relevant public, if such use causes confusion with goods of any other person, or sale, transport, export or import of goods using such symbols;
2. use in an identical or similar manner of the name of any other person, the name of a business establishment, a corporate name or other symbols signifying the business or service of another person that are commonly known to the relevant public, if such use causes confusion with the facilities or activities of the business or service of any other person; or
3. use an identical or similar goods trademark which is identical or similar to a well-known foreign trademark not registered in this country, or the sale, transport, export or import of goods bearing such trademark.

The provisions of the preceding paragraph are not applicable to the following situations:

1. use in an ordinary manner of the generic name customarily associated with the goods themselves or of a symbol customarily used in the trading of goods of the same category, or the sale, transport, export or import of the goods bearing the said name or symbol;
2. use in an ordinary manner of a name or other symbols customarily used in trading for similar business or services;
3. use of one’s own name in good faith or the sale, transport, export or import of goods bearing the said name; or
4. use in good faith of a symbol identical or similar to the symbol referred to in Items 1 and 2 of the preceding paragraph, before such symbol becomes known to the relevant public, or use of the said symbol in conjunction with the transfer of business from a person who uses the same in good faith, or the sale, transport, export or import of goods bearing such symbol.

Where the business, goods, facilities or activities of an enterprise is(are) likely to suffer damage or confusion as a result of the act(s) of another enterprise as set forth in Items 3 and/or 4 of the preceding paragraph, the said enterprise may request such other enterprise to affix an appropriate symbol, unless the other enterprise acts only as a carrier of such goods.

**Article 21**

An enterprise shall not make, on goods or in advertisements relating thereto, any false, untrue or misleading presentation which may likely cause confusion to or mistake by consumers such as their price, quantity, quality, content, manufacturing process, date of manufacturing, validity period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, and place of processing.

An enterprise shall not sell, transport, export or import goods bearing false, untrue or misleading presentations referred to in the preceding paragraph.

The provisions of the two preceding paragraphs shall apply *mutatis mutandis* to the provision of services by an enterprise.

An advertising agent which, having the knowledge of or being able to know the fact, makes or designs a misleading advertisement shall be liable, jointly and severally with the principal of such advertisement, for the damages arising therefrom. An advertising medium, which has the knowledge of or is able to know the fact that the advertisement it may communicate or publish is likely to mislead the public but still communicates or publishes such advertisement, shall be liable, jointly and severally with the principal of the advertisement, for the damages arising therefrom.
Article 22

An enterprise shall not, for the purpose of competition, make or publicize any false statements which is likely to cause damage to another person’s business reputation.

Article 23

Multi-level sales shall not be conducted if the participants thereof receive commissions, monetary awards, or other economic benefit mainly from introducing others to join in the sales rather than from the marketing or sale of the goods or services at reasonable market prices.

Regulations for the control of multi-level sales shall be enacted by the central competent authority.

Article 24

In addition to what has been provided for in this Law, an enterprise shall not conduct other deceptive or obviously unfair acts that are sufficient to affect trading order.

CHAPTER FOUR
FAIR TRADE COMMISSION

Article 25

In order to administer matters in respect of fair trade as set forth in this Law, the Executive Yuan shall establish the Fair Trade Commission having the following functions:

1. to prepare and formulate policies and rules related to fair trade;
2. to examine and review any fair trade matters related to this Law;
3. to investigate the activities of enterprises and the economic conditions;
4. to investigate and to dispose any case violating this Law, and
5. to administer other matters related to fair trade.
Article 26

The Fair Trade Commission may investigate and handle, ex officio or upon complaints, any violations of the provisions of this Law that are detrimental to public interests.

Article 27

When conducting investigations under this Law, the Fair Trade Commission may proceed in accordance with the following procedures:

1. to notify the principal parties and interested persons to appear and to make statements;
2. to notify relevant organizations, groups, enterprises, or individuals to submit their account books, documents, and other necessary information or evidence, and
3. to send personnel to the office, place of business, or other locations of the relevant groups or enterprises to conduct necessary investigations.

In carrying out his duty under this Law, the investigator shall present documents evidencing his authority to carry out such duty; upon failure by the investigator to show such documents, the person to be investigated may refuse the investigation.

Article 28

The Fair Trade Commission shall function independently according to law, and dispositions by the Fair Trade Commission in respect of any fair trade cases may be executed in the name of the Commission.

Article 29

The organizational structure of the Fair Trade Commission shall be governed by a separate law.
CHAPTER FIVE
DAMAGES

Article 30
If an enterprise violates any provision of this Law and infringes upon another person’s rights or interests, the injured party may petition to eliminate such infringement. If there is a likelihood of infringement, the party may petition for prevention thereof.

Article 31
An enterprise which infringes upon the rights and interests of another person as a result of its violation of this Law shall be liable for the damages arising therefrom.

Article 32
In the case of intentional act, a court may, at the request of the injured party referred to in the preceding Article and based on the extent of infringement, award a compensation greater than the amount of damages actually incurred; provided, however, that the amount so awarded may not exceed three times of the amount of proven damages.

In case the infringing party gains any profits from his act of infringement, the injured party may request to have the amount of damages calculated based exclusively on such profits.

Article 33
The right to claim for damages as specified in this CHAPTER shall be extinguished if not exercised within two years from the time when the claimant has knowledge of the act and the person liable for the damages, or within ten years from the commitment of such act.

Article 34
When an injured party institutes a lawsuit in accordance with this Law, he may request for publishing the contents of the judgment in newspapers at the infringing party’s expense.

CHAPTER SIX
PENALTIES

Article 35

Any violator of the provisions of Articles 10, 14, 20, or paragraph 1 of Article 23 shall be punished by imprisonment for not more than three (3) years, detention, or in lieu thereof or in addition thereto a fine of not more than one million New Taiwan Dollars (NT$1,000,000).

Article 36

Any violator of the provisions of Article 19 who continues his violation after having been ordered by the central competent authority to cease and desist shall be punished by imprisonment for not more than two (2) years, detention, or in lieu thereof or in addition thereto, a fine of not more than five hundred thousand New Taiwan Dollars (NT$500,000).

Article 37

In the event of any violation of Article 22, the person committing the acts shall be punished by imprisonment for not more than one (1) year, detention, or in lieu thereof or in addition thereto, a fine of not more than five hundred thousand New Taiwan Dollars (NT$500,000).

Article 38

In the event that the violator referred to in any of the three preceding Articles is a legal person, in addition to the punishment to be imposed upon the person committing the act, the said legal person shall also be subject to the fine specified in the
respective Article.

**Article 39**

Where more severe punishment is provided in other laws in respect of the offenses referred to in the four preceding Articles, the more severe punishment shall apply.

**Article 40**

Where an enterprise fails to apply for an authorization for entering into a combination or where it does apply for, but is not permitted to enter into a combination and nevertheless enters into such combination, the enterprise shall be punished, in addition to the disposition under the provisions of Article 13 hereof, by a fine of not more than one million (1,000,000) but not less than one hundred thousand (100,000) New Taiwan Dollars.

**Article 41**

Where an enterprise violates the provisions of this Law, the Fair Trade Commission may order the said enterprise to discontinue its act or set a time limit for it to take corrective action. In the event the enterprise fails to discontinue its act or to take corrective action within the given time limit after having been ordered to do so, the Fair Trade Commission may continue to give order and, in addition thereto, the said enterprise shall be punished successively by a fine of not exceeding one million New Taiwan Dollars (NT$1,000,000) until its violating act is discontinued or corrected.

**Article 42**

Violators of the governing regulations to be prescribed by the central competent authority under paragraph 2 of Article 23 shall be punished by a fine of not more than five hundred thousand (500,000) but not less than fifty thousand (50,000) New Taiwan Dollars. In case of a serious violation, an order may be issued to dissolve, suspend or close down the business operation of the violators.
Article 43

In the course of an investigation made by the Fair Trade Commission under the provisions of Article 27, if the party to be investigated refuses, without due cause, to accept the investigation, to appear at the hearing to make statements, or to submit relevant account books, documents or evidence within a given time limit, the said party shall be subject to a fine of not more than two hundred fifty thousand (250,000) but not less than twenty thousand (20,000) New Taiwan Dollars. If the said party, after having been notified, continues to refuse without due cause, the Fair Trade Commission may continue to issue notices of investigation and impose with respect to each successive refusal a fine of not more than five hundred thousand (500,000) but not less than fifty thousand (50,000) New Taiwan Dollars consecutively until its acceptance of the investigation, appearance to make statements, or submission of relevant account books, documents or evidence.

Article 44

Any failure to pay the fine imposed under the four preceding Articles shall cause the case to be referred to a court for compulsory execution.

CHAPTER SEVEN
SUPPLEMENTARY PROVISIONS

Article 45

The provisions of this Law shall not apply to the proper exercise of the right(s) under the Copyright Law, Trademark Law or Patent Law.

Article 46

The provisions of this Law shall not apply to any act performed by an enterprise in accordance with other laws.

The acts of a governmental enterprise, public utility or communications and transportation enterprise approved by the Executive Yuan shall not be subject to the
application of this Law until the elapse of five years after the promulgation of this Law.

**Article 47**

Unrecognized foreign legal persons or groups may file a complaint, private prosecution or civil action in respect of the matters specified in this Law provided, however, that nationals or groups of the Republic of China are entitled to the same privileges in their countries under treaties, laws and regulations or customary practices of such countries, or mutual protection agreement(s) entered into by and between groups or organizations with the approval of the central competent authority.

**Article 48**

The enforcement rules of this Law shall be adopted by the central competent authority.

**Article 49**

This Law shall come into force one year after promulgation.
Appendix II

THE FAIR TRADE LAW OF 1999

Promulgated on February 4, 1991, Effective on February 4, 1992;
Amendments Promulgated on February 3, 1999, Effective on February 5, 1999
(The 1999 Amendments amended Articles 10, 11, 16, 18, 19, 20, 21, 23, 35, 36, 37 and
40, 41, 42, 46, 49, and added Articles 23-1, 23-2, 23-3, and 23-4.)

CHAPTER ONE
GENERAL PRINCIPLES

Article 1

This Law is enacted for the purposes of maintaining trading order, protecting
consumers’ interests, ensuring fair competition, and promoting economic stability and
prosperity. Unless otherwise provided for in this Law the provisions of other relevant
laws shall apply.

Article 2

The term “enterprise” as used in this Law shall include,
1. a company,
2. a sole proprietorship or partnership,
3. a trade association, and
4. any other person or organization engaging in transactions through the
   provision of goods or services.

Article 3

The term “trading counterpart” as used in this Law means any supplier or
purchaser that engages in or concludes transactions with an enterprise.
Article 4

The term “competition” as used in this Law means any conduct of one enterprise to contest trading opportunities in the same market with one or more enterprises through offering more favorable price, quantity, quality, service or any other terms.

Article 5

The term “monopolistic enterprise” as used in this Law means any enterprise that faces no competition or has a dominant position to enable it to exclude competition in a relevant market.

Two or more enterprises shall be deemed monopolistic enterprises if they do not in fact, engage in price competition with each other and they as a whole has the same status as the enterprise defined in the provisions of the preceding paragraph.

The term “relevant market” as used in the first paragraph means a geographic area or a coverage wherein enterprises compete in respect of particular goods or services.

Article 6

The term “merger” as used in this Law means a situation:
1. where an enterprise and another enterprise are merged into one;
2. where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total capital of such other enterprise;
3. where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or properties of such other enterprise;
4. where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter’s business; or
5. where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.

In computing the shares or capital contributions referred to in subparagraph 2 of the preceding paragraph, the shares or capital contributions of another enterprise held or acquired by an enterprise(s) controlled by, controlling, or affiliated with the
acquiring enterprise under subparagraph 2 shall be included.

**Article 7**

The term “concerted action” as used in this Law means the conduct of any enterprise, by means of contract, agreement or any other form of mutual understanding, with any other competing enterprise, to jointly determine the price of goods or services, or to limit the terms of quantity, technology, products, facilities, trading counterparts, or trading territory with respect to such goods and services, etc., and thereby to restrict each other’s business activities.

**Article 8**

The term “multi-level sales” as used in this Law means the promotion or sales plan or organization pursuant to which the participants pay a certain consideration to obtain the right to promote or sell goods or services and the right to introduce other persons to participate in the plan or organization, thereby receiving a commission, bonus, or other economic benefit.

“To pay a certain consideration” as used in the preceding paragraph means the payment of money, the purchase of goods, the provision of services or the undertaking of an obligation.

**Article 9**

The term “competent authority” as used in this Law means the Fair Trade Commission, Executive Yuan, at the central government level; the Department of Reconstruction at the municipal level; and the county (or city) government at the county (or city) level.

For any matter provided for in this Law that concerns the authorities of any other ministry or commission, the Fair Trade Commission, Executive Yuan, may consult with such other ministry or commission to deal therewith.
CHAPTER TWO
MONOPOLIES, MERGERS AND CONCERTED ACTIONS

Article 10

No monopolistic enterprises shall:
1. directly or indirectly prevent any other enterprises from competing by unfair means;
2. improperly set, maintain or change the price for goods or the remuneration for services;
3. make a trading counterpart give preferential treatment without justification; or 
4. otherwise abuse its market power.

Article 11

For any merger that falls within any of the following circumstances, an application for approval shall be filed with the central competent authority:
1. as a result of the merger the enterprise(s) will have one third of the market share;
2. one of the enterprises in the merger has one fourth of the market share; or
3. sales for the preceding fiscal year of one of the enterprises in the merger exceeds the threshold amount publicly announced by the central competent authority.

The central competent authority shall make a decision of approval or rejection within two months from the receipt of an application filed in accordance with the preceding paragraph.

Article 12

The central competent authority may approve an application for merger filed pursuant to the preceding Article if the overall economic benefit of the merger outweighs the disadvantages resulting from competition restraint.
Article 13

Where any enterprise(s) fail to file an application for any merger that is required for approval, or proceed with the merger despite that the application is not approved, the central competent authority may prohibit such merger, prescribe a period for such enterprise(s) to split, to dispose of all or a part of the shares, to transfer a part of the operations, or to remove certain persons from positions, or make any other necessary dispositions.

For enterprise(s) violating the disposition made by the central competent authority pursuant to the preceding paragraph, the central competent authority may order the dissolution of such enterprise(s), or the suspension or termination of their operations.

Article 14

No enterprise shall have any concerted action, unless the concerted action that meets the requirements under one of the following circumstances is beneficial to the economy as a whole and in the public interest, and the central competent authority has approved such concerted action:

1. unifying the specifications or models of goods for the purpose of reducing costs, improving quality, or increasing efficiency;
2. joint research and development on goods or markets for the purpose of upgrading technology, improving quality, reducing costs, or increasing efficiency;
3. each developing a separate and specialized area for the purpose of rationalizing operations;
4. entering into agreements concerning solely the competition in foreign markets for the purpose of securing or promoting exports;
5. joint acts in regards to the importation of foreign goods for the purpose of strengthening trade;
6. joint acts limiting the quantity of production and sales, equipment, or prices for the purpose of meeting the demand orderly, while in economic downturn, the market price of products is lower than the average production costs so that
the enterprises in a particular industry have difficulty to maintain their business or encounter a situation of overproduction; or
7. joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small-medium enterprises.

**Article 15**

The central competent authority may impose conditions or restrictions or require undertakings in conjunction with an approval made pursuant to the provisions of the preceding article.

The approval shall specify a time limit not exceeding three years. The enterprises involved may, with justification, file a written application for an extension thereof with the central competent authority within three months prior to the expiration of such period; provided, however, that the term of each extension shall not exceed three years.

**Article 16**

After a concerted action is approved, the central competent authority may revoke the approval, alter the contents of the approval, or order the enterprises involved to cease from continuing the conduct or rectify its conduct, or to take necessary corrective actions if the cause for approval no longer exists, the economic condition changes, or the enterprises involved engage in any conduct beyond the scope of the approval.

**Article 17**

The central competent authority shall establish a specific registry to record the approvals, conditions, restrictions, undertakings, time limits, and relevant dispositions referred to in the preceding three articles and publish these matters in the government gazette.
CHAPTER THREE
UNFAIR COMPETITION

Article 18

Where an enterprise supplies goods to its trading counterpart for resale to a third
party or such third party makes further resale, the trading counterpart and the third
party shall be allowed to decide their resale prices freely; any agreement contrary to
this provision shall be void.

Article 19

No enterprise shall have any of the following acts which is likely to lessen
competition or to impede fair competition:

1. causing another enterprise to discontinue supply, purchase or other business
   transactions with a particular enterprise for the purpose of injuring such
   particular enterprise;
2. treating another enterprise discriminatorily without justification;
3. causing the trading counterpart(s) of its competitors to do business with itself
   by coercion, inducement with interest, or other improper means;
4. causing another enterprise to refrain from competing in price, or to take part
   in a merger or a concerted action by coercion, inducement with interest, or
   other improper means;
5. acquiring the secret of production and sales, information concerning trading
   counterparts or other technology-related secret of any other enterprise by
   coercion, inducement with interest, or other improper means; or
6. limiting its trading counterparts’ business activity improperly by means of the
   requirements of business engagement.

Article 20

No enterprise shall have any of the following acts with respect to the goods or
services it supplies:
1. using in the same or similar manner, the personal name, business or corporate name, or trademark of another, or container, packaging, or appearance of another’s goods, or any other symbol that represents such person’s goods, commonly known to relevant enterprises or consumers, so as to cause confusion with such person’s goods; or selling, transporting, exporting, or importing goods bearing such representation;

2. using in the same or similar manner, the personal name, business or corporate name, or service mark of another, or any other symbol that represents such person’s business or service, commonly known to relevant enterprises or consumers, so as to cause confusion with the facilities or activities of the business or service of such person; or

3. using on the same or similar goods the mark that is identical or similar to a well-known foreign trademark that has not been registered in this country; or selling, transporting, exporting, or importing goods bearing such trademark.

The preceding paragraph shall not apply to any one of the following:

1. using in an ordinary manner the generic name customarily associated with the goods or the representation customarily used in the trade of the same category of goods; or selling, transporting, exporting or importing goods bearing such name or representation;

2. using in an ordinary manner the name or representation that is customarily used in the trade of the same type of business or service;

3. using in good faith one’s own name, or selling, transporting, exporting or importing goods bearing such name; or

4. using, with good faith, in the same or similar manner the representation referred to in the first or second subparagraph of the preceding paragraph before such representation having become commonly known to the relevant enterprises or consumers, or using such representation by any successor that acquires such representation together with the business from a bone fide user; or selling, transporting, exporting or importing goods bearing such representation.

Where any enterprise has any of the acts set forth in the third and fourth
subparagraphs of the preceding paragraph which is likely to damage or cause confusion with the business, goods, facilities, or activities of another enterprise, the latter enterprise may request the former to add appropriate representation unless the former only transports such goods.

**Article 21**

No enterprise shall make or use false or misleading representations or symbols as to price, quantity, quality, content, production process, production date, valid period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, or place of processing on goods or in advertisements, or in any other way making known to the public.

No enterprise shall sell, transport, export or import goods bearing false or misleading representations referred to in the preceding paragraph.

The two preceding paragraphs shall apply *mutatis mutandis* to the services of an enterprise.

Where any advertising agency makes or designs any advertisement that it knows or is able to know is misleading, it shall be jointly and severally liable with the principal of such advertisement for damages arising therefrom. Where any advertising medium communicates or publishes any advertisement that it knows or is able to know is likely to mislead the public, it shall be jointly and severally liable with the principal of such advertisement for the damages arising therefrom.

**Article 22**

No enterprise shall, for the purpose of competition, make or disseminate any false statement that is able to damage the business reputation of another.

**Article 23**

No multi-level sale shall be conducted if the participants thereof receive commissions, bonuses, or other economic benefit mainly from introducing others to participate, rather than from the marketing or sale of the goods or services at reasonable market prices.
Article 23-1

Any participant in multi-level sales may rescind the participation agreement by giving the multi-level enterprise written notice within fourteen days after entering into such agreement.

Within a period of thirty days after rescission of the agreement takes effect, the multi-level sales enterprise shall accept the application from the participant for returning of goods, collect or accept goods returned by the participant, and return to the participant all the payment for goods made upon purchase and any other fees paid upon participation, accumulated until the time of rescission.

In returning the payments made by the participant according to the preceding paragraph, the multi-level sales enterprise may deduct, upon the time of returning of the goods, the value decreased due to the damage or loss attributable to the participant, and any bonus or remuneration already paid to the participant for purchase of such goods.

If the returned goods as referred to in the preceding paragraph are collected by the enterprise, the enterprise may deduct the shipping costs required for such collection.

Article 23-2

After the lapse of the period for entitlement to rescind the agreement as referred to in the first paragraph of the preceding article, the participant may still terminate the agreement by writing and withdraw itself from the multi-level sales.

Within thirty days from the termination of the agreement in accordance with the preceding paragraph, the multi-level sales enterprise shall buy back all goods possessed by the participant at ninety percent (90%) of the original purchase price; provided that it may be deducted the bonuses or remuneration paid to the participant for the purchase as well as the amount of the decreased value of the goods.

Article 23-3

When the participant exercises the right to rescind or terminate the agreement in accordance with the two preceding articles, the multi-level sales enterprise may not
claim damages or levy penalties against the participant for such rescission or
termination.

The provisions of the two preceding articles that relate to goods shall apply
mutatis mutandis to the supply of services.

**Article 23-4**

In addition to the provisions of this Law, regulations concerning any multi-level
sales enterprise’s filing for record, inspection of activities, notices to participants, and
the content of participation agreements as well as the protection of participants’
interests are to be promulgated by the central competent authority.

**Article 24**

In addition to what is provided for in this Law, no enterprise shall otherwise
have any deceptive or obviously unfair conduct that is able to affect trading order.

**CHAPTER FOUR**

**FAIR TRADE COMMISSION**

**Article 25**

In order to manage matters in respect of fair trade as set forth in this Law, the
Executive Yuan shall establish the Fair Trade Commission, which shall be in charge
of the following matters:

1. preparation and formulation of fair trade policy, laws and regulations;
2. review of any fair trade matters related to this Law;
3. investigation of activities of enterprises and economic conditions;
4. investigation and disposition of any case violating this Law; and
5. any other matters related to fair trade.

**Article 26**

The Fair Trade Commission may investigate and handle, upon complaints or ex
Appendix II

Article 27

In conducting investigations under this Law, the Fair Trade Commission may proceed in accordance with the following procedures:

1. to notify the parties and any related third party to appear to make statements;
2. to notify relevant agencies, organizations, enterprises, or individuals to submit books and records, documents, and any other necessary materials or exhibits, and
3. to dispatch personnel for any necessary on-site inspection of the office, place of business, or other locations of the relevant organizations or enterprises.

An investigator carrying out its duties under this Law shall present the documents supporting its duties; the person to be investigated may refuse the investigation where the investigator fails to present such documents.

Article 28

The Fair Trade Commission shall carry out its duties independently in accordance with the law and may dispose of the cases in respect of fair trade in the name of the Commission.

Article 29

There shall be a separate law enacted to govern the organizational structure of the Fair Trade Commission.

CHAPTER FIVE

COMPENSATION FOR DAMAGES

Article 30

If any enterprise violates any of the provisions of this Law and thereby infringes upon the rights and interests of another, the injured may demand the removal of such
infringement; if there is a likelihood of infringement, prevention may also be claimed.

**Article 31**

Any enterprise that violates any of the provisions of this Law and thereby infringes upon the rights and interests of another shall be liable for the damages arising therefrom.

**Article 32**

In response to the request of the person being injured as referred to in the preceding article, a court may, taking into consideration of the nature of the infringement, award damages more than actual damages if the violation is intentional; provided that no award shall exceed three times of the amount of damages that is proven.

Where the infringing person gains from its act of infringement, the injured may request to assess the damages exclusively based on the monetary gain to such infringing person.

**Article 33**

No claim for damages as prescribed in this Chapter shall be allowed unless the right is exercised within two years after the claimant knows the act and the person liable for the damages; nor shall the claim be allowed after lapse of ten years from the time of infringing conduct.

**Article 34**

In filing a suit with a court in accordance with this Law, the injured may request the content of the judgment to be published in a newspaper at the expense of the infringing party.
CHAPTER SIX
PUNISHMENT

Article 35

If any enterprise violating the provisions of Articles 10, 14, or paragraph 1 of Article 20 is ordered by the central competent authority pursuant to Article 41 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take any necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same or similar violation again, the actor shall be punished by imprisonment for not more than three years or detention, or by a fine of not more than one hundred million New Taiwan Dollars, or by both.

Any person violating any of the provisions of Article 23 shall be punished by imprisonment for not more than three years or detention, or by a fine of not more than one hundred million New Taiwan Dollars, or by both.

Article 36

If any enterprise violating the provisions of Article 19 is ordered by the central competent authority pursuant to Article 41 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same or similar violation again, the actor shall be punished by imprisonment for not more than two years or detention, or by a fine of not more than fifty million New Taiwan Dollars, or by both.

Article 37

Shall any enterprise violate the provisions of Article 22, the actor shall be punished by imprisonment for not more than two years or detention, or by a fine of not more than fifty million New Taiwan Dollars, or by both.
No action shall be brought against the violation referred to in the preceding paragraph unless there is a complaint filed.

**Article 38**

Shall any juristic person be convicted of the violation referred to in any of the three preceding articles, not only the actor shall be punished in accordance with the provisions of the three preceding articles, the juristic person shall also be fined as prescribed in each of the respective articles.

**Article 39**

Where other laws provide for more severe punishment than that prescribed in the preceding four articles, the provisions of such other laws shall apply.

**Article 40**

Where any enterprise(s) fail to file an application for any merger required for approval or proceed with such merger despite that the application is not approved, in addition to the disposition pursuant to the provisions of Article 13, an administrative penalty of not less than one hundred thousand nor more than fifty million New Taiwan Dollars shall be assessed upon such enterprise.

**Article 41**

The Fair Trade Commission may order any enterprise that violates any of the provisions of this Law to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars. Shall such enterprise fails to cease therefrom, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the Fair Trade Commission may continue to order such enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess
thereupon an administrative penalty of not less than one hundred thousand nor more than fifty million New Taiwan Dollars until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action.

**Article 42**

Any person violating the provisions of Article 23, in addition to being subject to the disposition pursuant to the provisions of Article 41, may be subject to an order for dissolution, suspension or termination of business operation if the violation is serious.

Any person violating any of the provisions of paragraph 2 of Article 23-1, paragraph 2 of Article 23-2, or Article 23-3, may be ordered to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order; in addition, an administrative penalty of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars may be assessed upon it. After the lapse of the prescribed period, shall it fail to cease therefrom, rectify its conduct or take any necessary corrective action within the time prescribed, it may be ordered continuously to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed, and in addition, an administrative penalty of not less than fifty thousand nor more than fifty million New Taiwan Dollars may be assessed successively thereupon each time until it ceases therefrom, rectifies its conduct, or takes necessary corrective action. Shall the violation be serious, an order for dissolution of the enterprise or suspension or termination of its operations may be made.

Any enterprise violating the regulations which is promulgated by the central competent authority pursuant to the provisions of Article 23-4 shall be subject to the disposition prescribed in Article 41.

**Article 43**

Shall any person subject to any investigation conducted by the Fair Trade Commission pursuant to the provisions of Article 27 refuse the investigation without justification, or refuse to appear to respond or to render relevant materials such as books and records, documents, or exhibits by the set time limit, an administrative
penalty of not less than twenty thousand nor more than two hundred fifty thousand New Taiwan Dollars shall be assessed upon that. Shall such person continue to refuse without justification upon another notice, the Fair Trade Commission may continue to issue notices of investigations, and may assess successively thereupon an administrative penalty of not less than fifty thousand nor more than five hundred thousand New Taiwan Dollars each time until it accepts the investigation, appears to respond, or renders relevant materials like books and records, documents, or exhibits.

**Article 44**

Shall any person upon which an administrative penalty is assessed pursuant to the preceding four articles refuse to pay such penalty, the matter shall be referred to the court for compulsory execution.

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**CHAPTER SEVEN**

**SUPPLEMENTARY PROVISIONS**

**Article 45**

No provision of this Law shall apply to any proper conduct in connection with the exercise of rights pursuant to the provisions of the Copyright Law, Trademark Law, or Patent Law.

**Article 46**

Where there is any other law governing the conducts of enterprises in respect of competition, such other law shall govern, provided that it does not conflict with the legislative purposes of this Law.

**Article 47**

Any unrecognized foreign juristic person or organization may file a complaint for public prosecution, private prosecution, or civil action pursuant to the provisions of this Law; provided, however that any national or organization of the Republic of
China in the country of such foreign juristic person or organization must be entitled to the right of the kind in accordance with any treaty, or any law, regulation, or custom of such country; or through any agreement entered into by any organization(s) or institution(s) and approved by the central competent authority, for mutual protection.

**Article 48**

The implementing rules of this Law shall be made and promulgated by the central competent authority.

**Article 49**

This Law shall take effect one year from promulgation.

Amendments to this Law shall take effect from the date of promulgation.
Appendix III

THE FAIR TRADE LAW OF 2000

Promulgated on February 4, 1991, Effective on February 4, 1992;
Amendments Promulgated on February 3, 1999, Effective on February 5, 1999
(The 1999 Amendments amended Articles 10, 11, 16, 18, 19, 20, 21, 23, 35, 36, 37 and 40, 41, 42, 46, 49, and added Articles 23-1, 23-2, 23-3, and 23-4.);
Amendment of Article 9 Promulgated on April 26, 2000

CHAPTER ONE
GENERAL PRINCIPLES

Article 1

This Law is enacted for the purposes of maintaining trading order, protecting consumers’ interests, ensuring fair competition, and promoting economic stability and prosperity. Unless otherwise provided for in this Law the provisions of other relevant laws shall apply.

Article 2

The term “enterprise” as used in this Law shall include,
1. a company,
2. a sole proprietorship or partnership,
3. a trade association, and
4. any other person or organization engaging in transactions through the provision of goods or services.

Article 3

The term “trading counterpart” as used in this Law means any supplier or purchaser that engages in or concludes transactions with an enterprise.
Article 4

The term “competition” as used in this Law means any conduct of one enterprise to contest trading opportunities in the same market with one or more enterprises through offering more favorable price, quantity, quality, service or any other terms.

Article 5

The term “monopolistic enterprise” as used in this Law means any enterprise that faces no competition or has a dominant position to enable it to exclude competition in a relevant market.

Two or more enterprises shall be deemed monopolistic enterprises if they do not, in fact, engage in price competition with each other and they as a whole has the same status as the enterprise defined in the provisions of the preceding paragraph.

The term “relevant market” as used in the first paragraph means a geographic area or a coverage wherein enterprises compete in respect of particular goods or services.

Article 6

The term “merger” as used in this Law means a situation:

1. where an enterprise and another enterprise are merged into one;
2. where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total capital of such other enterprise;
3. where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or properties of such other enterprise;
4. where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter’s business; or
5. where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.

In computing the shares or capital contributions referred to in subparagraph 2 of the preceding paragraph, the shares or capital contributions of another enterprise held or acquired by an enterprise(s) controlled by, controlling, or affiliated with the acquiring enterprise under subparagraph 2 shall be included.
Article 7

The term “concerted action” as used in this Law means the conduct of any enterprise, by means of contract, agreement or any other form of mutual understanding, with any other competing enterprise, to jointly determine the price of goods or services, or to limit the terms of quantity, technology, products, facilities, trading counterparts, or trading territory with respect to such goods and services, etc., and thereby to restrict each other’s business activities.

Article 8

The term “multi-level sales” as used in this Law means the promotion or sales plan or organization pursuant to which the participants pay a certain consideration to obtain the right to promote or sell goods or services and the right to introduce other persons to participate in the plan or organization, thereby receiving a commission, bonus, or other economic benefit.

“To pay a certain consideration” as used in the preceding paragraph means the payment of money, the purchase of goods, the provision of services or the undertaking of an obligation.

Article 9

The term “competent authority” as used in this Law means the Fair Trade Commission, Executive Yuan, at the central government level; the metropolitan government at the metropolitan level; and the county (or city) government at the county (or city) level.

For any matter provided for in this Law that concerns the authorities of any other ministry or commission, the Fair Trade Commission, Executive Yuan, may consult with such other ministry or commission to deal therewith.
CHAPTER TWO
MONOPOLIES, MERGERS AND CONCERTED ACTIONS

Article 10

No monopolistic enterprises shall:
1. directly or indirectly prevent any other enterprises from competing by unfair means;
2. improperly set, maintain or change the price for goods or the remuneration for services;
3. make a trading counterpart give preferential treatment without justification; or
4. otherwise abuse its market power.

Article 11

For any merger that falls within any of the following circumstances, an application for approval shall be filed with the central competent authority:
1. as a result of the merger the enterprise(s) will have one third of the market share;
2. one of the enterprises in the merger has one fourth of the market share; or
3. sales for the preceding fiscal year of one of the enterprises in the merger exceeds the threshold amount publicly announced by the central competent authority.

The central competent authority shall make a decision of approval or rejection within two months from the receipt of an application filed in accordance with the preceding paragraph.

Article 12

The central competent authority may approve an application for merger filed pursuant to the preceding article if the overall economic benefit of the merger outweighs the disadvantages resulting from competition restraint.
Article 13

Where any enterprise fails to file an application for any merger that is required for approval, or proceeds with the merger despite that the application is not approved, the central competent authority may prohibit such merger, prescribe a period for such enterprise(s) to split, to dispose of all or a part of the shares, to transfer a part of the operations, or to remove certain persons from positions, or make any other necessary dispositions.

For enterprise(s) violating the disposition made by the central competent authority pursuant to the preceding paragraph, the central competent authority may order the dissolution of such enterprise(s), or the suspension or termination of their operations.

Article 14

No enterprise shall have any concerted action; unless the concerted action that meets the requirements under one of the following circumstances is beneficial to the economy as a whole and in the public interest, and the central competent authority has approved such concerted action:

1. unifying the specifications or models of goods for the purpose of reducing costs, improving quality, or increasing efficiency;
2. joint research and development on goods or markets for the purpose of upgrading technology, improving quality, reducing costs, or increasing efficiency;
3. each developing a separate and specialized area for the purpose of rationalizing operations;
4. entering into agreements concerning solely the competition in foreign markets for the purpose of securing or promoting exports;
5. joint acts in regards to the importation of foreign goods for the purpose of strengthening trade;
6. joint acts limiting the quantity of production and sales, equipment, or prices for the purpose of meeting the demand orderly, while in economic downturn, the market price of products is lower than the average production costs so that
the enterprises in a particular industry have difficulty to maintain their business or encounter a situation of overproduction; or
7. joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small-medium enterprises.

**Article 15**

The central competent authority may impose conditions or restrictions or require undertakings in conjunction with an approval made pursuant to the provisions of the preceding article.

The approval shall specify a time limit not exceeding three years. The enterprises involved may, with justification, file a written application for an extension thereof with the central competent authority within three months prior to the expiration of such period; provided, however, that the term of each extension shall not exceed three years.

**Article 16**

After a concerted action is approved, the central competent authority may revoke the approval, alter the contents of the approval, or order the enterprises involved to cease from continuing the conduct or rectify its conduct, or to take necessary corrective actions if the cause for approval no longer exists, the economic condition changes, or the enterprises involved engage in any conduct beyond the scope of the approval.

**Article 17**

The central competent authority shall establish a specific registry to record the approvals, conditions, restrictions, undertakings, time limits, and relevant dispositions referred to in the preceding three articles and publish these matters in the government gazette.
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Article 18

Where an enterprise supplies goods to its trading counterpart for resale to a third party or such third party makes further resale, the trading counterpart and the third party shall be allowed to decide their resale prices freely; any agreement contrary to this provision shall be void.

Article 19

No enterprise shall have any of the following acts which is likely to lessen competition or to impede fair competition:

1. causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise for the purpose of injuring such particular enterprise;
2. treating another enterprise discriminatively without justification;
3. causing the trading counterpart(s) of its competitors to do business with itself by coercion, inducement with interest, or other improper means;
4. causing another enterprise to refrain from competing in price, or to take part in a merger or a concerted action by coercion, inducement with interest, or other improper means;
5. acquiring the secret of production and sales, information concerning trading counterparts or other technology related secret of any other enterprise by coercion, inducement with interest, or other improper means; or
6. limiting its trading counterparts’ business activity improperly by means of the requirements of business engagement.

Article 20

No enterprise shall have any of the following acts with respect to the goods or services it supplies:
1. using in the same or similar manner, the personal name, business or corporate name, or trademark of another, or container, packaging, or appearance of another’s goods, or any other symbol that represents such person’s goods, commonly known to relevant enterprises or consumers, so as to cause confusion with such person’s goods; or selling, transporting, exporting, or importing goods bearing such representation;

2. using in the same or similar manner, the personal name, business or corporate name, or service mark of another, or any other symbol that represents such person’s business or service, commonly known to relevant enterprises or consumers, so as to cause confusion with the facilities or activities of the business or service of such person; or

3. using on the same or similar goods the mark that is identical or similar to a well-known foreign trademark that has not been registered in this country; or selling, transporting, exporting, or importing goods bearing such trademark.

The preceding paragraph shall not apply to any one of the following:

1. using in an ordinary manner the generic name customarily associated with the goods or the representation customarily used in the trade of the same category of goods; or selling, transporting, exporting or importing goods bearing such name or representation;

2. using in an ordinary manner the name or representation that is customarily used in the trade of the same type of business or service;

3. using in good faith one’s own name, or selling, transporting, exporting or importing goods bearing such name; or

4. using, with good faith, in the same or similar manner the representation referred to in the first or second subparagraph of the preceding paragraph before such representation having become commonly known to the relevant enterprises or consumers, or using such representation by any successor that acquires such representation together with the business from a bone fide user; or selling, transporting, exporting or importing goods bearing such representation.

Where any enterprise has any of the acts set forth in the third and fourth
subparagraphs of the preceding paragraph which is likely to damage or cause confusion with the business, goods, facilities, or activities of another enterprise, the latter enterprise may request the former to add appropriate representation unless the former only transports such goods.

**Article 21**

No enterprise shall make or use false or misleading representations or symbol as to price, quantity, quality, content, production process, production date, valid period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, or place of processing on goods or in advertisements, or in any other way making them known to the public.

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The two preceding paragraphs shall apply *mutatis mutandis* to the services of an enterprise.

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Within a period of thirty days after rescission of the agreement takes effect, the multi-level sales enterprise shall accept the application from the participant for returning of goods, collect or accept goods returned by the participant, and return to the participant all the payment for goods made upon purchase and any other fees paid upon participation, accumulated until the time of rescission.

In returning the payments made by the participant according to the preceding paragraph, the multi-level sales enterprise may deduct upon the time of returning of the goods the value decreased due to the damage or loss attributable to the participant, and any bonus or remuneration already paid to the participant for purchase of such goods.

If the returned goods as referred to in the preceding paragraph are collected by the enterprise, the enterprise may deduct the shipping costs required for such collection.

Article 23-2

After the lapse of the period for entitlement to rescind the agreement as referred to in the first paragraph of the preceding article, the participant may still terminate the agreement by writing and withdraw itself from the multi-level sales.

Within thirty days from the termination of the agreement in accordance with the preceding paragraph, the multi-level sales enterprise shall buy back all goods possessed by the participant at ninety percent (90%) of the original purchase price; provided that it may be deducted the bonuses or remuneration paid to the participant for the purchase as well as the amount of the decreased value of the goods.

Article 23-3

When the participant exercises the right to rescind or terminate the agreement in accordance with the two preceding articles, the multi-level sales enterprise may not
claim damages or levy penalties against the participant for such rescission or termination.

The provisions of the two preceding articles that relate to goods shall apply _mutatis mutandis_ to the supply of services.

**Article 23-4**

In addition to the provisions of this Law, regulations concerning any multi-level sales enterprise’ filing for record, inspection of activities, notices to participants, and the content of participation agreements as well as the protection of participants’ interest are to be promulgated by the central competent authority.

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In addition to what is provided for in this Law, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order.

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2. review of any fair trade matters related to this Law;
3. investigation of activities of enterprises and economic conditions;
4. investigation and disposition of any case violating this Law; and
5. any other matters related to fair trade.

**Article 26**

The Fair Trade Commission may investigate and handle, upon complaints or ex officio, any violation of the provisions of this Law that harms the public interest.
Article 27

In conducting investigations under this Law, the Fair Trade Commission may proceed in accordance with the following procedures:

1. to notify the parties and any related third party to appear to make statements;
2. to notify relevant agencies, organizations, enterprises, or individuals to submit books and records, documents, and any other necessary materials or exhibits, and
3. to dispatch personnel for any necessary on-site inspection of the office, place of business, or other locations of the relevant organization or enterprises.

An investigator carrying out its duties under this Law shall present the documents supporting its duties; the person to be investigated may refuse the investigation where the investigator fails to present such documents.

Article 28

The Fair Trade Commission shall carry out its duties independently in accordance with the law and may dispose of the cases in respect of fair trade in the name of the Commission.

Article 29

There shall be a separate law enacted to govern the organizational structure of the Fair Trade Commission.

CHAPTER FIVE
COMPENSATION FOR DAMAGES

Article 30

If any enterprise violates any of the provisions of this Law and thereby infringes upon the rights and interests of another, the injured may demand the removal of such infringement; if there is a likelihood of infringement, prevention may also be claimed.
Article 31

Any enterprise that violates any of the provisions of this Law and thereby infringes upon the rights and interests of another shall be liable for the damages arising therefrom.

Article 32

In response to the request of the injured person being injured as referred to in the preceding article, a court may, taking into consideration of the nature of the infringement, award damages more than actual damages if the violation is intentional; provided that no award shall exceed three times of the amount of damages that is proven.

Where the infringing person gains from his/her act of infringement, the injured may request to assess the damages exclusively, based on the monetary gain to such infringing person.

Article 33

No claim for damages as prescribed in this Chapter shall be allowed unless the right is exercised within two years after the claimant knows the act and the person liable for the damages; nor shall the claim be allowed after lapse of ten years from the time of the infringing conduct.

Article 34

In filing a suit with a court in accordance with this Law, the injured may request the content of the judgment to be published in a newspaper at the expense of the infringing party.
Article 20 is ordered by the central competent authority pursuant to Article 41 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take any necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same or similar violation again, the actor shall be punished by imprisonment for not more than three years or detention, or by a fine of not more than one hundred million New Taiwan Dollars, or by both.

Any person violating any of the provisions of Article 23 shall be punished by imprisonment for not more than three years or detention, or by a fine of not more than one hundred million New Taiwan Dollars, or by both.

**Article 36**

If any enterprise violating the provisions of Article 19 is ordered by the central competent authority pursuant to Article 41 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same or similar violation again, the actor shall be punished by imprisonment for not more than two years or detention, or by a fine of not more than fifty million New Taiwan Dollars, or by both.

**Article 37**

Shall any enterprise violate the provisions of Article 22, the actor shall be punished by imprisonment for not more than two years or detention, or by a fine of not more than fifty million New Taiwan Dollars, or by both.

No action shall be brought against the violation referred to in the preceding paragraph unless there is a complaint filed.

**Article 38**

Shall any juristic person be convicted of the violation referred to in any of the
three preceding articles, not only the actor shall be punished in accordance with the provisions of the three preceding articles, the juristic person shall also be fined as prescribed in each of the respective articles.

**Article 39**

Where other laws provide for more severe punishment than that prescribed in the preceding four articles, the provisions of such other laws shall apply.

**Article 40**

Where any enterprise fail to file an application for any merger required for approval or proceed with such merger despite that the application is not approved, in addition to the disposition pursuant to the provisions of Article 13, an administrative penalty of not less than one hundred thousand nor more than fifty million New Taiwan Dollars shall be assessed upon such enterprise.

**Article 41**

The Fair Trade Commission may order any enterprise that violates any of the provisions of this Law to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars. Shall such enterprise fail to cease therefrom, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the Fair Trade Commission may continue to order such enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative penalty of not less than one hundred thousand nor more than fifty million New Taiwan Dollars until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action.

**Article 42**

Any person violating the provisions of Article 23, in addition to being subject to
the disposition pursuant to the provisions of Article 41, may be subject to an order for
dissolution, suspension or termination of business operation if the violation is serious.
Any person violating any of the provisions of paragraph 2 of Article 23-1, paragraph 2 of Article 23-2, or Article 23-3, may be ordered to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order; in addition, an administrative penalty of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars may be assessed upon it. After the lapse of the prescribed period, shall it fail to cease therefrom, rectify its conduct or take any necessary corrective action within the time prescribed, it may be ordered continuously to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed, and in addition, an administrative penalty of not less than fifty thousand nor more than fifty million New Taiwan Dollars may be assessed successively thereupon each time until it ceases therefrom, rectifies its conduct, or takes necessary corrective action. Shall the violation be serious, an order for dissolution of the enterprise or suspension or termination of its operations may be made.

Any enterprise violating the regulations which is promulgated by the central competent authority pursuant to the provisions of Article 23-4 shall be subject to the disposition prescribed in Article 41.

**Article 43**

Shall any person subject to any investigation conducted by the Fair Trade Commission pursuant to the provisions of Article 27 refuse the investigation without justification, or refuse to appear to respond or to render relevant materials such as books and records, documents, or exhibits by the set time limit, an administrative penalty of not less than twenty thousand nor more than two hundred fifty thousand New Taiwan Dollars shall be assessed upon it. Shall such person continue to refuse without justification upon another notice, the Fair Trade Commission may continue to issue notices of investigations, and may assess successively thereupon an administrative penalty of not less than fifty thousand nor more than five hundred thousand New Taiwan Dollars each time until it accepts the investigation, appears to
respond, or renders relevant materials like books and records, documents, or exhibits.

**Article 44**

Shall any person upon which an administrative penalty is assessed pursuant to the preceding four articles refuse to pay such penalty, the matter shall be referred to the court for compulsory execution.

**CHAPTER SEVEN**

**SUPPLEMENTARY PROVISIONS**

**Article 45**

No provision of this Law shall apply to any proper conduct in connection with the exercise of rights pursuant to the provisions of the Copyright Law, Trademark Law, or Patent Law.

**Article 46**

Where there is any other law governing the conducts of enterprises in respect of competition, such other law shall govern; provided that it does not conflict with the legislative purposes of this Law.

**Article 47**

Any unrecognized foreign juristic person or organization may file a complaint for public prosecution, private prosecution, or civil action pursuant to the provisions of this Law; provided, however that any national or organization of the Republic of China in the country of such foreign juristic person or organization must be entitled to the right of the kind in accordance with any treaty, or any law, regulation, or custom of such country; or through any agreement entered into by any organization(s) or institution(s) and approved by the central competent authority, for mutual protection.
**Article 48**

The implementing rules of this Law shall be made and promulgated by the central competent authority.

**Article 49**

This Law shall take effect one year from promulgation.

Amendments to this Law shall take effect from the date of promulgation.
Appendix IV

THE FAIR TRADE LAW OF 2002

Promulgated on February 4, 1991, Effective on February 4, 1992;
Amendments Promulgated on February 3, 1999, Effective on February 5, 1999;
(The 1999 Amendments amended Articles 10, 11, 16, 18, 19, 20, 21, 23, 35, 36,
37, 40, 41, 42, 46 and 49, and added Articles 23-1, 23-2, 23-3 and 23-4.)
Amendment of Article 9 Promulgated on April 26, 2000;
Amendment Promulgated on February 6, 2002.
(The 2002 Amendments amended Articles 7, 8, 11 12, 13, 14, 15, 16, 17, 23-4
and 40 and added Articles 5-1, 11-1, 27-1 and 42-1.)

CHAPTER ONE
GENERAL PRINCIPLES

Article 1

This Law is enacted for the purposes of maintaining trading order, protecting
consumers’ interests, ensuring fair competition, and promoting economic stability and
prosperity. Unless otherwise provided for in this Law the provisions of other relevant
laws shall apply.

Article 2

The term “enterprise” as used in this Law shall include:
1. a company,
2. a sole proprietorship or partnership,
3. a trade association, and
4. any other person or organization engaging in transactions through the
   provision of goods or services.
Article 3

The term “trading counterpart” as used in this Law means any supplier or purchaser that engages in or concludes transactions with an enterprise.

Article 4

The term “competition” as used in this Law means any conduct of one enterprise to contest trading opportunities in the same market with one or more enterprises through offering more favorable price, quantity, quality, service or any other terms.

Article 5

The term “monopolistic enterprise” as used in this Law means any enterprise that faces no competition or has a dominant position to enable it to exclude competition in a relevant market.

Two or more enterprises shall be deemed monopolistic enterprises if they do not in fact engage in price competition with each other and they as a whole have the same status as the enterprise defined in the provisions of the preceding paragraph.

The term “relevant market” as used in the first paragraph means a geographic area or a coverage wherein enterprises compete in respect of particular goods or services.

Article 5-1

An enterprise shall not be deemed a monopolistic enterprise as defined in the preceding article if none of the following circumstances exists:

1. the market share of the enterprise in a relevant market reaches one-half of the market;
2. the combined market share of two enterprises in a relevant market reaches two-thirds of the market; and
3. the combined market share of three enterprises in a relevant market reaches three-fourths of the market.

Under any of the circumstances set forth in the preceding paragraph, where the
market share of any individual enterprise does not reach one-tenth of the relevant market or where its total sales in the preceding fiscal year are less than one billion New Taiwan Dollars, such enterprise shall not be deemed as a monopolistic enterprise.

An enterprise exempt from being deemed as a monopolistic enterprise by any of the preceding two paragraphs may still be deemed a monopolistic enterprise by the Central Competent Authority if the establishment of such enterprise or any of the goods or services supplied by such enterprise to a relevant market is subject to legal or technological restraints, or there exists any other circumstance under which the supply and demand of the market are affected and the ability of others to compete is impeded.

**Article 6**

The term “merger” as used in this Law means a situation:

1. where an enterprise and another enterprise are merged into one;
2. where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total capital of such other enterprise;
3. where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or properties of such other enterprise;
4. where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter’s business; or
5. where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.

In computing the shares or capital contributions referred to in subparagraph 2 of the preceding paragraph, the shares or capital contributions of another enterprise held or acquired by an enterprise(s) controlled by, controlling, or affiliated with the acquiring enterprise under subparagraph 2 shall be included.

**Article 7**

The term “concerted action” as used in this Law means the conduct of any
enterprise, by means of contract, agreement or any other form of mutual understanding, with any other competing enterprise, to jointly determine the price of goods or services, or to limit the terms of quantity, technology, products, facilities, trading counterparts, or trading territory with respect to such goods and services, etc., and thereby to restrict each other’s business activities.

The term “concerted action” as used in the preceding paragraph is limited to horizontal concerted action at the same production and/or marketing stage which would affect the market function of production, trade in goods, or supply and demand of services.

The term “any other form of mutual understanding” as used in Paragraph 1 means other than contract or agreement, a meeting of minds whether legally binding or not which would in effect lead to joint actions.

By means of its charter, a resolution of a general meeting of members or a board meeting of directors or supervisors, or any other means, to restrict activities of enterprises is also deemed as horizontal concerted action as used in Paragraph 2.

**Article 8**

The term “multi-level sales” as used in this Law means the promotion or sales plan or organization pursuant to which the participants pay a certain consideration to obtain the right to promote or sell goods or services and the right to introduce other persons to participate in the plan or organization, thereby receiving a commission, bonus, or other economic benefit.

“To pay a certain consideration” as used in the preceding paragraph means the payment of money, the purchase of goods, the provision of services, or the undertaking of an obligation.

The term “multi-level sales enterprise” as used in this Law means an enterprise that adopts a multi-level sales operations plan or organization and conducts overall planning of multi-level sales activity.

A participant of a foreign enterprise or a third party that introduces the multi-level sales plans or organizations of such enterprise shall be deemed a “multi-level sales enterprise” as referred to in the preceding paragraph.
The term “participant” as used in this Law means the following:
1. a person who takes part in the organization or plans of a multi-level sales enterprise and promotes or sells goods or services, and may introduce other persons to participate;
2. a person who, by agreement with a multi-level sales enterprise, obtains the right to promote or sell goods or services and introduce other persons to participate only after cumulatively paying a certain amount of consideration.

Article 9

The term “competent authority” as used in this Law means the Fair Trade Commission, Executive Yuan, at the central government level; the metropolitan government at the metropolitan level; and the county (or city) government at the county (or city) level.

For any matter provided for in this Law that concerns the authorities of any other ministries or commissions, the Fair Trade Commission, Executive Yuan may consult with such other ministries or commissions to deal therewith.

CHAPTER TWO
MONOPOLIES, MERGERS AND CONCERTED ACTIONS

Article 10

No monopolistic enterprises shall:
1. directly or indirectly prevent any other enterprises from competing by unfair means;
2. improperly set, maintain or change the price for goods or the remuneration for services;
3. make a trading counterpart give preferential treatment without justification; or
4. otherwise abuse its market power.

Article 11
Any merger that falls within any of the following circumstances shall be filed with the central competent authority in advance:

1. as a result of the merger the enterprise(s) will have one third of the market share;
2. one of the enterprises in the merger has one fourth of the market share; or
3. sales for the preceding fiscal year of one of the enterprises in the merger exceeds the threshold amount publicly announced by the central competent authority.

The threshold amount of the sales referred to in Subparagraph 3 of the preceding paragraph may be announced separately for financial enterprises and non-financial enterprises by the Central Competent Authority.

Enterprises shall not proceed to merge within a period of 30 days from the date the Central Competent Authority accepts the complete filing materials, provided that the Central Competent Authority may shorten or extend the period as it deems necessary and notifies the filing enterprise of such change in writing.

Where the Central Competent Authority extends the period in accordance with the proviso of the preceding paragraph, such extension may not exceed 30 days; for cases of extension, decisions on the filing shall be made in accordance with the provisions of Article 12.

Where the Central Competent Authority fails to notify of the extension as referred to in the proviso of Paragraph 3 or makes any decision as referred to in the preceding paragraph when the period is going to expire, the enterprises may proceed to merge provided that the merger may not proceed under any of the following circumstances:

1. where the filing enterprises consent to a further extension of the period.
2. where the filing contains any false or misleading item.

**Article 11-1**

The provisions of Paragraph 1 of the preceding Article shall not apply to any of the following circumstances:
1. where any of the enterprises participating in a merger already holds no less than 50% of the voting shares or capital contribution of another enterprise in the merger and merges such other enterprise.

2. where enterprises of which 50% or more of the voting shares or capital contribution are held by the same enterprise merge.

3. where an enterprise assigns all or a principal part of its business or assets, or all or part of any part of its business that could be separately operated, to another enterprise newly established by the former enterprise solely.

4. where an enterprise, pursuant to the proviso of Article 167, Paragraph 1 of the Company Law or Article 28-2 of the Securities and Exchange Law, redeems its shares held by shareholders so that its original shareholders’ shareholding falls within the circumstances provided for in Article 6, Paragraph 1, Subparagraph 2 herein.

Article 12

The Central Competent Authority may not prohibit any of the mergers filed if the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint.

The Central Competent Authority may attach conditions or require undertakings in any of the decisions it makes on the filing cases referred to in Article 11, Paragraph 4 herein in order to ensure that the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint.

Article 13

Where any enterprise(s) proceeds with a merger in violation of Paragraph 1 or 3 of Article 11 herein, or proceeds with a merger despite that the Central Competent Authority decides upon the filing to prohibit such merger, or fails to perform the undertakings required as pursuant to Paragraph 2 of the preceding Article, the Central Competent Authority may prohibit such merger, prescribe a period for such enterprise(s) to split, to dispose of all or a part of the shares, to transfer a part of the operations, or to remove certain persons from positions, or make any other necessary
dispositions.

For enterprise(s) violating the disposition made by the central competent authority pursuant to the preceding paragraph, the central competent authority may order the dissolution of such enterprise(s), or the suspension or termination of their operations.

**Article 14**

No enterprise shall have any concerted action; unless the concerted action that meets one of the following requirements is beneficial to the economy as a whole and in the public interest, and the application with the central competent authority for such concerted action has been approved:

1. unifying the specifications or models of goods for the purpose of reducing costs, improving quality, or increasing efficiency;
2. joint research and development on goods or markets for the purpose of upgrading technology, improving quality, reducing costs, or increasing efficiency;
3. each developing a separate and specialized area for the purpose of rationalizing operations;
4. entering into agreements concerning solely the competition in foreign markets for the purpose of securing or promoting exports;
5. joint acts in regards to the importation of foreign goods for the purpose of strengthening trade;
6. joint acts limiting the quantity of production and sales, equipment, or prices for the purpose of meeting the demand orderly, while in economic downturn, the market price of products is lower than the average production costs so that the enterprises in a particular industry have difficulty to maintain their business or encounter a situation of overproduction; or
7. joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small-medium enterprises.

After receipt of the application referred to in the preceding Article, the Central Competent Authority shall make a decision of approval or rejection within three
months, the period of which may be extended once if necessary.

Article 15

The central competent authority may attach conditions or require undertakings in the approval it grants pursuant to the provisions of the preceding article.

The approval shall specify a time limit not exceeding three years. The enterprises involved may, with justification, file a written application for an extension thereof with the Central Competent Authority within three months prior to the expiration of such period; provided, however, that the term of each extension shall not exceed three years.

Article 16

After a concerted action is approved, the Central Competent Authority may revoke the approval, alter the contents of the approval, or order the enterprises involved to cease from continuing the conduct or rectify its conduct, or to take necessary corrective actions if the cause for approval no longer exists, the economic condition changes, or the enterprises involved engage in any conduct beyond the scope of approval.

Article 17

The Central Competent Authority shall establish a specific registry to record the approvals, conditions, undertakings, time limits, and relevant dispositions referred to in the preceding three articles and publish these matters in the government gazette.

CHAPTER THREE
UNFAIR COMPETITION

Article 18

Where an enterprise supplies goods to its trading counterpart for resale to a third party or such third party makes further resale, the trading counterpart and the third
party shall be allowed to decide their resale prices freely; any agreement contrary to this provision shall be void.

Article 19

No enterprise shall have any of the following acts which is likely to lessen competition or to impede fair competition:

1. causing another enterprise to discontinue supply, purchase or other business transactions with a particular enterprise for the purpose of injuring such particular enterprise;
2. treating another enterprise discriminatively without justification;
3. causing the trading counterpart(s) of its competitors to do business with itself by coercion, inducement with interest, or other improper means;
4. causing another enterprise to refrain from competing in price, or to take part in a merger or a concerted action by coercion, inducement with interest, or other improper means;
5. acquiring the secret of production and sales, information concerning trading counterparts or other technology related secret of any other enterprise by coercion, inducement with interest, or other improper means; or
6. limiting its trading counterparts’ business activity improperly by means of the requirements of business engagement.

Article 20

No enterprise shall have any of the following acts with respect to the goods or services it supplies:

1. using in the same or similar manner, the personal name, business or corporate name, or trademark of another, or container, packaging, or appearance of another’s goods, or any other symbol that represents such person’s goods, commonly known to relevant enterprises or consumers, so as to cause confusion with such person’s goods; or selling, transporting, exporting, or importing goods bearing such representation;
2. using in the same or similar manner, the personal name, business or corporate name, or service mark of another, or any other symbol that represents such person’s business or service, commonly known to relevant enterprises or consumers, so as to cause confusion with the facilities or activities of the business or service of such person; or
3. using on the same or similar goods the mark that is identical or similar to a well-known foreign trademark that has not been registered in this country; or selling, transporting, exporting, or importing goods bearing such trademark.

The preceding paragraph shall not apply to any one of the following:

1. using in an ordinary manner the generic name customarily associated with the goods or the representation customarily used in the trade of the same category of goods; or selling, transporting, exporting or importing goods bearing such name or representation;
2. using in an ordinary manner the name or representation that is customarily used in the trade of the same type of business or service;
3. using in good faith one’s own name, or selling, transporting, exporting or importing goods bearing such name; or
4. using, with good faith, in the same or similar manner the representation referred to in the first or second subparagraph of the preceding paragraph before such representation having become commonly known to the relevant enterprises or consumers, or using such representation by any successor that acquires such representation together with the business from a bona fide user; or selling, transporting, exporting or importing goods bearing such representation.

Where any enterprise has any of the acts set forth in the third and fourth subparagraphs of the preceding paragraph which is likely to damage or cause confusion with the business, goods, facilities, or activities of another enterprise, the latter enterprise may request the former to add appropriate representation unless the former only transports such goods.
Article 21

No enterprise shall make or use false or misleading representations or symbol as to price, quantity, quality, content, production process, production date, valid period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, or place of processing on goods or in advertisements, or in any other way making known to the public.

No enterprise shall sell, transport, export or import goods bearing false or misleading representations referred to in the preceding paragraph.

The two preceding paragraphs shall apply *mutatis mutandis* to the services of an enterprise.

Where any advertising agency makes or designs any advertisement that it knows or is able to know is misleading, it shall be jointly and severally liable with the principal of such advertisement for damages arising therefrom. Where any advertising medium communicates or publishes any advertisement that it knows or is able to know is likely to mislead the public, it shall be jointly and severally liable with the principal of such advertisement for the damages arising therefrom.

Article 22

No enterprise shall, for the purpose of competition, make or disseminate any false statement that is able to damage the business reputation of another.

Article 23

No multi-level sale shall be conducted if the participants thereof receive commissions, bonuses, or other economic benefit mainly from introducing others to participate, rather than from the marketing or sale of the goods or services at reasonable market prices.

Article 23-1

Any participant in multi-level sales may rescind the participation agreement by giving the multi-level enterprise written notice within fourteen days after entering
into such agreement.

Within a period of thirty days after rescission of the agreement takes effect, the multi-level sales enterprise shall accept the application from the participant for returning of goods, collect or accept goods returned by the participant, and return to the participant all the payment for goods made upon purchase and any other fees paid upon participation, accumulated until the time of rescission.

In returning the payments made by the participant according to the preceding paragraph, the multi-level sales enterprise may deduct upon the time of returning of the goods the value decreased due to the damage or loss attributable to the participant, and any bonus or remuneration already paid to the participant for purchase of such goods.

If the returned goods as referred to in the preceding paragraph are collected by the enterprise, the enterprise may deduct the shipping costs required for such collection.

**Article 23-2**

After the lapse of the period for entitlement to rescind the agreement as referred to in the first paragraph of the preceding article, the participant may still terminate the agreement by writing and withdraw itself from the multi-level sales.

Within thirty days from the termination of the agreement in accordance with the preceding paragraph, the multi-level sales enterprise shall buy back all goods possessed by the participant at ninety percent (90%) of the original purchase price; provided that it may be deducted the bonuses or remuneration paid to the participant for the purchase as well as the amount of the decreased value of the goods.

**Article 23-3**

When the participant exercises the right to rescind or terminate the agreement in accordance with the two preceding articles, the multi-level sales enterprise may not claim damages or levy penalties against the participant for such rescission or termination.

The provisions of the two preceding articles that relate to goods shall apply
mutatis mutandis to the supply of services.

**Article 23-4**

Regulations concerning any multi-level sales enterprise’ filing for record, inspection of activities, CPA certification and public disclosure of financial statements, the matters that participants should be informed, the content of participation agreements, the protection of participants’ interest, conduct prohibited as materially affecting the rights and interests of participants, and management obligations toward participants are to be promulgated by the Central Competent Authority.

**Article 24**

In addition to what is provided for in this Law, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order.

**CHAPTER FOUR**

**FAIR TRADE COMMISSION**

**Article 25**

In order to manage matters in respect of fair trade as set forth in this Law, the Executive Yuan shall establish the Fair Trade Commission, which shall be in charge of the following matters:

1. preparation and formulation of fair trade policy, laws and regulations;
2. review of any fair trade matters related to this Law;
3. investigation of activities of enterprises and economic conditions;
4. investigation and disposition of any case violating this Law; and
5. any other matters related to fair trade.

**Article 26**

The Fair Trade Commission may investigate and handle, upon complaints or ex
officio, any violation of the provisions of this Law that harms the public interest.

**Article 27**

In conducting investigations under this Law, the Fair Trade Commission may proceed in accordance with the following procedures:

1. to notify the parties and any related third party to appear to make statements;
2. to notify relevant agencies, organizations, enterprises, or individuals to submit books and records, documents, and any other necessary materials or exhibits, and
3. to dispatch personnel for any necessary on-site inspection of the office, place of business, or other locations of the relevant organization or enterprises.

An investigator carrying out its duties under this Law shall present the documents supporting its duties; the person to be investigated may refuse the investigation where the investigator fails to present such documents.

**Article 27-1**

During the course of an investigation conducted pursuant to the preceding Article, a party or a related person, for the need of claiming or defending its legal rights and interests, may apply to read, transcribe, photocopy, or photograph relevant materials or files except the following:

1. Drafts of an administrative decision or any other working document prepared for a case.
2. Materials related to national defense, military affairs, diplomatic affairs, and any other official secrets that are required to be kept confidential by laws or regulations.
3. Materials relating to personal privacy, professional secrets, or business secrets that are required to be kept confidential by laws or regulations.
4. Where it is likely to infringe the rights and interests of a third party.
5. Where it is likely to seriously obstruct the performance of the official duties in maintaining social order, public security, or any other public interests.

Procedural matters and restrictions relating to the qualifications of applicants,
the application period, the scope of materials or files available for access, and the way
to proceed as referred to in the preceding paragraph shall be prescribed by the Central
Competent Authority.

Article 28

The Fair Trade Commission shall carry out its duties independently in
accordance with the law and may dispose of the cases in respect of fair trade in the
name of the Commission.

Article 29

There shall be a separate law enacted to govern the organizational structure of
the Fair Trade Commission.

CHAPTER FIVE
COMPENSATION FOR DAMAGES

Article 30

If any enterprise violates any of the provisions of this Law and thereby infringes
upon the rights and interests of another, the injured may demand the removal of such
infringement; if there is a likelihood of infringement, prevention may also be claimed.

Article 31

Any enterprise that violates any of the provisions of this Law and thereby
infringes upon the rights and interests of another shall be liable for the damages
arising therefrom.

Article 32

In response to the request of the person being inured as referred to in the
preceding article, a court may, taking into consideration of the nature of the
infringement, award damages more than actual damages if the violation is intentional;
provided that no award shall exceed three times of the amount of damages that is proven.

Where the infringing person gains from its act of infringement, the injured may request to assess the damages exclusively based on the monetary gain to such infringing person.

**Article 33**

No claim for damages as prescribed in this Chapter shall be allowed unless the right is exercised within two years after the claimant knows the act and the person liable for the damages; nor shall the claim be allowed after lapse of ten years from the time of infringing conduct.

**Article 34**

In filing a suit with a court in accordance with this Law, the injured may request the content of the judgment to be published in a newspaper at the expenses of the infringing party.

**CHAPTER SIX**

**PUNISHMENT**

**Article 35**

If any enterprise violating the provisions of Articles 10, 14, or paragraph 1 of Article 20 is ordered by the central competent authority pursuant to Article 41 to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take any necessary corrective action, or after its ceasing therefrom, shall such enterprise have the same or similar violation again, the actor shall be punished by imprisonment for not more than three years or detention, or by a fine of not more than one hundred million New Taiwan Dollars, or by both.
Any person violating any of the provisions of Article 23 shall be punished by
imprisonment for not more than three years or detention, or by a fine of not more than
one hundred million New Taiwan Dollars, or by both.

Article 36

If any enterprise violating the provisions of Article 19 is ordered by the central
competent authority pursuant to Article 41 to cease therefrom, rectify its conduct, or
take necessary corrective action within the time prescribed in the order, and after the
lapse of such period, shall such enterprise fail to cease therefrom, rectify such
conduct, or take necessary corrective action, or after its ceasing therefrom, shall such
enterprise have the same or similar violation again, the actor shall be punished by
imprisonment for not more than two years or detention, or by a fine of not more than
fifty million New Taiwan Dollars, or by both.

Article 37

Shall any enterprise violate the provisions of Article 22, the actor shall be
punished by imprisonment for not more than two years or detention, or by a fine of
not more than fifty million New Taiwan Dollars, or by both.

No action shall be brought against the violation referred to in the preceding
paragraph unless there is a complaint filed.

Article 38

Shall any juristic person be convicted of the violation referred to in any of the
three preceding articles, not only the actor shall be punished in accordance with the
provisions of the three preceding articles, the juristic person shall also be fined as
prescribed in each of the respective articles.

Article 39

Where any other laws provide for more severe punishment than those prescribed
in the preceding four articles, the provisions of such other laws shall apply.
Article 40

Where any enterprise(s) proceeds with a merger in violation of Paragraph 1 or 3 of Article 11 herein, or proceeds with a merger despite that the Central Competent Authority decides upon the filing to prohibit such merger, or fails to perform the undertakings required as pursuant to Paragraph 2 of Article 12, in addition to the disposition pursuant to the provisions of Article 13, an administrative penalty of not less than one hundred thousand nor more than fifty million New Taiwan Dollars shall be assessed upon such enterprise(s).

Where any enterprise(s) proceeds with a merger under the circumstance set forth in Subparagraph 2 of the proviso of Article 11, Paragraph 5, an administrative penalty of not less than fifty thousand nor more than five hundred thousand New Taiwan Dollars shall be assessed upon such enterprise(s).

Article 41

The Fair Trade Commission may order any enterprise that violates any of the provisions of this Law to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed in the order; in addition, it may assess upon such enterprise an administrative penalty of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars. Shall such enterprise fails to cease therefrom, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, the Fair Trade Commission may continue to order such enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative penalty of not less than one hundred thousand nor more than fifty million New Taiwan Dollars until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action.

Article 42

Any person violating the provisions of Article 23, in addition to being subject to the disposition pursuant to the provisions of Article 41, may be subject to an order for
dissolution, suspension or termination of business operation if the violation is serious.

Any person violating any of the provisions of paragraph 2 of Article 23-1, paragraph 2 of Article 23-2, or Article 23-3, may be ordered to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order; in addition, an administrative penalty of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars may be assessed upon it. After the lapse of the prescribed period, shall it fail to cease therefrom, rectify its conduct or take any necessary corrective action within the time prescribed, it may be ordered continuously to cease therefrom, rectify its conduct or take necessary corrective action within the time prescribed, and in addition, an administrative penalty of not less than fifty thousand nor more than fifty million New Taiwan Dollars may be assessed successively thereupon each time until it ceases therefrom, rectifies its conduct, or takes necessary corrective action. Shall the violation be serious, an order for dissolution of the enterprise or suspension or termination of its operations may be made.

Any enterprise violating the regulations which is promulgated by the Central Competent Authority pursuant to the provisions of Article 23-4 shall be subject to the disposition prescribed in Article 41.

**Article 42-1**

The periods for suspension of business operation ordered pursuant to this Law shall be limited to six months each.

**Article 43**

Shall any person subject to any investigation conducted by the Fair Trade Commission pursuant to the provisions of Article 27 refuse the investigation without justification, or refuse to appear to respond or to render relevant materials such as books and records, documents, or exhibits by the set time limit, an administrative penalty of not less than twenty thousand nor more than two hundred fifty thousand New Taiwan Dollars shall be assessed upon it. Shall such person continue to refuse without justification upon another notice, the Fair Trade Commission may continue to
issue notices of investigations, and may assess successively thereupon an administrative penalty of not less than fifty thousand nor more than five hundred thousand New Taiwan Dollars each time until it accepts the investigation, appears to respond, or renders relevant materials like books and records, documents, or exhibits.

**Article 44**

Shall any person upon which an administrative penalty is assessed pursuant to the preceding four articles refuse to pay such penalty, the matter shall be referred to the court for compulsory execution.

**CHAPTER SEVEN**

**SUPPLEMENTARY PROVISIONS**

**Article 45**

No provision of this Law shall apply to any proper conduct in connection with the exercise of rights pursuant to the provisions of the Copyright Law, Trademark Law, or Patent Law.

**Article 46**

Where there is any other law governing the conducts of enterprises in respect of competition, such other law shall govern; provided that it does not conflict with the legislative purposes of this Law.

**Article 47**

Any unrecognized foreign juristic person or organization may file a complaint for public prosecution, private prosecution, or civil action pursuant to the provisions of this Law; provided, however that any national or organization of the Republic of China in the country of such foreign juristic person or organization must be entitled to the right of the kind in accordance with any treaty, or any law, regulation, or custom of such country; or through any agreement entered into by any organization(s) or
institution(s) and approved by the Central Competent Authority, for mutual protection.

**Article 48**

The enforcement rules of this Law shall be made and promulgated by the Central Competent Authority.

**Article 49**

This Law shall take effective one year from promulgation.

Amendments to this Law shall take effect from the date of promulgation.
Appendix V

ENFORCEMENT RULES OF FAIR TRADE LAW OF 1992

promulgated on June 24, 1992

Article 1
These Enforcement Rules are adopted pursuant to Article 48 of the Fair Trade Law (hereinafter referred to as the “Law”).

Article 2
The term “concerted action” as mentioned in Article 7 of the Law refers to an act among enterprises at the same level of production or distribution that is sufficient to influence production or the function of supply and demand in a market for goods or services.

The term “other forms of mutual understanding” as mentioned in Article 7 of the Law refers to the communications other than a contract or agreement, which, regardless of their legal enforceability, will actually result in parallel actions.

Article 3
In determining whether an enterprise constitutes a monopolistic enterprise as prescribed in Paragraph 2, Article 10 of the Law, the central competent authority shall consider the following factors:
1. market share enjoyed by the enterprise in a particular market;
2. possibility of substitution of the goods or services in the market, giving regard to time and geographical considerations;
3. ability of the enterprise to influence prices in the particular market;
4. difficulty for other enterprises to enter into the particular market; and
5. import and export conditions of the goods or services.
Article 4

Any enterprise not satisfying the following requirements will not be considered a monopolistic enterprise according to the preceding article:

1. a single enterprise holding a market share of one-half (1/2) or more;
2. two (2) enterprises together enjoying a market share of two-thirds (2/3) or more; and
3. three (3) enterprises together enjoying a market share of three-fourths (3/4) or more.

Although an enterprise(s) meets all of the requirements mentioned above, such an enterprise(s) shall not be considered a monopolistic enterprise if each of the enterprises individually enjoys a market share which is less than one tenth (1/10) or if each such enterprise’s total sales in the preceding fiscal year was less than on (1) billion New Taiwan Dollars.

The central competent authority may still determine an enterprise which, under the preceding two paragraphs should not be included, to be a monopolistic enterprise if the establishment of such enterprise or the entry into the particular goods or service market by such enterprise is restricted by laws and regulations, technology or other conditions that may impede competition.

Article 5

When calculating the market share of an enterprise, information concerning the productions, sales, inventory, import and export value (volume) of each enterprise and the relevant market shall be taken into account.

Information necessary for the calculation of the market share may be based on such information as obtained upon investigation by the central competent authority or that recorded in other government agencies.

Article 6

The sales amount as mentioned in Subparagraph 3, Paragraph 1, Article 11 of the Law refers to the total sales amount of an enterprise.

The “total sales amount” as used in the preceding paragraph shall be based on
the information obtained upon investigation by the central competent authority or that
recorded in other government agencies.

**Article 7**

Application for an approval of a combination of enterprises according to Paragraph 1, Article 11 of the Law shall be filed:

1. by all enterprises participating in the combination, where an enterprise is merging with, acquiring or leasing the business or properties of, or frequently operating with other enterprises;
2. by the holding or acquiring enterprise, where an enterprise holds or acquires shares or the capital contribution of another enterprise; or
3. by the controlling enterprise, where an enterprise controls the business operation or personnel employment and termination of another enterprise.

**Article 8**

Enterprises applying for an approval of a combination according to Paragraph 1, Article 11 of the Law shall submit the following documents to the central competent authority:

1. application form stating the following information:
   (1) type and substance of the combination;
   (2) name, location, residence or domicile of each participating enterprise, company, firm and organization;
   (3) target date of combination;
   (4) name of the attorney and power of attorney, if any; and
   (5) other required information;
2. basic information describing each participating enterprise, including:
   (1) name and address of the representative or administrator of each participating enterprise, if any;
   (2) capital amount and business items of each participating enterprise;
   (3) revenues in the preceding fiscal year of each participating enterprise and any enterprise having a controlling or subordinate relationship with it;
and

(4) number of employees of each participating enterprise;

3. financial statement and business report for the preceding fiscal year of each participating enterprise;

4. information such as production or operation cost, sale price, value or amount of production and sales of related goods or services of each participating enterprise;

5. explanation of benefits to the overall economy that the combination will bring; and

6. other documents or information required by the central competent authority.

The form application mentioned in the preceding paragraph shall be stipulated by the central competent authority.

Article 9

If the information submitted by enterprises applying for approval of combination is incomplete or inaccurate, the central competent authority may state reasons therefor and require supplement or correction of such information within a prescribed time limit and may dismiss the application in case the required supplement or correction is not made in time.

The supplement or correction mentioned in the preceding paragraph may be submitted only once for each application.

The two-month time limit prescribed in Paragraph 3, Article 11 of the Law shall commence from the date of receipt of the application by the central competent authority, or from the date of receipt of the supplement or correction, if any information is incorrect or incomplete and supplement or correction of such information is required by the central competent authority.

Article 10

If it deems necessary, the central competent authority may publish its approval or disapproval of applications for a combination of enterprises in the government gazette.
**Article 11**

Applications for an approval of concerted actions pursuant to the provision of Article 14 of the Law shall be made jointly by the enterprises participating in the concerted actions or through their association or agent with a power of attorney.

**Article 12**

The following documents shall be submitted by the participating enterprises for an approval of a concerted action in accordance with the provision of Article 14 of the Law:

1. application form stating the following information:
   (1) goods or services to which the concerted action is applicable;
   (2) type of concerted action;
   (3) proposed implementation period and geographical area of the concerted action; and
   (4) other required information;
2. a copy of draft contracts, agreements, or other documents relative to the concerted actions;
3. concrete substance of and implementation methods for the proposed concerted action;
4. basic information of the enterprises participating in the concerted action, including:
   (1) name, location, residence or domicile of each participating enterprise, company, firm, trade association or organization;
   (2) name and address of the representative or administrator, if any; and
   (3) business items, capital amount, and the revenues in the preceding fiscal year of each participating enterprise;
5. prices, and production/sales volume/amount of the goods or service of the two (2) most recent years of each participating enterprise stated by season;
6. financial statement and business report for the preceding fiscal year of each participating enterprise;
7. impact evaluation report of the concerted action; and
8. other documents or information required by the central competent authority.

The application form mentioned in the preceding paragraph shall be stipulated by the central competent authority.

**Article 13**

The impact evaluation report of the concerted action as referred to in Paragraph 7 of the preceding article shall state:

1. analytical data concerning cost structure and cost changes before and after the implementation of the concerted action;
2. effects of the implementation of such concerted action on enterprises not participating in the concerted action;
3. effects on structure, supply and demand, and price of the relevant market by the implementation of the concerted action;
4. effects on the upstream and downstream enterprises and their respective market after the implementation of the concerted action;
5. concrete efficiency and disadvantages to the overall economy and public interest created by the implementation of the concerted action; and
6. other required information.

**Article 14**

Enterprises applying for an approval pursuant to Subparagraph 1 or 3, Article 14 of the Law shall provide in the impact evaluation report concrete expected effects in cost reduction, quality improvement, efficiency gains or promotion of reasonable operation to be attained by the implementation of the concerted actions.

**Article 15**

Enterprises applying for an approval pursuant to Subparagraph 2, Article 14 of the Law shall provide the following information in the impact evaluation report:

1. comparison between funds required in the research and development programs by the individual enterprises versus those required in a joint research and development program; and
2. concrete expected effects in technology upgrading, cost reduction, quality improvement or efficiency gains to be attained by the implementation of the concerted action.

**Article 16**

Enterprises applying for an approval pursuant to Subparagraph 4, Article 14 of the Law shall provide the following information in the impact evaluation report:

1. quantities and values of concerned goods exported by each participating enterprise in the most recent year and the percentage of such quantities and values to the total export quantities and values as well as the ratio between export and domestic sales of the concerned commodities; and
2. concrete expected effects in ensuring or promoting exports as a result of the implementation of the concerted action.

**Article 17**

Enterprises applying for an approval pursuant to Subparagraph 5, Article 14 of the Law shall provide the following information in the impact evaluation report:

1. quantities and values of the concerned goods imported by each participating enterprise in the three (3) most recent years;
2. comparison between costs required for import by the individual enterprises versus those required for joint import; and
3. concrete expected effects in strengthening trading capability resulting from the implementation of the concerted action.

**Article 18**

Enterprises applying for an approval pursuant to Subparagraph 6, Article 14 of the Law shall provide the following information in the impact evaluation report:

1. comparative information of average production costs and prices of the specific goods that the concerted action is applicable to;
2. data relating to the yearly capacity, equipment utilization rate, production/sales quantities (values), export/import quantities (values), inventory in respect of the concerned goods of each participating enterprise in the three (3) most recent years, as well as a monthly breakdown of such information in the most recent year; and
3. change of number of operators in the trade during the three (3) most recent years;
4. prospect of the market for the particular industry; and
5. self-help measures taken by participating enterprises in overcoming economic recession.

Article 19

Enterprises applying for an approval pursuant to Subparagraph 7, Article 14 of the Law shall provide the following information in the impact evaluation report:
1. documents showing eligibility to be considered as small and medium-sized enterprises; and
2. concrete expected effects to enhance operation efficiency or competitiveness as a result of the concerted action.

Article 20

If the information submitted by enterprises applying for the approval of a concerted action is incomplete or inaccurate, the central competent authority may state reasons therefor and request the said enterprise to supplement or correct all of the information within a prescribed time limit or may otherwise dismiss the application if the required supplement or correction is not made in time.

The supplement or correction in the preceding paragraph may be submitted only once for each application.

Article 21

The small and medium-sized enterprises mentioned in Subparagraph 7, Article 14 of the Law shall be determined in accordance with the Statute for Development of
Small and Medium-sized Enterprises.

**Article 22**

Any enterprise applying for an extension pursuant to Paragraph 2, Article 15 of the Law shall submit the following documents:

1. form application;
2. copy of the original approval;
3. reasons for such extension; and
4. other documents or information required by the central competent authority.

When the application for extension is approved, the central competent authority shall state in its approval the reference number of the original approval and the effective period for registration and public announcement.

**Article 23**

The following factors shall be taken into consideration when determining whether there is due cause as referred to in Subparagraph 2, Article 19 of the Law:

1. supply/demand situation of the relevant market;
2. difference in costs;
3. amount of the respective sales;
4. credit risks; and
5. other reasonable or justifiable causes.

**Article 24**

The “restrictions” as used in Subparagraph 6, Article 19 of the Law refer to tie-in, exclusive dealing, territory, customer or utilization restrictions, and other restrictions restraining trading counterparts’ business operations.

In order to determine whether the restrictions mentioned in the preceding paragraph are reasonable, the totality of such factors as intent, aim, market power of the parties, structure of the relevant market, nature of the goods and the effect on competition in the market resulting from implementation of such restrictions shall be considered.
Article 25

In case of any violation by an enterprise of Paragraph 1 or 3, Article 21 of the Law, the central competent authority may order the enterprise to publish advertisements showing the correction notice in accordance with Article 41 of the Law.

Weighing the level of effect of the original advertisements, the central competent authority shall decide the methods, frequency and period of the advertisements mentioned in the preceding paragraph.

Article 26

To make the notification prescribed in Subparagraph 1, Paragraph 1, Article 27 of the Law, a written notice shall be used.

The above written notice shall contain the following information:
1. name, location, residence or domicile of the notified party, and the name and location of the responsible person if the notified party is a company, firm, trade association or organization;
2. subject of the matter;
3. date, time and place of required presence; and
4. punishment for failure to make presence without proper reasons.

Except in cases of urgency, service of a written notice shall be made at least forty-eight (48) hours prior to the date of required presence.

Article 27

The notified party referred to in the preceding Article may designate an agent to make statements. If it is deemed necessary, however, the central competent authority may order him to appear in person.

Article 28

After the notified party has appeared and made his/her statements pursuant to Article 26, the central government authority shall have the statements transcribed and order him/her to sign on the transcripts thereof; provided that if he/she is unable to
sign, the statements may be affixed with a seal or be fingerprinted by the notified party after the reason therefore has been recorded. If the notified party refuses to sign, affix a seal or fingerprint the transcript, such facts shall be stated in the transcript.

**Article 29**

Notification by the central government authority pursuant to Subparagraph 2, Paragraph 1, Article 27 of the Law shall be made in writing and contain the following information:

1. name, location, residence or domicile of the notified party, and the name and location of the responsible person if the notified party is a company, firm, trade association or organization;
2. subject of the matter;
3. account books, documents and other necessary information or evidence to be submitted;
4. time limit for the submission; and
5. punishment for failure to submit without proper reasons.

**Article 30**

The central competent authority, upon receipt of account books, documents and other necessary information or evidence submitted by relevant agencies, organizations, enterprises or individuals, shall issue a receipt therefor.

**Article 31**

In seeking approval for exemption of acts from being subject to the Law according to Paragraph 2, Article 46 of the Law, the governmental enterprise, public utility or communication and transportation enterprise shall submit, in writing, to the authority with jurisdiction over the business of the respective enterprises at the central government level, for reviewing and transferring to the Executive Yuan, the substance of such acts, the article(s) of the Law to be exempted and rationale therefor with relevant information and documents.

When transferring the application made pursuant to the preceding paragraph, the
authority with jurisdiction over the business of the respective enterprises at the central government level shall provide its preliminary opinion thereto.

If the application made in accordance with Paragraph 1 above is approved by the Executive Yuan, the authority with jurisdiction over the business of respective enterprises at the central government shall notify the central competent authority under the Law with a copy of notification to the applicant enterprise.

**Article 32**

These Rules shall come into force on the date of promulgation.
Appendix VI

IMPLEMENTING RULES TO THE FAIR TRADE LAW
OF 1999

(formerly translated as Enforcement Rules of Fair Trade Law)
Promulgated on 24 June 1992; Amendments Promulgated on 30 August 1999

Article 1

These Implementing Rules are adopted pursuant to the provisions of Article 48 of the Fair Trade Law (hereinafter referred to as the “Law”).

Article 2

The following factors shall be taken into consideration when determining whether an enterprise constitutes a monopoly as referred to in Article 5 of the Law:

1. the market share of the enterprise in a particular market;
2. the possibility of substitution of the goods or services in a particular market, giving regard to considerations of time and place;
3. the ability of the enterprise to influence prices in a particular market;
4. whether formidable difficulties exist, restricting other enterprises from entering a particular market; and
5. import and export status of the goods or services.

Article 3

Absent any one of the circumstances set forth in the following subparagraphs, no enterprise shall be considered a monopoly as provided for in the preceding article:

1. the market share of an enterprise reaches one-half of a particular market;
2. the combined market share of two enterprises reaches two-thirds of a particular market; and
3. the combined market share of three enterprises reaches three-fourths of a particular market.
Even though there is one of the circumstances as set forth in the preceding paragraph, in case the market share of an individual enterprise does not reach one-tenth of the particular market or in case its total sales in the preceding fiscal year are less than one billion New Taiwan Dollars, such enterprise shall not be considered as a monopoly.

Despite the existence of the circumstances specified in the preceding two paragraphs, under which an enterprise shall not be considered as a monopoly, the central competent authority may nevertheless determine that such enterprise constitute a monopolistic enterprise where its establishment or its provision of goods or services to a particular market is subject to legal or technological restrictions or where other circumstances exist that would affect market supply and demand and might impede the ability of others to compete.

Article 4

Production, sales, inventory, and import/export value (volume) data for the enterprise and the particular market shall be taken into account when calculating the market share of an enterprise.

Data necessary for the calculation of the market share may be based on that obtained upon investigation by the central competent authority or that recorded by other government agencies.

Article 5

Concerted action under Article 7 of the Law is limited to a horizontal one among enterprises at the same stage of production and/or marketing, through which the market functions of production, trade in goods, or supply and demand of services are capable of being affected.

“Other form of mutual understanding” in Article 7 means communication of intent other than contract or agreement that, irrespective of whether any binding effect exists, could in fact lead to joint action.

Restricting activities of enterprises by a trade association through its charter, a resolution of a member meeting or a directors/supervisors meeting, or other means
shall also be considered as a horizontal concerted action as set out in the first paragraph of this article; the representative of such trade association may be deemed as the actor.

**Article 6**

“Sales amount” in subparagraph 3, paragraph 1, Article 11 of the Law means the total sales amount of an enterprise.

Calculation of the “total sales amount” referred to in the preceding paragraph shall be based on data obtained through investigation by the central competent authority or recorded by other government agencies.

**Article 7**

An application for approval of a merger of enterprises required by paragraph 1, Article 11 of the Law shall be filed with the competent central authority by the following enterprises:

1. all the enterprises participating in the merger, where two enterprises are merged into one, where an enterprise is assigned by or leases from another enterprise, or where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latters business;

2. the holding or acquiring enterprise, where an enterprise holds or acquires shares or capital contribution of another enterprise; and

3. the controlling enterprise, where an enterprise directly or indirectly controls the business operations or the appointment or discharge of personnel of another enterprise.

**Article 8**

An application for approval of a merger of enterprises required by paragraph 1, Article 11 of the Law shall be filed with the central competent authority with the following documents attached:

1. an application form specifying the following information:
Appendix VI

1. The application for approval of merger shall contain the following information:

(1) the type and substance of the merger;
(2) personal name and residence or domicile of each participating enterprise, or the name of each participating company, sole proprietorship or partnership, or organization, and the location of office or place of business for each participating enterprise;
(3) the scheduled date of merger;
(4) the name of the agent, if any, and the supporting document there; and
(5) other necessary information;

2. Basic data on each participating enterprise:

(1) the name and residence or domicile of the representative or administrator, if any, of each enterprise;
(2) the capital and scope of business of each participating enterprise;
(3) the turnover in the preceding fiscal year of each participating enterprise and any enterprise with which it has a relationship of control or subordination, and
(4) the number of employees of each participating enterprise.

3. The financial statement and operating report for the preceding fiscal year of each participating enterprise;

4. Data such as the production or operating costs, sales prices, and production and sales values (volumes) of each enterprise’s goods or services related to the merger applied for;

5. An explanation of the benefits of the merger for the overall economy; and

6. Other documents as specified by the central competent authority.

The form of the application referred to in the preceding paragraph shall be set by the central competent authority.

Article 9

Where the materials submitted with the application for approval of merger are incomplete or are deficient in content, the central competent authority may require supplementation or correction of the application within a specified period of time, stating the reasons for such requirement, and may dismiss the application for failure
to comply within the specified period.

Supplementation or correction referred to in the preceding paragraph is limited to one time.

The two-month period referred to in paragraph 2, Article 11 of the Law is calculated beginning from the date of receipt of the application by the central competent authority; provided, where the materials submitted by the enterprise or the information therein are incomplete or deficient in content and the central competent authority has notified the applicant to make supplementation or correction within a specified time, the period shall be calculated from the date of receipt of the supplementation or correction.

**Article 10**

When approving a merger pursuant to Article 12 of the Law, the central competent authority may prescribe, for a reasonable duration, additional conditions or burdens to ensure that the benefits for the overall economy outweigh the disadvantages resulted from competition restraints.

The additional conditions or burdens made in accordance with the preceding paragraph may not contradict the purposes of the approval, and shall furthermore bear justifiable and reasonable relevance to such purposes.

**Article 11**

When considered necessary, the central competent authority may publish approvals for mergers in the government gazette.

**Article 12**

To conduct a concerted action pursuant to the proviso of Article 14 of the Law, an application for approval shall be jointly filed with the central competent authority by all the enterprises participating in such action.

An application for approval of a concerted action by a trade association as referred to in paragraph 3, Article 5 shall be filed with the central competent authority by such trade association.
The applications in the preceding two paragraphs may be made through an attorney-in-fact.

**Article 13**

An application for approval filed pursuant to the proviso of Article 14 of the Law shall be accompanied by the following documents:

1. an application form that sets forth the following:
   (1) the names of the goods or services to which the concerted action applies;
   (2) the type of concerted action;
   (3) the implementation period and area of the concerted action;
   (4) the name of the attorney-in-fact, if there is one, and the supporting document;
   (5) other necessary information;
2. the document showing the contract, agreement or other forms of communication of intent in the concerted action;
3. the concrete substance and implementation methods of the concerted action;
4. basic data on the participating enterprises:
   (1) personal name and residence or domicile of each participating enterprise, or the name of each participating company, sole proprietorship or partnership, trade association, or organization, and the location of office or place of business for each participating enterprise;
   (2) the name and residence or domicile of the representative or administrator, if any, of each enterprise; and
   (3) the scope of business, capital, and turnover in the preceding fiscal year of each participating enterprise.
5. quarter reports for the past two years on the prices and production and sales values (volumes) of those products or services relevant to the concerted action, of each participating enterprise;
6. financial statement and operating report of each participating enterprise for the preceding fiscal year;
7. an assessment report on the concerted action; and
8. other documents as specified by the central competent authority.

The form of the application referred to in the preceding paragraph shall be set by the central competent authority.

**Article 14**

The assessment report on the concerted action referred to in subparagraph 7, paragraph 1, of the preceding article shall specify the following:

1. cost structure before and after the concerted action and analytical data on forecasted changes;
2. the impact of the concerted action on non-participating enterprises;
3. the impact of the concerted action on the structure, supply and demand, and pricing of the relevant market;
4. the impact of the concerted action on upstream and downstream enterprises and their markets;
5. concrete benefits and detrimental effects of the concerted action to the overall economy and public interest; and
6. other necessary information.

**Article 15**

The concerted action assessment report accompanying an application filed pursuant to the provisions of subparagraph 1 or 3, Article 14, of the Law shall set out in detail the anticipated concrete results in cost reduction, quality improvement, increased efficiency, or rationalization of operations.

**Article 16**

The concerted action assessment report accompanying an application filed pursuant to the provisions of subparagraph 2, Article 14, of the Law shall specify the following information:

1. the difference between the funding required for individual research and development and that required for joint research and development; and
2. the anticipated concrete results in technology upgrading, quality improvement, cost reduction, or increased efficiency.

Article 17

The concerted action assessment report accompanying an application filed pursuant to the provisions of subparagraph 4, Article 14, of the Law shall specify the following information:

1. the export value (volume) of each participating enterprise for the most recent one-year period, the percentage of the total export value (volume) of the same product for which it accounts, and the enterprise’s ratio of exports to domestic sales; and

2. the anticipated concrete results in promoting exports.

Article 18

The concerted action assessment report accompanying an application filed pursuant to the provisions of subparagraph 5, Article 14, of the Law shall specify the following information:

1. the export value (volume) of each participating enterprise for the most recent three years;

2. a comparison of the costs required for import by the individual enterprises versus those required for concerted import;

3. the anticipated concrete results in strengthening trade.

Article 19

The concerted action assessment report accompanying an application filed pursuant to the provisions of subparagraph 6, Article 14, of the Law shall specify the following information:

1. a monthly comparative breakdown for the preceding three years of the average fixed costs, average variable costs, and pricing of specified goods of each participating enterprise;
implementing rules to the fair trade law of 1999

2. a monthly breakdown for the preceding three years of production capacity, equipment utilization rate, production and sales value (volume), import/export value (volume) and inventory levels of each participating enterprise;
3. changes in the number of businesses in the relevant industry over the preceding three years;
4. market prospects for the relevant industry;
5. adopted or contemplated self-help methods, other than concerted action, to turn around the business; and
6. anticipated results of the concerted action.

In addition to those enumerated above, the central competent authority may request the provision of other related materials.

**article 20**

The concerted action assessment report accompanying an application filed pursuant to the provisions of subparagraph 7, Article 14, of the Law shall specify the following information:

1. supporting document showing that the enterprise conforms to the criteria for recognition as a small or medium-sized enterprise.
2. anticipated concrete results in achieving improved operational efficiency or strengthened competitiveness.

**article 21**

Where the materials submitted with the application for approval of concerted action are incomplete or are deficient in content, the central competent authority may require supplementation or correction of the application within a specified period of time, stating the reasons for such requirement, and may dismiss the application for failure to comply within the specified period.

Supplementation or correction referred to in the preceding paragraph is limited to one time.
Article 22

The identification of a small or medium-sized business as referred to in subparagraph 7, Article 14, of the Law shall be made in accordance with the criteria set forth in the Statute for the Development of Small and Medium-Sized Enterprises.

Article 23

To obtain an extension pursuant to paragraph 2, Article 15, of the Law the enterprises shall file an application with the central competent authority attaching the following materials:

1. an application form;
2. a copy of the original approval;
3. the reasons for applying for the extension; and
4. other documents or materials designated by the central competent authority.

Article 24

The following factors shall be taken into consideration when determining whether a justification exists as referred to in subparagraph 2, Article 19, of the Law:

1. supply and demand conditions in the market;
2. cost differences;
3. transaction amounts;
4. credit risks; and
5. other reasonable grounds.

Article 25

“Limiting” as used in subparagraph 6, Article 19 of the Law refers to tying arrangements, exclusive dealings, restrictions on territory, customers or use, and other restrictions on business activities.

In determining whether the restrictions mentioned in the preceding paragraph are reasonable, the totality of such factors as the intent, purposes, and market position of the parties, the structure of the market to which they belong, the characteristics of the goods, and the impact of carrying out such restrictions on market competition shall be
considered.

**Article 26**

In cases where actions of an enterprise violate the provisions of paragraphs 1 or 3, Article 21 of the Law, the central competent authority may order the enterprise to publish corrective advertisements pursuant to Article 41 of the Law.

The methods, number of appearances, and duration of the advertisements shall be determined by the central competent authority, taking into consideration the degree of impact of the original advertisements.

**Article 27**

“Participant” as used in paragraph 3, Article 23-1, and paragraph 2, Article 23-2 of the Law means the party to a contract that has been rescinded or terminated, and does not extend to other participants.

**Article 28**

The central competent authority, when giving notice as prescribed in subparagraph 1, Paragraph 1, Article 27 of the Law, shall do so in writing. The written notice in the preceding paragraph shall specify the following information:

1. name and residence or domicile of the recipient of the notice, or, if a company, sole proprietorship or partnership, trade association, or organization, the name of its responsible person and the address of its office or place of business;
2. subject matter of the case;
3. date, time, and place of required appearance; and
4. provisions concerning punishment for failure to appear without proper reason.

The notice shall be served no later than 48 hours prior to the date when appearance is required, provided this restriction shall not apply in cases where urgent circumstances exist.
Article 29

A person notified pursuant to the preceding article may retain an attorney-in-fact to appear and make statements on his/her behalf; provided, when the central competent authority deems necessary, it may give notice requiring appearance in person.

Article 30

Statements made by the person notified pursuant to the provisions of Article 28 shall be recorded into a written Statement, to be signed by the notified person. If the notified person is unable to sign the Statement, he or she may seal or fingerprint it instead; if the notified person refuses to sign, seal, or fingerprint the Statement, such facts shall be recorded.

Article 31

When issuing notice pursuant to subparagraph 2, Paragraph 1, Article 27 of the Law, the central competent authority shall include the following items in writing:

1. the name and residence or domicile of the notified person, and in the case of a company, sole proprietorship or partnership, trade association or organization, the name of the responsible person and the location of the office or place of business;
2. the subject matter of the case;
3. books and records, documents, or other materials or evidence to be submitted;
4. the time limit for submission; and
5. provisions concerning punishment for refusal to submit without proper reason.

Article 32

The central competent authority shall issue a receipt upon receiving books and records, documents, and other required materials and evidence submitted by relevant agencies, organizations, enterprises, or individuals.
Article 33

When assessing fines in accordance with the Law, all circumstances shall be taken into consideration, and the following items shall be noted:

1. motivation, purpose, and expected improper interests of the illegal acts;
2. the degree of the illegal act’s damage to trading order;
3. the duration of the illegal act’s damage to trading order;
4. interests derived on account of the illegal act;
5. scale, operating situation, and market position of the enterprise involved in the illegal act;
6. whether or not the type of illegal acts involved in the violation has been the subject of correction or warning by the central competent authority;
7. types of, number of, and intervening time between, past violations, and;
8. remorse shown for the act and attitude of cooperation in the investigation.

Article 34

The duration for which an enterprise is ordered to suspend business pursuant to the Law shall be limited to six months each time.

Article 35

These Implementing Rules shall take effect from the date of announcement.
Article 1

These Enforcement Rules are adopted pursuant to the provisions of Article 48 of the Fair Trade Law (hereinafter referred to as the “Law”).

Article 2

The term “trade association” in Article 2, Subparagraph 3 of the Law refers to the following:

1. Industry associations and chambers of industry organized under the Industrial Association Law;
2. Commercial associations, federations of commercial associations, exporter associations, and federations of exporter associations, and chambers of commerce organized under the Commercial Association Law;
3. Other professional associations organized under the provisions of other laws and regulations.
Article 3

The following factors shall be taken into consideration when determining whether an enterprise constitutes a monopoly as referred to in Article 5 of the Law:

1. the market share of the enterprise in a particular market;
2. the possibility of substitution of the goods or services amidst changes in a particular market, giving regard to considerations of time and place;
3. the ability of the enterprise to influence prices in a particular market;
4. whether formidable difficulties exist to entry to a particular market by other enterprises;
5. import and export status of the goods or services.

Article 4

Production, sales, inventory, and import/export value (volume) data for the enterprise and the particular market shall be taken into account when calculating the market share of an enterprise.

Data necessary for the calculation of the market share may be based on that obtained upon investigation by the central competent authority or that recorded by other government agencies.

Article 5

The responsible person of a trade association may be deemed as the actor in concerted action as under Article 7 of the Law.

Article 6

“Sales amount” in Subparagraph 3, Paragraph 1, Article 11 of the Law means the total sale or operating revenue of an enterprise.

Calculation of the total sale or operating revenue referred to in the preceding paragraph may be based on data obtained through investigation by the Central Competent Authority or recorded by other government agencies.
Article 7

A report of a merger of enterprises under Article 11, Paragraph 1 of the Law shall be filed with the Competent Central Authority by the following enterprises:

1. the enterprises in the merger, where an enterprise is merged into another, assigned by or leases from another enterprise(s) of the operations or assets of another, regularly runs operation jointly with another, or is commissioned by another enterprise to run operation;
2. the holding or acquiring enterprise, where an enterprise holds or acquires shares or capital contribution of another enterprise; and
3. the controlling enterprise, where an enterprise directly or indirectly controls the business operations or the appointment or discharge of personnel of another enterprise.

If an enterprise required to file a report has not yet been established, the existing enterprises in the merger shall file the report(s).

Article 8

A report of a merger of enterprises under Paragraph 1, Article 11 of the Law shall be filed with the Central Competent Authority with the following documents attached:

1. a report form specifying the following information:
   (1) type and substance of the merger;
   (2) the name and the place of office of each participating enterprise, or the name and the place of the office or business of each participating company, sole proprietorship, partnership, or association;
   (3) the scheduled date of merger;
   (4) the name of the attorney-in-fact, if any, and the supporting document therefor,
   (5) other required information;
2. basic data on each participating enterprise:
   (1) the name and residence or domicile of the responsible person or administrator, if any, of each enterprise;
(2) the capital and business items of each participating enterprise;
(3) the turnover in the preceding fiscal year of each participating enterprise and any enterprise with which it has a relationship of control or subordination;
(4) the number of employees of each participating enterprise.
(5) Certificates of incorporation or establishment of each participating enterprise.

3. the financial statement and operating report for the preceding fiscal year of each participating enterprise;
4. data such as the production or operating costs, sales prices, and production and sales values (volumes) of the participating enterprises’ goods or services related to the combination applied for;
5. an explanation of the benefits of the merger for the overall economy and any disadvantages due to restraints on competition;
6. major future operating plans of the participating enterprises;
7. overview of the long-term investments by the participating enterprises in other enterprises;
8. if a participating enterprise’s stock is listed on the stock exchange or traded on over-the-counter markets, the most recent prospectus or annual report;
9. information of the market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;
10. other documents as specified by the Central Competent Authority.

The form of the report referred to in the preceding paragraph shall be prescribed by the Central Competent Authority.

**Article 9**

Where the materials submitted with the merger report pursuant to Paragraph 1, Article 11 fail to comply with the requirements of the preceding article or are deficient in content, the Central Competent Authority may issue notice to require supplementation or correction within a specified period of time, with the reasons stated for such requirement. If such supplementation or correction is not made within
the specified time period or is so made but the submitted materials remain deficient, the filing will not be accepted.

Article 10

The term “financial enterprises” as used in Article 11, Paragraph 2 of the Law refers to financial institutions under Article 4 of the Financial Institution Merger Law and financial holding companies under Article 4 of the Financial Holding Company Law.

Article 11

The date accepting the complete filing of report materials referred to in Paragraph 3, Article 11 of the Law means the filing date on which the report materials filed with the Central Competent Authority are in conformity with Article 8 and the contents thereof are also complete.

Article 12

The Central Competent Authority may publish in the government gazette its decisions made on the filings of mergers pursuant to Article 11, Paragraph 4 of the Law.

Article 13

An application for approval of concerted action filed pursuant to the proviso of Article 14, Paragraph 1 of the Law shall be jointly filed with the Central Competent Authority by all the enterprises participating in such action.

An application for approval of concerted action by a trade association as referred to in Article 7, Paragraph 4 of the Law shall be filed with the Central Competent Authority by the trade association.

The applications in the preceding two paragraphs may be made through an agent.

Article 14
An application for approval pursuant to the proviso of Article 14, Paragraph 1 of the Law shall be accompanied by the following documents:

1. an application form that sets forth the following:
   (1) the names of the goods or services to which the concerted action applies;
   (2) the type of concerted action;
   (3) the implementation period and area of the concerted action;
   (4) the name of the attorney-in-fact, if any, and the supporting document therefor;
   (5) other required information;

2. the contract, agreement or other document evidencing agreement to the concerted action;

3. the concrete substance and implementation methods of the concerted action;

4. basic data on the participating enterprises:
   (1) the name and residence or domicile of each participating enterprise, or the name and the location of the office or place of business of each participating company, sole proprietorship, partnership, or association;
   (2) the name and residence or domicile of the representative or administrator, if any, of each enterprise; and
   (3) the business items, capital, and turnover in the preceding fiscal year of each participating enterprise.

5. quarterly reports for the past two years on the prices and production and sales values (volumes) of those products or services relevant to the concerted action, of each participating enterprise;

6. financial statement and operating report of each participating enterprise for the preceding fiscal year;

7. information of the market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;

8. an assessment report on the concerted action; and

9. other documents as specified by the Central Competent Authority.

The form of the application referred to in the preceding paragraph shall be set by the Central Competent Authority.
Article 15

The assessment report on the concerted action referred to in Subparagraph 8, Paragraph 1, of the preceding article shall specify the following:

1. cost structure before and after the concerted action and analytical data on forecasted changes;
2. the impact of the concerted action on enterprises not participating;
3. the impact of the concerted action on the structure, supply and demand, and pricing of the relevant market;
4. the impact of the concerted action on upstream and downstream enterprises and their markets;
5. concrete benefits and detrimental effects of the concerted action for the overall economy and public interest;
6. other required information.

Article 16

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 1 or 3, Paragraph 1, Article 14, of the Law shall include a concerted action assessment report that sets out in detail the anticipated concrete results in cost reduction, quality improvement, increased efficiency, or rationalization of operations.

Article 17

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 2, Paragraph 1, Article 14, of the Law shall specify the following information:

1. the difference between the funding required for individual research and development and that required for joint research and development;
2. the anticipated concrete results in technology upgrading, quality improvement, cost reduction, or increased efficiency.

Article 18
The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 4, Paragraph 1, Article 14, of the Law shall specify the following information:

1. the export value (volume) of each participating enterprise for the most recent one-year period, the percentage of the total export value (volume) of the same product for which it accounts, and the enterprise’s ratio of exports to domestic sales; and
2. the anticipated concrete efficacy in promoting exports.

Article 19

The concerted action assessment report accompanying an application filed pursuant to the provisions of Subparagraph 5, Paragraph 1, Article 14, of the Law shall specify the following information:

1. the export value (volume) of each participating enterprise for the most recent three years;
2. a comparison of the costs required for import by the individual enterprises versus those required for concerted import;
3. the anticipated concrete results in strengthening trade.

Article 20

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 6, Paragraph 1, Article 14, of the Law shall specify the following information:

1. a monthly comparative breakdown for the preceding three years of the average fixed costs, average variable costs, and pricing of specified goods of each participating enterprise;
2. a monthly breakdown for the preceding three years of production capacity, equipment utilization rate, production and sales value (volume), import/export value (volume) and inventory levels of each participating enterprise;
3. changes in the number of businesses in the relevant industry over the preceding three years;
4. market prospects for the relevant industry;
5. adopted or contemplated self-help methods, other than concerted action, to turn around the business; and
6. anticipated results of the concerted action.
In addition to that enumerated above, the Central Competent Authority may request the provision of other related materials.

**Article 21**

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 7, Paragraph 1, Article 14, of the Law shall specify the following information:

1. materials to show meeting the criteria to be recognized as a small or medium-sized enterprise.
2. anticipated concrete results in achieving improved operational efficiency or strengthened competitiveness.

**Article 22**

A small or medium-sized business as referred to in Subparagraph 7, Paragraph 1, Article 14, of the Law shall be determined in accordance with the criteria set forth in the Statute for the Development of Small and Medium-Sized Enterprises.

**Article 23**

Where an enterprise applying for approval of concerted action pursuant to Paragraph 1, Article 14 submits materials that are incomplete or are deficient in content, the Central Competent Authority may issue notice to require supplementation or correction of the application within a specified period of time, with the reasons stated for such requirement. If such supplementation or correction is not made within the specified time period or is so made but the submitted materials remain deficient, the application will be rejected.
Supplementation or correction referred to in the preceding paragraph may be made only once.

**Article 24**

The three-month period specified in Article 14, Paragraph 2 of the Law shall be calculated from the day next to the date on which the Central Competent Authority receives the application. However, where the materials submitted by the enterprise are incomplete or deficient in content and the Central Competent Authority has issued a notice to require supplementation or correction within a specified time, the period shall be calculated from the day next to the date of receipt of the supplementation or correction.

**Article 25**

To apply for an extension pursuant to Paragraph 2, Article 15, of the Law, the enterprises shall prepare the following materials to file with the Central Competent:

1. an application form;
2. a copy of the original approval;
3. the reasons for applying for the extension; and
4. other documents or materials designated by the Central Competent Authority.

When the Central Competent Authority approves an extension, it shall record the original approval number and period along with the extension and publish them in the government gazette.

**Article 26**

The following factors shall be taken into consideration when determining whether just cause exists as referred to in Subparagraph 2, Article 19, of the Law:

1. supply and demand conditions in the market;
2. cost differences;
3. transaction amounts;
4. credit risks; and
5. other reasonable grounds.
Article 27

“Restrictions” as used in Subparagraph 6, Article 19, of the Law refers to the circumstances under which an enterprise engages in restrictive activity in regards to tie-ins, exclusive dealing, territory, customers, use, or otherwise.

In determining whether the restrictions mentioned in the preceding paragraph are reasonable, the totality of such factors as the intent, purposes, and market position of the parties, the structure of the market to which they belong, the characteristics of the goods, and the impact that carrying out such restrictions would have on market competition shall be considered.

Article 28

In cases where actions of an enterprise violate the provisions of Paragraphs 1 or 3, Article 21, of the Law, the Central Competent Authority may order the enterprise to publish corrective advertisements pursuant to the provisions of Article 41 of the Law.

The methods, number of appearances, and duration of the advertisements referred to in the preceding paragraph shall be determined by the Central Competent Authority, taking into consideration the degree of impact of the original advertisements.

Article 29

“Participant” as used in Paragraph 3, Article 23bis, and Paragraph 2, Article 23ter, of the Law means the party to a contract that has been rescinded or terminated, and does not extend to other participants.
Article 30

The Central Competent Authority may refuse to process complaints that lack substantive content or have no genuine name or address affixed thereto.

Article 31

The Central Competent Authority, when giving notice as prescribed in Subparagraph 1, Paragraph 1, Article 27 of the Law, shall do so in writing.

The written notice in the preceding paragraph shall specify the following information:

1. name and residence or domicile of the recipient of the notice; if a company, sole proprietorship or partnership, trade association, or organization, the name of its responsible person and the address of its office or place of business;
2. the matter to be investigated and the explanations or materials that the notified party is required to provide with respect to such matter;
3. date, time, and place of required appearance;
4. provisions concerning punishment for failure to appear without proper reason.

The notice shall be served no later than 48 hours prior to the date when appearance is required, provided this restriction shall not apply in cases where urgent circumstances exist.

Article 32

A person notified pursuant to the preceding article may retain an attorney-in-fact to appear and make statements on his or her behalf, provided that when the Central Competent Authority deems necessary, it may give notice requiring appearance in person.

Article 33

After a person notified pursuant to the provisions of Article 31 has appeared and made a statement, the Central Competent Authority shall produce a written record of the statement, to be signed by the notified person. If the notified person is unable to
sign the record of statement, he or she may seal or fingerprint it instead; if the notified person refuses to sign, seal, or fingerprint the record of statement, such facts shall be recorded.

Article 34

When issuing notice pursuant to Subparagraph 2, Paragraph 1, Article 27 of the Law, the Central Competent Authority shall include the following items in writing:

1. the name and residence or domicile of the notified person; if a company, sole proprietorship or partnership, trade association or organization, the name of the responsible person and the location of the office or place of business;
2. the matter to be investigated;
3. the explanations, books and records, documents, and other materials or evidence required to be submitted by the notified party;
4. the time limit for submission;
5. provisions concerning punishment for refusal to submit without justification.

Article 35

After the Central Competent Authority has received books and records, documents, and any other required materials or evidence provided by relevant agencies, associations, enterprises, or individuals, the Central Competent Authority shall issue a receipt at the request of the provider.

Article 36

When assessing fines in accordance with the Law, all circumstances shall be taken into consideration, and the following items shall be noted:

1. motivation, purpose, and expected improper benefit of the acts;
2. the degree of the act’s harm to market order;
3. the duration of the act’s harm to market order;
4. benefits derived on account of the unlawful act;
5. scale, operating condition, and market position of the enterprise;
6. whether or not the type of unlawful act involved in the violation has been the subject of correction or warning by the Central Competent Authority;
7. types of, number of, and intervening time between past violations, and the punishment for such violations; and
8. remorse shown for the act and attitude of cooperation in the investigation.

Article 37

These Enforcement Rules shall take effect from the date of promulation.
Appendix VIII

SUPERVISORY REGULATION OF MULTI-LEVEL SALES OF 1992

Promulgated on February 28, 1992
by Fair Trade Commission Order (81) Kung Mi Fa Tzu No. 001

Article 1

These Regulations are enacted pursuant to Paragraph 2, Article 23 of the Fair Trade Law.

Article 2

The provisions of these Regulations shall apply to the control of multi-level sales.

The term “multi-level sales enterprise” as referred to in these Regulations shall mean an enterprise which makes its operational projects or its rules, and plans its overall sales activities in respect of multi-level sales.

The term “participant” as referred to in these Regulations, shall mean a person who takes part in the organization or plan of a multi-level sales enterprise and sells or promotes the sale of commodities or services, and introduces other persons to join the aforesaid activities.

Article 3

Prior to commencing its business or operation, a multi-level sales enterprise shall file a written report setting forth the following particulars for recordation with the central competent authority:

1. sales organization or plan;
2. operation project or guidelines, providing, among others, the calculation formula of participants’ commissions, grants and other economic gains;
3. the commencement date of business or operation;
4. principal office;
5. terms and conditions providing rights and obligations of participants and
general conditions of sales; and
6. provisions regarding warranties with respect to the commodities or services to
be sold.

In the event of any change in the contents of the aforesaid report, the enterprise
shall file another report for such change with the authority prior to the
implementation thereof.

Any multi-level sales enterprise which commences its business or operation of
multi-level sales before the promulgation of these Regulations shall file the aforesaid
report for recording within two (2) months after the promulgation of these
Regulations.

If deemed necessary, the central competent authority may notify a multi-level
sales enterprise to supplement the report as filed in accordance with the first
paragraph within a specified time limit.

**Article 4**

Before a participant takes part in the sales organization or plan of a multi-level
sales enterprise, the enterprise shall inform the participant of the following particulars
with no false, concealed, or misleading statements:

1. capital amount;
2. sales organization or plan;
3. operation rules and trading guide;
4. obligations and liabilities of a participant;
5. contents of gains paid to a participant for directly selling or promoting the
sales of commodities or services, and, if a participant may be paid gains for
selling or promoting the sales of commodities or services by another
participant who is introduced to join the plan or organization by the former
participant, the contents and conditions of such gains;
6. particulars in connection with the types, functions, qualities, and usage of
commodities or services;
7. terms, conditions and limitation of the obligations for warranties in commodities or services;
8. terms and conditions of withdrawal of a participant from an organization or plan, and rights and obligations arising out of the withdrawal; and
9. other particulars as designated by the central competent authority.

Before a participant takes part in the sales organization or plan of a multi-level sales enterprise, the enterprise shall enter into a written participating contract with the participant, incorporating the provisions as prescribed in Items 2 through 9 of the first paragraph of this Article.

To evidence the performance of the non-disclosure duty of the first paragraph, the multi-level sales enterprise shall keep a statement signed by each participant or other types of proof documenting such disclosure.

The provisions as prescribed in paragraphs 1 and 3 of this Article shall apply to a participant introducing a third person to participate.

**Article 5**

The contents of Item 8, Paragraph 1 of the preceding Article shall include the following particulars:

1. a participant may give written notice to a multi-level sales enterprise to rescind a contract within fourteen (14) days after the execution of the contract.
2. within thirty (30) days after the cancellation of the contract becomes effective, the multi-level sales enterprise shall, upon the participant’s request, retrieve or accept the participant’s delivery of the commodities, and return the purchase price at the time of cancellation of the contract and other expenses paid by the participant at the time of participation.
3. in returning the payments made by the participant under Paragraph 2 of this Article, the multi-level sales enterprise may deduct the value of the commodities destroyed or extinguished due to reasons attributable to the participant and the grant and/or the amount paid to the participant for such
dealing, as well as the shipping cost if the enterprise retrieves the commodities.

4. after expiration of the period for entitlement to rescind a contract as set forth in Paragraph 1 of this Article, the participant may terminate the contract in writing and withdraw from the multi-level sales plan or organization at any time.

5. after termination of a contract, the multi-level sales enterprise shall buy back commodities possessed by the participant concerned at the price of ninety percent (90%) of the original purchase price paid by the participant, provided that the enterprise may deduct the amount paid to the participant for such dealing and the diminished value of the commodities if the value of the retrieved commodities is diminished.

6. if the participant exercises his/her rights to cancel or terminate a contract under Paragraph 1 or 4, the multi-level sales enterprise shall not claim from the participant any breach penalty or compensation for damages suffered by the enterprise in connection with the cancellation or termination of the contract.

Article 6

A multi-level sales enterprise shall prepare and keep, in its principal office, written information about monthly records of the development of the enterprise within the territory of the Republic of the China for examination by the central competent authority, including the overall organizational system of the enterprise and the organizational system of each of its levels, the number of participants, categories of commodities and services sold or dealt, quantities, commissions, grants or other economic gains and principal distribution areas.

The aforesaid records shall be kept for five years.

The written information may be restored by electronic data media if the central competent authority so agrees.

The central competent authority may dispatch officials to check the written information from time to time, which the enterprise shall not impede, refuse or evade.
Article 7

A multi-level sales enterprise shall not conduct any of the following activities:

1. require a participant to pay any fee exceeding the cost in the name of training, seminars, social activities or meetings, or in any others.
2. require a participant to pay or undertake any security deposit, breach penalty, or other responsibilities which are obviously inappropriate.
3. require a participant to purchase commodities in a quantity which are clearly impossible to be sold out in a short period by an average person, unless it is set forth in a contract that the price shall be paid after the commodities are sold.
4. withhold gains payable to a participant after the participant withdraws from the enterprise in accordance with the relevant regulations.
5. set forth in a contract that a participant shall be given more gains only after the participant pays a massive amount of training fees or other costs; and
6. require, in other improper manners, a participant to undertake any responsibility which is clearly unfair. The above-listed provisions of this Article shall apply mutatis mutandis to a participant introducing a third person to participate.

Article 8

These Regulations shall come into force as of the date of promulgation.
Appendix IX

SUPERVISORY REGULATIONS GOVERNING
MULTI-LEVEL SALES OF 1999

(formerly translated as Supervisory Regulations of Multi-Level Sales)
Promulgated on February 28, 1992
by Fair Trade Commission Order (81) Kung Mi Fa Tzu No. 001
Amendments Promulgated on June 16, 1999
by Fair Trade Commission Order (88) Kung Mi Fa Tzu No. 01588

CHAPTER ONE
GENERAL PROVISIONS

Article 1
These Regulations are promulgated pursuant to the provisions of Article 23-4 of the Fair Trade Law.

Article 2
The provisions of these Regulations shall apply to relevant matters including any multi-level sales enterprise’s filing for record, inspection of activities, notices to participants, and the content of participation agreements as well as the protection of participants’ interests.

Article 3
The term “multi-level sales enterprise” as used in these Regulations means an enterprise that makes its operational plans or rules and designs its overall sales activities in respect of multi-level sales.
Article 4

The term “participant” as used in these Regulations means the following:
1. a person who takes part in the organization or plans of a multi-level sales enterprise and promotes or sells goods or services, and may introduce other persons to participate;
2. a person having an agreement with a multi-level sales enterprise, under which it will obtain the right to promote or sell goods or services and introduce other persons to participate after cumulatively paying a certain consideration.

CHAPTER TWO
PROCEDURES OF REPORT FILING FOR RECORD

Article 5

Thirty days prior to commencing multi-level sales activities, a multi-level sales enterprise shall file a written report that accurately sets forth the following particulars for recording by the central competent authority:
1. photocopies of the company license and the profit-seeking enterprise registration;
2. locations of the principal place of business and other places of business;
3. names and locations of related enterprises and their shareholding relationship with the multi-level sales enterprise;
4. sales organization or plan;
5. operational plans or rules, specifying, among other things, the methods of calculating the participants’ commissions, bonuses, and other economic benefits; a forecast of the highest possible share of gross operating revenues that could be constituted by the total amount of such commissions, bonuses, and other economic benefits;
6. the date of commencement of multi-level sales activities;
7. contract clauses and other agreements governing the rights and obligations of participants;
8. types, functions, qualities, prices, and uses of the goods to be sold or services to be provided, the forecasted unit cost of manufacturing, material or labor of the goods or services, and related matters;
9. provisions regarding warranties with respect to defects of the goods to be sold or services to be provided; and
10. other matters specified by the central competent authority.
The format of the “written report” referred to in the preceding paragraph may be prescribed by the central competent authority.

Article 6

If a multi-level sales enterprise fails to fully file all materials in accordance with the provisions of paragraph 1 of the preceding article, the central competent authority may order it to make necessary corrections and supplements.

If it deems necessary, the central competent authority may order a multi-level sales enterprise to provide additional materials to supplement any item listed in paragraph one of the preceding article.

The multi-level sales enterprise shall perform the corrections or supplementation referred to in the preceding two paragraphs within the time period prescribed by the central competent authority.

Article 7

With the exception of changes to the unit cost of manufacturing, material or labor of the goods or services in item 8, paragraph 1 of Article 5, any change to the content of the report filed by a multi-level sales enterprise shall be reported prior to implementation. However, report on changes with respect to items 1 and 3, paragraph 1 of Article 5 may be filed within 15 days after the change.

A multi-level sales enterprise shall report each June its unit cost of manufacturing, material or labor of the goods or services it sold in the preceding year.

Article 8

A multi-level sales enterprise that ceases multi-level sales activities shall file a
report with the central competent authority, post public notices at all its places of business, and notify its participants, thirty days prior to cessation.

**Article 9**

The central competent authority shall record in a roster the names of multi-level sales enterprises found, upon checking, to have fully reported all the information in paragraph 1 of Article 5.

The roster of multi-level sales enterprises and the important developments of the relevant information thereof shall be published by the central competent authority. The publication referred to in the preceding paragraph may take the form of publication in the central competent authority’s gazette or on its Internet site, or other forms sufficient to make the information widely known to the public.

**Article 10**

If a multi-level sales enterprise listed in the roster is found, upon checking, to have relocated to an unknown location or shows no evidence of operation, the central competent authority may note such circumstances in the roster.

**CHAPTER THREE**

**RIGHTS AND OBLIGATIONS OF PARTICIPANTS**

**Article 11**

Before a participant takes part in the sales organization or plan of a multi-level sales enterprise, the enterprise shall inform the participant of the following particulars, and shall make no false, dissembling, or misleading presentations:

1. capitalization and gross business volume in the preceding year, or, if the enterprise has been operating for less than one year, the cumulative business volume for the months of operation;
2. multi-level sales organization or plan;
3. operational rules, transaction guidelines, and laws and regulations relevant to multi-level sales;
4. obligations and responsibilities of a participant;
5. contents of benefits a participant may obtain by directly promoting or selling goods or services; contents of benefits a participant may obtain when a person he/she introduced to take part in the plan or organization promotes or sells goods or services, and the conditions for obtaining such benefits;
6. types, functions, qualities, prices, and uses of the goods or services, and other matters related thereto;
7. conditions, terms, and scope of warranties against defects of the goods or services;
8. conditions of withdrawal by a participant from the organization or plan, and rights and obligations arising from the withdrawal; and
9. other matters specified by the central competent authority.

The provisions of the preceding paragraph shall also apply when a participant introduces another person to take part in the organization or plan.

Article 12

A multi-level sales enterprise shall enter into a written participation contract with that who intends to take part in the sales organization or plan as a participant; the participation contract shall include the matters prescribed in items 2 through 9 of paragraph 1 of the preceding article.

Article 13

The content as specified in item 8, paragraph 1 of Article 11 shall include, subject to other stipulations more favorable to the participant, the following:
1. the participant may rescind the participation contract by giving the multi-level sales enterprise written notice within fourteen days of signing the contract;
2. within a period of thirty days after the rescission of the contract by the participant becomes effective, the multi-level sales enterprise shall, upon request by the participant, retrieve or accept delivery by the participant of the
goods; it shall furthermore refund the purchase price of all the goods owned by the participant at the time of rescission as well as other consideration paid at the time the participant joined;

3. when returning the consideration paid by a participant pursuant to the provisions of the preceding item, a multi-level sales enterprise may deduct the value of the damage to, or the loss of, the goods where such damage or loss is attributable to the participant, and may deduct any bonus or remuneration already paid to the participant for the purchase of such goods. If the goods referred to in the preceding item are retrieved by the enterprise, the enterprise may deduct necessary costs of transportation for such retrieval;

4. after the rescission period referred to in the first item has expired, the participant may still terminate the contract in writing and withdraw from the multi-level sales plan or organization at any time;

5. within thirty days following the termination of the contract pursuant to the preceding item, the multi-level sales enterprise shall buy back all goods in the participant’s possession at 90% of the original purchase price; provided, bonuses or remuneration paid to participants on account of such goods, as well as decreases in the value of the goods, may be deducted; and

6. if a participant exercises rights to rescind or terminate the contract pursuant to the provisions of items 1 and 4, the multi-level sales enterprise may not claim from the participant any damage or penalty for breach of contract in connection with such rescission or termination.

The provisions of items 2 and 5 of the preceding paragraph shall not affect the rights the participant is entitled to exercise pursuant to the relevant provisions of the Civil Code.

The provisions of the two preceding paragraphs concerning goods shall apply mutatis mutandis to services.

**Article 14**

The method for handling a request by a participant to return goods in the event a multi-level sales enterprise rescinds or terminates the contract for breach of
operational rules or plans by such participant, or other reasons attributable to such participant shall be specified in the contract.

Article 15

Beginning June 1, 2000, a multi-level sales enterprise shall prepare and keep in its principal place of business the following audited accounting statements for the previous accounting year, certified by a Certified Public Accountant:

1. operating reports;
2. balance sheets;
3. inventory of property, and
4. income statement.

A participant who has joined a multi-level sales enterprise for more than one year and who was entitled to obtain commission, bonus, or other economic benefit during the preceding year, may inspect the audited statements, as specified in the preceding paragraph, of the multi-level sales enterprise to which the participant belongs. The multi-level sales enterprise may not refuse such request without justifiable reason.

A multi-level sales enterprise shall continue to abide by the provisions of the preceding two paragraphs for two months after it ceases multi-level sales activities.

Article 16

A multi-level sales enterprise that recruits a minor as its participant shall first obtain the written consent of the minor’s statutory agent, and shall furthermore attach it to the participation contract.

CHAPTER FOUR
SALES ACTIVITIES

Article 17

A multi-level sales enterprise may not engage in any of the following activities:
1. requiring a participant to pay any fee obviously incommensurate with the cost in the name of training, seminars, social activities, meetings, or other like activities;
2. requiring a participant to pay or undertake any security deposit, breach penalty, or other liability, where such is obviously unreasonable;
3. requiring a participant to purchase goods in a quantity that would obviously be impossible for an average person to sell out in a short period, unless it is agreed that the price shall be paid only after the goods are re-sold;
4. unjustifiably withholding commission, bonus, or other economic benefit payable to a participant after rescission or termination of the contract;
5. stipulating that a participant shall be paid greater benefits only after he pays training fees obviously incommensurate with the cost or pays other obviously unjustifiable consideration;
6. giving specific persons preferential treatment in a manner contrary to the multi-level sales organization or plan, such that the commission, bonus, or other economic benefits that should be available to other participants would be diminished;
7. improperly hindering a participant from returning goods arising from rescinding the contract or terminating the contract; and
8. requiring a participant to undertake obviously unfair obligations.

The provisions of the preceding paragraph shall apply *mutatis mutandis* to participants.

**Article 18**

For purposes of regulating the activities of its participants in respect of multi-level sales, a multi-level sales enterprise shall stipulate that the following are breaches of contract by the participant, and shall prescribe methods for handling such breaches and faithfully enforce them:

1. promoting or selling goods or services, or recruiting participants to the sales organization, by deceptive or misleading means;
2. raising funds from other persons in the name of the multi-level sales enterprise or through its organization;
3. engaging in sales activities by means that run counter to public order or good morals;
4. affecting the market trading order or creating heavy losses to consumers by improper direct sales calls; and
5. engaging in sales activities that violate the Criminal Code or other laws or regulations governing industry and commerce.

Article 19

When recruiting participants by advertising or other means of communication to the public, a multi-level sales enterprise shall make it clearly known that it is engaged in multi-level sales activities; neither may it recruit participants under the guise of recruiting employees or on other pretenses.

The provisions of the preceding paragraph shall also apply to participants.

Article 20

When promoting or selling goods or services or recruiting participants by means of declared cases of success, a multi-level sales enterprise or its participants shall concretely explain the time periods, benefits obtained, and course of development of such cases, and may not make false or misleading representations.

The preceding paragraph shall apply mutatis mutandis to assertions of the items in paragraph 1 of Article 11.

Article 21

After a participant joins the sales organization or plan of a multi-level sales enterprise, the enterprise shall educate and train the participant with respect to laws and regulations relevant to multi-level sales and to channels for filing complaints about infractions of law by enterprises.
CHAPTER FIVE
INSPECTION OF BUSINESS

Article 22

A multi-level sales enterprise shall prepare and keep in its principal place of business the following written materials, and record therein on a monthly basis its development within the territory of the Republic of China:

1. the organizational system of the enterprise overall and at each level of its hierarchy;
2. total number of participants, and numbers of participants that joined and withdrew in the relevant month;
3. each participant’s name or appellation, citizen’s ID card number or number appeared on the business license, address, and contact telephone number; and the areas in which the participants are mainly located;
4. written participation contracts signed with the participants;
5. types, quantities, and monetary amounts of the goods or services sold, and other matters related thereto;
6. status of the payment of commission, bonus, or other economic benefits;
7. status of the handling of return of goods by participants and the aggregate amount of purchase price refunds paid.

The materials in the preceding paragraph shall be kept for five years; the same shall apply in the case of an enterprise that ceases multi-level sales activities.

The written materials in the first paragraph may be stored by means of electronic data storage media.

Article 23

The central competent authority may at any time dispatch personnel to inspect the materials provided for in the preceding article, or order an enterprise to provide those materials at regular intervals; the enterprise may not impede, refuse, or evade such inspection or order.
CHAPTER SIX
SUPPLEMENTARY PROVISIONS

Article 24

These Regulations shall apply to foreign enterprises that engage in multi-level sales activities within the territory of the Republic of China; a participant or any third party who introduces a sales plan or operational rules of such enterprise introduced from abroad shall also be governed by the provisions of these Regulations pertaining to enterprises.

Article 25

A multi-level sales enterprise that has already filed its written report before these amended Regulations take effect shall file its report of the particulars in items 2, 3, and 5, paragraph 1 of Article 5 and of amendments to the particulars in item 7, paragraph 1, Article 5 within two months after the amendments to these Regulations take effect.

Article 26

These Regulations shall be effective from the date of promulgation.
The amendments to these Regulations shall be effective from July 1, 1999.
SUPERVISORY REGULATIONS GOVERNING
MULTI-LEVEL SALES OF 2002

Promulgated on February 28, 1992
by Fair Trade Commission Order (81) Kung Mi Fa Tzu No. 001
Amendments Promulgated on June 16, 1999
by Fair Trade Commission Order (88) Kung Mi Fa Tzu No. 01588
Amendments Promulgated on April 24, 2002
by Fair Trade Commission Order Kung Mi Fa Tzu No. 0910003680

CHAPTER ONE
GENERAL PROVISIONS

Article 1

These Regulations are promulgated pursuant to the provisions of Article 23-4 of the Fair Trade Law.

Article 2

The provisions of these Regulations shall apply to relevant matters including any multi-level sales enterprise' filing for record, inspection of activities, required CPA certification of and public disclosure of financial statements, matters requiring notice to participants, the content of participation agreements, the protection of participants' interests, conduct prohibited as materially affecting the interests of participants, and managerial obligations toward participants.

Article 3

(Deleted)

Article 4

(Deleted)
CHAPTER TWO
PROCEDURES OF REPORT FILING FOR RECORD

Article 5

Thirty days prior to commencing multi-level sales activities, a multi-level sales enterprise shall file a written report that accurately sets forth the following particulars for recording by the central competent authority:

1. company name, paid-in capital, responsible person, place of office, date of incorporation registration, and a photocopy of the profit-seeking business registration;
2. locations of the principal place of business and other places of business;
3. names and locations of related enterprises and their shareholding relationship with the multi-level sales enterprise;
4. sales organization or plan;
5. operational plans or rules, specifying, among other things, the methods of calculating participants’ commissions, bonuses, and other economic benefits; a forecast of the highest possible share of gross operating revenues that could be constituted by the total amount of such commissions, bonuses, and other economic benefits;
6. the date of commencement of multi-level sales activities;
7. contract clauses and other agreements governing the rights and obligations of participants;
8. types, functions, qualities, prices, and uses of the goods to be sold or services to be provided, the forecasted unit cost of manufacturing, material or labor of the goods or services, and related matters;
9. provisions regarding warranties with respect to defects of the goods to be sold or services to be provided;
10. other matters specified by the central competent authority.

The format of the “written report” referred to in the preceding paragraph may be prescribed by the central competent authority.
Article 6

If a multi-level sales enterprise fails to fully file all materials in accordance with the provisions of paragraph one of the preceding article, the central competent authority may order it to make necessary corrections and supplement.

If it deems necessary, the central competent authority may order a multi-level sales enterprise to provide additional materials to supplement any item listed in paragraph one of the preceding article.

The multi-level sales enterprise shall perform the corrections or supplementation referred to in the preceding two paragraphs within the time period prescribed by the central competent authority.

Article 7

With the exception of changes to the unit cost of manufacturing, material or labor of the goods or services in item 8, paragraph 1 of Article 5, any change to the content of the report filed by a multi-level sales enterprise shall be reported prior to implementation. However, report on changes with respect to items 1 and 3, paragraph 1 of Article 5 may be filed within 15 days after the change.

A multi-level sales enterprise shall report each June its unit cost of manufacturing, material or labor of the goods or services it sold in the preceding year.

Article 8

A multi-level sales enterprise that ceases multi-level sales activities shall file a report with the central competent authority, post public notices at all its places of business, and notify its participants, thirty days prior to cessation.

Article 9

The central competent authority shall record in a roster the names of multi-level sales enterprises found, upon checking, to have fully reported all the information in paragraph 1 of Article 5.

The roster of multi-level sales enterprises and the important developments of the relevant information thereof shall be published by the central competent authority.

The publication referred to in the preceding paragraph may take the form of
publication in the central competent authority's gazette or on its Internet site, or other forms sufficient to make the information widely known to the public.

Article 10

If a multi-level sales enterprise listed in the roster is found, upon checking, to have relocated to an unknown location or shows no evidence of operation, the central competent authority may note such circumstances in the roster.

CHAPTER THREE
RIGHTS AND OBLIGATIONS OF PARTICIPANTS

Article 11

Before a participant takes part in the sales organization or plan of a multi-level sales enterprise, the enterprise shall inform the participant of the following particulars, and shall make no false, dissembling, or misleading presentations:

1. capitalization and gross business volume in the preceding year, or, if the enterprise has been operating for less than one year, the cumulative business volume for the months of operation;
2. multi-level sales organization or plan;
3. operational rules, transaction guidelines, and laws and regulations relevant to multi-level sales;
4. obligations and responsibilities of a participant;
5. contents of benefits a participant may obtain by directly promoting or selling goods or services; contents of benefits a participant may obtain when a person he/she introduced to take part in the plan or organization promotes or sells goods or services, and the conditions for obtaining such benefits;
6. types, functions, qualities, prices, and uses of the goods or services, and other matters related thereto;
7. conditions, terms, and scope of warranties against defects of the goods or services;
8. conditions of withdrawal by a participant from the organization or plan, and
   rights and obligations arising from the withdrawal; and
9. other matters specified by the central competent authority.

The provisions of the preceding paragraph shall also apply when a participant introduces another person to take part in the organization or plan.

**Article 12**

A multi-level sales enterprise shall enter into a participation contract in writings with that who intends to take part in the sales organization or plan as a participant; the participation contract shall include the matters prescribed in items 2 through 9 of paragraph 1 of the preceding article.

The writings referred to in the preceding paragraph may not be in the form of an electronic document.

**Article 13**

The content as specified in item 8, paragraph 1 of Article 11 shall include, subject to other stipulations more favorable to a participant, the following:

1. a participant may rescind the participation contract by giving the multi-level sales enterprise written notice within fourteen days of signing the contract;
2. within a period of thirty days after the rescission of the contract by a participant becomes effective, the multi-level sales enterprise shall, upon request by the participant, retrieve or accept delivery by the participant of the goods; it shall furthermore refund the purchase price of all the goods owned by the participant at the time of rescission as well as other consideration paid at the time the participant joined;
3. when returning the consideration paid by a participant pursuant to the provisions of the preceding item, a multi-level sales enterprise may deduct the value of the damage to, or the loss of, the goods where such damage or loss is attributable to the participant, and may deduct any bonus or remuneration already paid to the participant for the purchase of such goods. If the goods referred to in the preceding item are retrieved by the enterprise, the enterprise may deduct necessary costs of transportation for such retrieval;
4. after the rescission period referred to in the first item has expired, a participant may still terminate the contract in writing and withdraw from the multi-level sales plan or organization at any time;

5. within thirty days following the termination of the contract pursuant to the preceding item, the multi-level sales enterprise shall buy back all goods in the participant's possession at 90% of the participant's original purchase price; provided that deduction may be any bonuses or remuneration already paid to the participant on account of such goods and any decreases in the value of the goods;

6. if a participant exercises rights to rescind or terminate the contract pursuant to the provisions of items 1 and 4, the multi-level sales enterprise may not claim from the participant any damage or penalty for breach of contract in connection with such rescission or termination.

The provisions of items 2 and 5 of the preceding paragraph shall not affect the rights the participant is entitled to exercise pursuant to the relevant provisions of the Civil Code.

The provisions of the two preceding paragraphs concerning goods shall apply mutatis mutandis to services.

**Article 14**

The method for handling a request by a participant to return goods in the event a multi-level sales enterprise rescinds or terminates the contract for breach of operational rules or plans by such participant or other reasons attributable to such participant shall be specified in the contract.

**Article 15**

A multi-level sales enterprise shall prepare and keep in its main office the following audited accounting statements for the previous accounting year certified by a Certified Public Accountant:

1. operating reports;
2. balance sheets;
3. inventory of property;
4. income statement.

A participant who has joined a multi-level sales enterprise for more than one year and who was entitled to obtain commission, bonus, or other economic benefit during the preceding year, may inspect the audited statements as specified in the preceding paragraph of the multi-level sales enterprise to which the participant belongs. The multi-level sales enterprise may not refuse such request without justifiable reason.

A multi-level sales enterprise shall continue to abide by the provisions of the preceding two paragraphs for two months after it ceases multi-level sales activities.

**Article 16**

A multi-level sales enterprise that recruits a minor as its participant shall first obtain the written consent of the minor's statutory agent, and shall furthermore attach it to the participation contract.

The written consent referred to in the preceding paragraph may not be in the form of an electronic document.

**CHAPTER FOUR**

**SALES ACTIVITIES**

**Article 17**

A multi-level sales enterprise may not engage in any of the following activities:

1. requiring a participant to pay any fee obviously incommensurate with the cost in the name of training, seminars, social activities, meetings, or other like activities;

2. requiring a participant to pay or undertake any security deposit, breach penalty, or other liability, where such is obviously unreasonable;

3. requiring a participant to purchase goods in a quantity that would obviously be impossible for an average person to sell out in a short period, unless it is agreed that the price shall be paid only after the goods are re-sold;
4. unjustifiably withholding commission, bonus, or other economic benefit payable to a participant after rescission or termination of the contract;
5. stipulating that a participant shall be paid greater benefits only after he pays training fees obviously incommensurate with the cost or pays other obviously unjustifiable consideration;
6. giving specific persons preferential treatment in a manner contrary to the multi-level sales organization or plan, such that the commission, bonus, or other economic benefits that should be available to other participants would be diminished;
7. improperly hindering a participant from returning goods arising from rescinding the contract or terminating the contract;
8. requiring a participant to undertake obviously unfair obligations.

The provisions of the preceding paragraph shall apply mutatis mutandis to participants.

Article 18

For purposes of regulating the activities of its participants in respect of multi-level sales, a multi-level sales enterprise shall stipulate that the following are breaches of contract by the participant, and shall prescribe methods for handling such breaches and faithfully enforce them:

1. promoting or selling goods or services, or recruiting participants to the sales organization, by deceptive or misleading means;
2. raising funds from other persons in the name of the multi-level sales enterprise or through its organization;
3. engaging in sales activities by means that run counter to public order or good morals;
4. affecting the market trading order or creating heavy losses to consumers by improper direct sales calls;
5. engaging in sales activities that violate the Criminal Code or other laws or regulations governing industry and commerce.
Article 19

When recruiting participants by advertising or other means of communication to the public, a multi-level sales enterprise shall make it clearly known that it is engaged in multi-level sales activities; neither may it recruit participants under the guise of recruiting employees or on other pretense.

The provisions of the preceding paragraph shall also apply to participants.

Article 20

When promoting or selling goods or services or recruiting participants by means of declared cases of success, a multi-level sales enterprise or its participants shall concretely explain the time periods, benefits obtained, and course of development of such cases, and may not make false or misleading representations.

The preceding paragraph shall apply mutatis mutandis to assertions of the items in paragraph 1 of Article 11.

Article 21

After a participant joins the sales organization or plan of a multi-level sales enterprise, the enterprise shall educate and train the participant with respect to laws and regulations relevant to multi-level sales and to channels for filing complaints about infractions of law by enterprises.

CHAPTER FIVE
INSPECTION OF BUSINESS

Article 22

A multi-level sales enterprise shall prepare and keep in its principal place of business the following written materials, and record therein on a monthly basis its development within the territory of the Republic of China:
1. the organizational system of the enterprise overall and at each level of its hierarchy;
2. total number of participants, and numbers of participants that joined and withdrew in the relevant month;
3. each participant's name or appellation, citizen’s ID card number or number appeared on the business license, address, and contact telephone number; and the areas in which the participants are mainly located;
4. written participation contracts signed with the participants;
5. types, quantities, and monetary amounts of the goods or services sold, and other matters related thereto;
6. status of the payment of commission, bonus, or other economic benefits;
7. status of the handling of return of goods by participants and the aggregate amount of purchase price refunds paid.

The materials in the preceding paragraph shall be kept for five years; the same shall apply in the case of an enterprise that ceases multi-level sales activities.

The written materials in the first paragraph may be stored by means of electronic data storage media.

Article 23

The central competent authority may at any time dispatch personnel to inspect the materials provided for in the preceding article, or order an enterprise to provide those materials at regular intervals; the enterprise may not impede, refuse, or evade such inspection or order.

CHAPTER SIX
SUPPLEMENTARY PROVISIONS

Article 24

(Deleted)
Article 25

(Deleted)

Article 26

The Regulations shall be in force from the date of promulgation, with the exception of the provisions amended and promulgated on June 16, 1999, which shall be in force from July 1, 1999.
CHAPTER ONE
GENERAL PROVISIONS

Article 1

These Regulations are promulgated pursuant to the provisions of Article 23-4 of the Fair Trade Law (“the Law” for short).

Article 2

The provisions of these Regulations shall apply to relevant matters including any multi-level sales enterprise' filing for record, inspection of activities, required CPA certification of and public disclosure of financial statements, matters requiring notice to participants, the content of participation agreements, the protection of participants' interests, conduct prohibited as materially affecting the interests of participants, and managerial obligations toward participants.
Article 3

(Deleted)

Article 4

(Deleted)

CHAPTER TWO
PROCEDURES OF REPORT FILING FOR RECORD

Article 5

Prior to commencing multi-level sales activities, a multi-level sales enterprise shall file a completed written report that accurately sets forth the following particulars for recording by the central competent authority:

1. business name, paid-in capital, responsible person, place of office, date of incorporation registration, and a photocopy of the profit-seeking business registration;
2. locations of the principal place of business and other places of business; sales organization or plan;
3. the date of commencement of multi-level sales activities;
4. multi-level sales system, which shall include the contents, offering requirements, and methods of calculating participants' commissions, bonuses, and other economic benefits; a forecast of the highest possible share of gross operating revenues that could be constituted by the total amount of such commissions, bonuses, and other economic benefits;
5. the content and format of the contract;
6. items, prices, unit costs, uses and sources of the goods to be sold or services to be provided, and related matters;
7. other matters specified by the central competent authority.

The format of the "written report" referred to in the preceding paragraph may be
prescribed by the central competent authority.

**Article 6**

If a multi-level sales enterprise fails to fully file all materials in accordance with the provisions of paragraph one of the preceding article, the central competent authority may order it to make necessary corrections and supplement.

If it deems necessary, the central competent authority may order a multi-level sales enterprise to provide additional materials to supplement any item listed in paragraph one of the preceding article.

The multi-level sales enterprise shall perform the corrections or supplementation referred to in the preceding two paragraphs within the time period prescribed by the central competent authority.

**Article 7**

Any change to the content of the report filed by a multi-level sales enterprise shall be reported prior to implementation. However, report on changes with respect to item 1, paragraph 1 of Article 5 may be filed within 15 days after the change.

No changes to the unit cost in item 6, paragraph 1 of Article 5 shall apply to the preceding paragraph.

**Article 8**

A multi-level sales enterprise that ceases multi-level sales activities shall file a report with the central competent authority prior to cessation.

**Article 9**

The central competent authority shall record in a roster the names of multi-level sales enterprises found, upon checking, to have fully reported all the information in paragraph 1 of Article 5.

The roster of multi-level sales enterprises and the important developments of the relevant information thereof shall be published by the central competent authority.

The publication referred to in the preceding paragraph may take the form of
publication in the central competent authority's gazette or on its Internet site, or other forms sufficient to make the information widely known to the public.

**Article 10**

If a multi-level sales enterprise listed in the roster is found, upon checking, to have relocated to an unknown location or shows no evidence of operation, the central competent authority may note such circumstances in the roster.

**CHAPTER THREE**

**RIGHTS AND OBLIGATIONS OF PARTICIPANTS**

**Article 11**

Before a participant takes part in the sales organization or plan of a multi-level sales enterprise, the enterprise shall inform the participant of the following particulars, and shall make no dissembling, false, or misleading presentations:

1. Paid-up capital and gross business volume in the preceding year, or, if the enterprise has been operating for less than one year, the cumulative business volume for the months of operation;
2. multi-level sales system, which shall include the contents of the attainable benefits, acquiring requirements and measuring methods from goods or services directly promoted or sold by participants as well as from goods or services promoted or sold by participants who joined the multi-level sales system posteriorly. participants’ promoting or selling commodities and services after participating the system;
3. laws and regulations relevant to multi-level sales;
4. obligations and responsibilities of a participant;
5. Items, prices, and uses of the goods or services, and other matters related thereto;
6. conditions, terms, and scope of warranties against defects of the goods or services;
7. conditions of withdrawal by a participant from the organization or plan, and
rights and obligations arising from the withdrawal; and
8. other matters specified by the central competent authority.

Shall make no false or misleading presentations on items listed in the preceding paragraph when a participant introduces another person to take part in the organization or plan.

**Article 12**

A multi-level sales enterprise shall enter into a participation contract in writings with that who intends to take part in the sales organization or plan as a participant; the participation contract shall include the matters prescribed in items 2 through 8 of paragraph 1 of the preceding article.

The writings referred to in the preceding paragraph may not be in the form of an electronic document.

**Article 13**

The content of written contract, which should be disclosed by multi-level sales enterprise to participants, in accordance with item 7, paragraph 1 of article 11, should include articles 23-1 through 23-3 of the Law, except for those are beneficial to participants.

**Article 14**

The method for handling a request by a participant to return goods in the event a multi-level sales enterprise rescinds or terminates the contract for breach of operational rules or plans by such participant or other reasons attributable to such participant shall be specified in the contract.

**Article 15**

A multi-level sales enterprise shall prepare and keep in its main office the following audited financial statements for the previous accounting year certified by a Certified Public Accountant:
1. balance sheets;
2. income statement.

A participant who has joined a multi-level sales enterprise for more than one year and who was entitled to obtain commission, bonus, or other economic benefit during the preceding year, may inspect the audited financial statements as specified in the preceding paragraph of the multi-level sales enterprise to which the participant belongs. The multi-level sales enterprise may not refuse such request without justifiable reason.

A multi-level sales enterprise shall continue to abide by the provisions of the preceding two paragraphs for two months after it ceases multi-level sales activities.

**Article 16**

A multi-level sales enterprise that recruits a minor as its participant shall first obtain the written consent of the minor's statutory agent, and shall furthermore attach it to the participation contract.

The written consent referred to in the preceding paragraph may not be in the form of an electronic document.

**CHAPTER FOUR**

**SALES ACTIVITIES**

**Article 17**

A multi-level sales enterprise may not engage in any of the following activities:

1. requiring a participant to pay any fee obviously incommensurate with the cost in the name of training, seminars, social activities, meetings, or other like activities;
2. requiring a participant to pay or undertake any security deposit, breach penalty, or other liability, where such is obviously unreasonable;
3. requiring a participant to purchase goods in a quantity that would obviously be impossible for an average person to sell out in a short period, unless it is agreed that the price shall be paid only after the goods are re-sold;
4. unjustifiably withholding commission, bonus, or other economic benefit
payable to a participant after rescission or termination of the contract;
5. stipulating that a participant shall be paid greater benefits only after he pays
training fees obviously incommensurate with the cost or pays other obviously
unjustifiable consideration;
6. giving specific persons preferential treatment in a manner contrary to the
multi-level sales organization or plan, such that the commission, bonus, or
other economic benefits that should be available to other participants would
be diminished;
7. improperly hindering a participant from returning goods arising from
rescinding the contract or terminating the contract;
8. requiring a participant to undertake obviously unfair obligations.
The provisions of the preceding paragraph shall apply mutatis mutandis to
participants.

Article 18

For purposes of regulating the activities of its participants in respect of
multi-level sales, a multi-level sales enterprise shall stipulate that the following are
breaches of contract by the participant, and shall prescribe methods for handling such
breaches and faithfully enforce them:
   1. promoting or selling goods or services, or recruiting participants to the sales
      organization, by deceptive or misleading means;
   2. raising funds from other persons in the name of the multi-level sales
      enterprise or through its organization;
   3. engaging in sales activities by means that run counter to public order or good
      morals;
   4. affecting the market trading order or creating heavy losses to consumers by
      improper direct sales calls;
   5. engaging in sales activities that violate the Criminal Code or other laws or
      regulations governing industry and commerce.

Article 19
When recruiting participants by advertising or other means of communication to the public, a multi-level sales enterprise shall make it clearly known that it is engaged in multi-level sales activities; neither may it recruit participants under the guise of recruiting employees or on other pretense.

The provisions of the preceding paragraph shall also apply to participants.

Article 20

When promoting or selling goods or services or recruiting participants by means of declared cases of success, a multi-level sales enterprise or its participants shall concretely explain the time periods, benefits obtained, and course of development of such cases, and may not make false or misleading representations.

Article 21

After a participant joins the sales organization or plan of a multi-level sales enterprise, the enterprise shall educate and train the participant with respect to laws and regulations relevant to multi-level sales and to channels for filing complaints about infractions of law by enterprises.

CHAPTER FIVE
INSPECTION OF BUSINESS

Article 22

A multi-level sales enterprise shall prepare and keep in its principal place of business the following written materials, and record therein on a monthly basis its development within the territory of the Republic of China:

1. the organizational system of the enterprise overall and at each level of its hierarchy;
2. total number of participants, and numbers of participants that joined and withdrew in the relevant month;
3. each participant's name or appellation, citizen's ID card number or number appeared on the business license, address, and contact telephone number; and
the areas in which the participants are mainly located;
4. written participation contracts signed with the participants;
5. types, quantities, and monetary amounts of the goods or services sold, and other matters related thereto;
6. status of the payment of commission, bonus, or other economic benefits;
7. status of the handling of return of goods by participants and the aggregate amount of purchase price refunds paid.

The materials in the preceding paragraph shall be kept for five years; the same shall apply in the case of an enterprise that ceases multi-level sales activities.

The written materials in the first paragraph may be stored by means of electronic data storage media.

Article 23

The central competent authority may at any time dispatch personnel to inspect the materials provided for in the preceding article, or order an enterprise to provide those materials at regular intervals; the enterprise may not impede, refuse, or evade such inspection or order.

CHAPTER SIX
SUPPLEMENTARY PROVISIONS

Article 24

(Deleted)

Article 25

(Deleted)

Article 26

The Regulations shall be in force from the date of promulgation.
CHAPTER ONE
GENERAL PROVISIONS

Article 1

These Regulations are promulgated pursuant to the provisions of Article 23-4 of the Fair Trade Law (“the Law” for short).

Article 2

The provisions of these Regulations shall apply to relevant matters including any multi-level sales enterprise' filing for record, inspection of activities, required CPA certification of and public disclosure of financial statements, matters requiring notice to participants, the content of participation agreements, the protection of participants' interests, conduct prohibited as materially affecting the interests of participants, and
managerial obligations toward participants.

**Article 3**

(Deleted)

**Article 4**

(Deleted)

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**CHAPTER TWO**

**PROCEDURES OF REPORT FILING FOR RECORD**

**Article 5**

Prior to commencing multi-level sales activities, a multi-level sales enterprise shall file a completed written report that accurately sets forth the following particulars for recording by the central competent authority:

1. business name, paid-in capital, responsible person, place of office, date of incorporation registration, and a photocopy of the profit-seeking business registration;
2. locations of the principal place of business and other places of business; sales organization or plan;
3. the date of commencement of multi-level sales activities;
4. multi-level sales system, which shall include the contents, offering requirements, and methods of calculating participants' commissions, bonuses, and other economic benefits; a forecast of the highest possible share of gross operating revenues that could be constituted by the total amount of such commissions, bonuses, and other economic benefits;
5. the content and format of the contract;
6. items, prices, unit costs, uses and sources of the goods to be sold or services to be provided, and related matters;
7. other matters specified by the central competent authority.

The format of the "written report" referred to in the preceding paragraph may be
prescribed by the central competent authority.

**Article 6**

If a multi-level sales enterprise fails to fully file all materials in accordance with the provisions of paragraph one of the preceding article, the central competent authority may order it to make necessary corrections and supplement.

If it deems necessary, the central competent authority may order a multi-level sales enterprise to provide additional materials to supplement any item listed in paragraph one of the preceding article.

The multi-level sales enterprise shall perform the corrections or supplementation referred to in the preceding two paragraphs within the time period prescribed by the central competent authority.

**Article 7**

Any change to the content of the report filed by a multi-level sales enterprise shall be reported prior to implementation. However, report on changes with respect to item 1, paragraph 1 of Article 5 may be filed within 15 days after the change.

No changes to the unit cost in item 6, paragraph 1 of Article 5 shall apply to the preceding paragraph.

**Article 8**

A multi-level sales enterprise that ceases multi-level sales activities shall file a report with the central competent authority prior to cessation.

**Article 9**

The central competent authority shall record in a roster the names of multi-level sales enterprises found, upon checking, to have fully reported all the information in paragraph 1 of Article 5.

The roster of multi-level sales enterprises and the important developments of the relevant information thereof shall be published by the central competent authority.

The publication referred to in the preceding paragraph may take the form of
publication on the World Wide Web site, or other forms sufficient to make the information widely known to the public.

**Article 10**

If a multi-level sales enterprise listed in the roster is found, upon checking, to have relocated to an unknown location or shows no evidence of operation, the central competent authority may note such circumstances in the roster.

**CHAPTER THREE**

**RIGHTS AND OBLIGATIONS OF PARTICIPANTS**

**Article 11**

Before a participant takes part in the sales organization or plan of a multi-level sales enterprise, the enterprise shall inform the participant of the following particulars, and shall make no dissembling, false, or misleading presentations:

1. Paid-up capital and gross business volume in the preceding year, or, if the enterprise has been operating for less than one year, the cumulative business volume for the months of operation;
2. multi-level sales system, which shall include the contents of the attainable benefits, acquiring requirements and measuring methods from goods or services directly promoted or sold by participants as well as from goods or services promoted or sold by participants who joined the multi-level sales system posterior;
3. laws and regulations relevant to multi-level sales;
4. obligations and responsibilities of a participant;
5. Items, prices, and uses of the goods or services, and other matters related thereto;
6. conditions, terms, and scope of warranties against defects of the goods or services;
7. conditions of withdrawal by a participant from the organization or plan, and rights and obligations arising from the withdrawal; and
8. other matters specified by the central competent authority.

Shall make no false or misleading presentations on items listed in the preceding paragraph when a participant introduces another person to take part in the organization or plan.

**Article 12**

A multi-level sales enterprise shall enter into a participation contract in writings with that who intends to take part in the sales organization or plan as a participant; the participation contract shall include the matters prescribed in items 2 through 8 of paragraph 1 of the preceding article.

The writings referred to in the preceding paragraph may not be in the form of an electronic document.

**Article 13**

The content of written contract, which should be disclosed by multi-level sales enterprise to participants, in accordance with item 7, paragraph 1 of article 11, should include articles 23-1 through 23-3 of the Law, except for those are beneficial to participants.

**Article 14**

The method for handling a request by a participant to return goods in the event a multi-level sales enterprise rescinds or terminates the contract for breach of operational rules or plans by such participant or other reasons attributable to such participant shall be specified in the contract.

**Article 15**

A multi-level sales enterprise shall prepare and keep in its main office the following audited financial statements for the previous accounting year certified by a Certified Public Accountant:

1. balance sheets;
2. income statement.
A participant who has joined a multi-level sales enterprise for more than one year and who was entitled to obtain commission, bonus, or other economic benefit during the preceding year, may inspect the audited financial statements as specified in the preceding paragraph of the multi-level sales enterprise to which the participant belongs. The multi-level sales enterprise may not refuse such request without justifiable reason.

A multi-level sales enterprise shall continue to abide by the provisions of the preceding two paragraphs for two months after it ceases multi-level sales activities.

**Article 16**

A multi-level sales enterprise that recruits a minor as its participant shall first obtain the written consent of the minor's statutory agent, and shall furthermore attach it to the participation contract.

The written consent referred to in the preceding paragraph may not be in the form of an electronic document.

**CHAPTER FOUR**

**SALES ACTIVITIES**

**Article 17**

A multi-level sales enterprise may not engage in any of the following activities:

1. requiring a participant to pay any fee obviously incommensurate with the cost in the name of training, seminars, social activities, meetings, or other like activities;
2. requiring a participant to pay or undertake any security deposit, breach penalty, or other liability, where such is obviously unreasonable;
3. requiring a participant to purchase goods in a quantity that would obviously be impossible for an average person to sell out in a short period, unless it is agreed that the price shall be paid only after the goods are re-sold;
4. unjustifiably withholding commission, bonus, or other economic benefit payable to a participant after rescission or termination of the contract;
5. stipulating that a participant shall be paid greater benefits only after he pays training fees obviously incommensurate with the cost or pays other obviously unjustifiable consideration;
6. giving specific persons preferential treatment in a manner contrary to the multi-level sales organization or plan, such that the commission, bonus, or other economic benefits that should be available to other participants would be diminished;
7. improperly hindering a participant from returning goods arising from rescinding the contract or terminating the contract;
8. requiring a participant to undertake obviously unfair obligations.

The provisions of the preceding paragraph shall apply mutatis mutandis to participants.

**Article 18**

For purposes of regulating the activities of its participants in respect of multi-level sales, a multi-level sales enterprise shall stipulate that the following are breaches of contract by the participant, and shall prescribe methods for handling such breaches and faithfully enforce them:

1. promoting or selling goods or services, or recruiting participants to the sales organization, by deceptive or misleading means;
2. raising funds from other persons in the name of the multi-level sales enterprise or through its organization;
3. engaging in sales activities by means that run counter to public order or good morals;
4. affecting the market trading order or creating heavy losses to consumers by improper direct sales calls;
5. engaging in sales activities that violate the Criminal Code or other laws or regulations governing industry and commerce.

**Article 19**

When recruiting participants by advertising or other means of communication to
the public, a multi-level sales enterprise shall make it clearly known that it is engaged in multi-level sales activities; neither may it recruit participants under the guise of recruiting employees or on other pretense.

The provisions of the preceding paragraph shall also apply to participants.

Article 20

When promoting or selling goods or services or recruiting participants by means of declared cases of success, a multi-level sales enterprise or its participants shall concretely explain the time periods, benefits obtained, and course of development of such cases, and may not make false or misleading representations.

Article 21

After a participant joins the sales organization or plan of a multi-level sales enterprise, the enterprise shall educate and train the participant with respect to laws and regulations relevant to multi-level sales and to channels for filing complaints about infractions of law by enterprises.

CHAPTER FIVE

INSPECTION OF BUSINESS

Article 22

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1. the organizational system of the enterprise overall and at each level of its hierarchy;
2. total number of participants, and numbers of participants that joined and withdrew in the relevant month;
3. each participant's name or appellation, citizen's ID card number or number appeared on the business license, address, and contact telephone number; and the areas in which the participants are mainly located;
4. written participation contracts signed with the participants;
5. types, quantities, and monetary amounts of the goods or services sold, and other matters related thereto;
6. status of the payment of commission, bonus, or other economic benefits;
7. status of the handling of return of goods by participants and the aggregate amount of purchase price refunds paid.

The materials in the preceding paragraph shall be kept for five years; the same shall apply in the case of an enterprise that ceases multi-level sales activities.

The written materials in the first paragraph may be stored by means of electronic data storage media.

**Article 23**

The central competent authority may at any time dispatch personnel to inspect the materials provided for in the preceding article, or order an enterprise to provide those materials at regular intervals; the enterprise may not impede, refuse, or evade such inspection or order.

**CHAPTER SIX**

**SUPPLEMENTARY PROVISIONS**

**Article 24**

(Deleted)

**Article 25**

(Deleted)

**Article 26**

The Regulations shall be in force from the date of promulgation.
Appendix XIII

Procedures for Handling Complaints and Requests for Interpretations of the Fair Trade Law

Application Procedures for Various Cases
I. Request for an Interpretation of the Fair Trade Law

A
FTC has previously made an interpretation in an identical or similar case
Applicant notified in writing

B
FTC has not previously made any interpretation in any identical or similar case
Responsible department drafts and submits a proposal

After checking and approval, proposal submitted to the Commissioners’ Meeting for case deliberation
Reply letter drafted in accordance with the decision and submitted for approval

Letter issued
Original to the applicant
II. Complaints

C

Responsible department investigates

Responsible department drafts and submits a proposal

Reply letter drafted in accordance with the decision and submitted for approval

After checking and approval, proposal submitted to the Commissioners Meeting for case deliberation

Letter issued

Disposition made in respect of the defendant

No disposition made in respect of the defendant

Original to the complainant

Copy to the defendant

Originals to the defendant and complainant

Copy to the local competent authorities
Appendix XIV

Procedures for Pre-Merger Notification by Enterprises

1. Enterprise submits notification for merger
   (notification received by the FTC)

2. Responsible department undertakes formality and completeness review under the direction of the reviewing commissioner

3. Are the requirements for a pre-merger notification fulfilled?
   - Yes: Director of responsible department decides to issue the acceptance of notification
   - No: Is there any uncertainty on that the requirements are not met?
     - No: Pre-merger notification rejected
     - Yes: Overall analysis of the pre-merger notification, and proposal prepared for submitting to Commissioners’ Meeting for approval

4. Is the filed documentation complete?
   - Yes: Director of responsible department decides to request the notifying enterprise to submit further documents
   - No: Notifying enterprise is informed in writing

5. Pre-merger notification submitted to earliest upcoming Commissioners’ Meeting for deliberation

6. Are documents submitted after request?
   - Yes: Is the documentation complete after the further submissions?
     - Yes: Overall analysis of the pre-merger notification, and proposal prepared for submitting to Commissioners’ Meeting for approval
     - No: Resolution to extend the waiting period
   - No: Resolution to prohibit the merger

7. To inform the notifying enterprise of the failure of meeting requirements

8. Resolution to prohibit the merger

9. To issue the written decision to prohibit the merger

10. Had there been a resolution to extend the waiting period?
    - No: To inform notifying enterprise in writing that merger is not prohibited
    - Yes: Is the waiting period to be shortened?
      - Yes: Merger is not opposed, and the notifying enterprise is informed of the shortening of the waiting period by Director of responsible department
      - No: To inform notifying enterprise in writing that merger is not prohibited

11. Merger is not opposed, and the notifying enterprise is informed of the shortening of the waiting period by Director of responsible department

12. Resolution not to oppose the merger

13. To make findings after substantive review

14. Notifying enterprise is informed in writing

15. Resolution to extend the waiting period

16. To inform notifying enterprise in writing that merger is not prohibited

17. Merger is not opposed (Written notice is not required)
Appendix XV

Procedures for Handling Applications for Concerted Actions of Enterprises

Enterprise files an application for concerted action

FTC receives the application

Responsible department drafts and submits recommendations

Investigate:
1. structure of the concerted action under application
2. structure of the specific market
3. market position of the applicant
4. assess market impact of approval of the concerted action

Analysis

Case presented to the Commissioners’ Meeting

Applicant notified in writing of approval or non-approval

Case closed
Appendix XVI

Procedures for Handling Document Filing by Multi-level Sales Enterprises

1. Multi-level sales enterprise files the documents
2. FTC receives the documents
3. Responsible department inspects the document contents
   - Complete
   - Further materials required
   - Revision required
     - Enterprise notified of need for further materials or revisions
       - Complete
       - Further materials or revisions required
         - Applicant notified in writing of receipt of documents
Appendix XVII

Statistics

1) Major Statistical Terminologies and Their Definitions

I. Complaint

Complaint refers to a case filed by reporting agency or other government agencies in writing (including E-mail and fax) or oral (recorded by the FTC) to the Fair Trade Commission, stating a possible violation of the provisions of the Fair Trade Act.

1. Decision

Decision refers to a complaint reviewed and a disposition made by the FTC’s Commissioners Meeting that the defendant is confirmed to violate the Fair Trade Act (the FTA) or the Supervisory Regulations Governing Multi-level Sales and will receive a decision document.

2. No-action Decision

No-action decision refers to a complaint reviewed (or authorized persons in accordance with a precedent) and a disposition made by the FTC’s Commissioners Meeting that the defendant is confirmed not to violate the FTA or relevant regulation. Reasons for the no-action decision can be classified into following categories:

(1) Applicable to Article 46: cases subject to the regulation by Article 46, FTA.

(2) Failing to meet substantive prerequisites: insufficient evidences, failing to meet substantive criteria; the defendant had taken corrective measure already, or in a minor case a settlement had already been reached between two sides.

(3) Others: reasons may not be classified into the aforementioned items.

3. Administrative Action

Administrative action refers to measures taken by the FTC’s Commissioners Meeting (or authorized persons in accordance with a precedent) in response to a defendant which violated the FTA or the spirit thereof. Administrative action could be any of the followings:

(1) Correction program: cases for which no decision rulings will be made before a measure is taken to require related party’s correction of certain behavior
before a deadline or its attention to the case.

(2) Written advice: cases on which a written statement rather than a written decision will be sent to the related party to require stopping or correcting certain behavior or ask to adopt improvement measures.

(3) Written request for agency-in-charge to take appropriate measures: cases for which the agency-in-charge is requested by the FTC to take appropriate measures to solve competition concerns.

(4) Other measures: cases which may not be classified into the aforementioned three items.

4. Termination of Review

Termination of review refers to the complaint or accusation goes beyond FTC’s responsibilities, shall be referred to another agency according to division of jurisdictions between agencies, or fails to meet the FTC’s procedural requirements.

(1) Reasons for termination of review: ☐criminal case, ☒civil dispute ☐case fallen upon other agency’s responsibility, and ☐failing to meet procedural requirements (e.g., the filing party withdraw its complaint, failed to supplement information required, been out of contact, complained anonymously, complained against a party does not fit into the definitions by Article 2 of the Fair Trade Act, or the complained party already been filed for the same cause).

(2) Results of Terminating Review: ☐replied with a written explanation, ☒filed for record, or ☐referred to another agency.

II. Application for Concerted Action

Application for concerted action refers to an application submitted by enterprises to the FTC for an approval to conduct a concerted action according to the Article 14 of the Fair Trade Act.

1. Approved

An approved case refers to an application for concerted action for which the FTC decides to grant approval at its Commissioners’ Meeting.

2. Partially Approved

A case partially approved refers to an application for concerted action for which the FTC decides to grant approval for part of the applied items at its Commissioners’ Meeting.

3. Rejected

A rejected case refers to an application for concerted action against which the FTC decides to reject at its Commissioners’ Meeting. (This category includes
cases whose applicants fail to provide supplementary data as required.)

4. Termination of Review
   A case whose application review is terminated refers to an application which contains a fact taking place before the Fair Trade Act became effective, or a case whose handling results cannot be classified into any one of the aforementioned three categories and which is already concluded as proposed.

III. Merger Notifications
   It refers to a merger notification filed by an enterprise to the FTC according to the Article 11 of the Fair Trade Act.
   1. Merger not Prohibited
      Merger not prohibited refers to a merger proposal not prohibited or objected by the Commissioners’ Meetings of the FTC.
   2. Merger Prohibited
      Merger prohibited refers to a merger proposal prohibited by the Commissioners’ Meetings of the FTC.
   3. Termination of Review
      Termination of review happens either when notifying parties fail to provide sufficient documents to meet the FTC’s written request, or the results of cases handling cannot be categorized into merger not prohibited or merger prohibited.

IV. Request for Explanation
   Request for explanation refers to a request of a government agency, an enterprise, or an individual to the FTC for explanation of certain provisions of the Fair Trade Act and its related regulations or a written request of a government agency to comment whether a case is applicable to the Fair Trade Act.
   1. Explanation
      Explanation refers to a written statement which, provided by the FTC, deliberates and analyzes the meanings of the Fair Trade Act and related regulations for FTC’s enforcement work by a government agency, an enterprise, or an individual’s request.
   2. Inquiry-answering
      (1) Inquiry-answering refers to a response provided by responsible personnel, instead of the FTC Commissioners’ Meeting, in accordance with a previous explanation or based on the existent laws and regulations whose provisions are already adequate to clarify the question raised or whose provisions are very clear without controversy and need no further interpretation.
      (2) It also refers to a response to a request of FTC’s advisory opinion by a court, a
prosecutor’s office, or an investigation agency.

3. Termination of Review

Termination of review happens when a request for explanation goes beyond the FTC’s responsibilities and for which the FTC has no authority to provide explanation, or the contents of the request are vague and the party making such request fails to respond to or ignores the FTC’s request for supplementary information.

V. FTC Self-initiated Investigation

The FTC self-initiated investigation means that the FTC take initiative to investigate, per its authorization and duties, possible illegal actions against the Fair Trade Act in accordance with an established procedure.

1. Decision

Decision refers to a disposition made by the FTC’s Commissioners’ Meeting that a FTC self-initiated investigation case is confirmed to violate the Fair Trade Act (the FTA) or the Supervisory Regulations Governing Multi-level Sales and will receive a decision document.

2. No-action Decision

No-action decision refers to a disposition made by the FTC’s Commissioners Meeting (or authorized persons in accordance with a precedent) that a FTC self-initiated investigation case is confirmed no violation of the FTA or relevant regulation. Reasons for the no-action decision can be classified into following categories:

(1) Applicable to Article 46: cases subject to the regulation by Article 46, FTA.
(2) Failing to meet substantive prerequisites: insufficient evidences, failing to meet substantive criteria; the defendant had taken corrective measure already, or in a minor case a settlement had already been reached between two sides.
(3) Others: reasons may not be classified into the aforementioned items.

3. Administrative Action

Administrative action refers to measures taken by the FTC’s Commissioners Meeting (or authorized persons in accordance with a precedent) in response to a FTC self-initiated investigation case which violated the FTA or the spirit thereof. Administrative action could be any of the followings:

(1) Correction program: cases for which no decision rulings will be made before a measure is taken to require related party’s correction of certain behavior before a deadline or its attention to the case.
(2) Written advice: Cases on which a written statement rather than a written decision will be sent to the related party to require stopping or correcting
certain behavior or ask to adopt improvement measures.

(3) Written request for agency-in-charge to take appropriate measures: Cases for which the agency-in-charge is requested by the FTC to take appropriate measures to solve competition concerns.

(4) Other measures: Cases which may not be classified into the aforementioned three items.

4. Investigation Suspended

Termination of review happens when a FTC self-initiated investigation case goes beyond FTC’s responsibilities or should be monitored and then closed.
2) Cases Received

I. Cases Received and Processed

Table 1  Statistics on Cases Received by the Commission

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(1) Complaints

Table 2  Statistics on Concluded Complaints—Categorized by Results

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</table>
(2) Application for Concerted Action

To prevent any concerted action between and among competitors in the same industry from undermining market mechanisms and damaging the consumer interests, the Fair Trade Law of the Republic of China expressly prohibits horizontal concerted actions that may undermine the market mechanism for production and trading of commodities, or supply and demand of services. However, exceptions may be made under Article 14, Subparagraph 7 of the Fair Trade Law if a concerted action is beneficial to the overall economy and public interest and is approved by the Fair Trade Commission.

Table 3  Statistics of Concluded Concerted Action Application–Categorized by Results

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Table 4  Effective Approvals of Concerted Action

End of December 2006

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<tr>
<th>Concerted Action</th>
<th>Valid Period of Concerted Action</th>
<th>No. of Enterprises</th>
<th>Applicable FTA Article</th>
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<tr>
<td>1. Joint manufacture, sales &amp; imports of 69KV-161KV connecting appliances by a new joint venture under extended joint program</td>
<td>03/11/1999～02/14/2008</td>
<td>9</td>
<td>Subpara. 2, Para. 1, Article 14 Para. 2, Article 15</td>
</tr>
<tr>
<td>2. Joint shipping of corn under joint procurement program (Major League)</td>
<td>09/01/1999～08/31/2008</td>
<td>61</td>
<td>Subpara. 5, Para. 1, Article 14 Para. 2, Article 15</td>
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3. Joint shipping of barley under joint procurement program

<table>
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<th>Para 1, Article 14</th>
<th>Para 2, Article 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>01/01/2000 ~ 12/31/2008</td>
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4. Joint shipping of corn under joint procurement program (Feed League)

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<th>Subpara</th>
<th>Para 1, Article 14</th>
<th>Para 2, Article 15</th>
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</thead>
<tbody>
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<td>03/01/2000 ~ 02/28/2009</td>
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<td>Subpara 5</td>
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</table>

5. Joint shipping of soybean under joint procurement program

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<th>Number</th>
<th>Subpara</th>
<th>Para 1, Article 14</th>
<th>Para 2, Article 15</th>
</tr>
</thead>
<tbody>
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<td>08/30/2000 ~ 08/31/2009</td>
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6. Joint shipping of wheat under joint procurement program

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<th>Number</th>
<th>Subpara</th>
<th>Para 1, Article 14</th>
<th>Para 2, Article 15</th>
</tr>
</thead>
<tbody>
<tr>
<td>10/01/2000 ~ 09/30/2009</td>
<td>38</td>
<td>Subpara 5</td>
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<td></td>
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</table>

7. Joint IC card sales & services by financial institutions under extended joint program

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<th>Number</th>
<th>Subpara</th>
<th>Para 1, Article 14</th>
<th>Para 2, Article 15</th>
</tr>
</thead>
<tbody>
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<td>12/13/2000 ~ 12/31/2009</td>
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8. Joint shipping of corn under joint procurement program (GreatWall League)

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<th>Para 2, Article 15</th>
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<tbody>
<tr>
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9. Joint shipping of materials and equipments purchased by government agencies and public owned enterprises under joint carriage program

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<th>Subpara</th>
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<th>Para 2, Article 15</th>
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<td>Three years after approval received</td>
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10. Joint developing specifications of notebook computer base under joint program

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<th>Subpara</th>
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<th>Para 2, Article 15</th>
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<td>Until 04/19/2009</td>
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11. Joint applying unconditional endorsement and transfer of ticket vouchers on Taipei- Tainan route

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<th>Number</th>
<th>Subpara</th>
<th>Para 1, Article 14</th>
<th>Para 2, Article 15</th>
</tr>
</thead>
<tbody>
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<td>Until 10/31/2008</td>
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12. Joint applying unconditional endorsement and transfer of ticket vouchers on Taipei- Kaohsiung route

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<th>Number</th>
<th>Subpara</th>
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13. Joint scheduling, joint ticketing and ticket sharing on Tungkang-Little Okinawa

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<th>Number</th>
<th>Subpara</th>
<th>Para 1, Article 14</th>
<th>Para 2, Article 15</th>
</tr>
</thead>
<tbody>
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<td>Until 04/19/2009</td>
<td>4</td>
<td>Subpara 1</td>
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</table>

(3) Mergers

Although enterprises can improve their operating efficiency and achieve economy of scale through mergers and expansion of business, such expansion of business scope may lead to convergence of market players and reduction of competition, and ultimately hamper competition. Therefore, the Fair Trade Law requires that application should be made to the Fair Trade Commission if a merger of enterprises achieves a certain scale of business, and the Commission will decide whether to grant the approval after having evaluated the impact of such merger on the overall economy and market competition. In doing so, the Commission seeks to ensure that all merger cases will meet the requirement for promotion of overall economy and public interest.
### Table 5  Statistics of Concluded Merger—Categorized by Results

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<tr>
<th>Year</th>
<th>Subtotal</th>
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<th>Rejected or Prohibited</th>
<th>Termination of Review</th>
<th>Consolidated with Other Cases</th>
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Note: In Feb. 2002, the “pre-merger application” regulations under the Fair Trade Law were amended to the “pre-merger notification” system, merger threshold was loosened and changed into a dual thresholds model. “merger Approved” changed into “merger not Prohibited”, “merger Rejected” changed into “merger Prohibited”.

### Table 6  Statistics on Enterprise Merger

<table>
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<tr>
<th>Year</th>
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<th>Type of Merger (Article 6, Paragraph 1 of the Fair Trade Law)</th>
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<tr>
<td>2006</td>
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</table>

Note: More than one type of merger may be applicable to some cases. Therefore, the total number of cases under different types of mergers exceeds the total number of approved cases.
(4) Explanation Request

Table 7  Statistics of Closed Cases Involving the Commission’s Explanation –Categorized by Results

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<th>Year</th>
<th>Total</th>
<th>Explanation or Inquiry-answering</th>
<th>Termination of Review</th>
<th>Consolidated with Other Cases</th>
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II. FTC Self-initiated Investigation

Table 8  FTC Self-initiated Investigation Initiated

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III. Cases of Decision

Table 9  Cases for which Sanctions Were Enforced by the Commission
–Categorized by Type of Violation

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Monopoly</th>
<th>Mergers</th>
<th>Concerted Action</th>
<th>Restriction on Resale Price</th>
<th>Restrictive Competition</th>
<th>Counterfeiting</th>
<th>False, Untrue or Misleading Acts</th>
<th>Damage to Business Reputation</th>
<th>Unlawful Multi-level Sales</th>
<th>Deceptive or Obviously Unfair Conducts</th>
<th>Others</th>
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<tbody>
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<td>33</td>
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<td>853</td>
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Note: The number of cases for which sanctions were imposed is inconsistent with the subtotal for each category of violation because certain cases involve more than one category of violation.

IV. Decision Repealed

Table 10  Decisions Repealed–By Type of Illegal Actions

<table>
<thead>
<tr>
<th>The Year</th>
<th>Number of Decisions Made</th>
<th>Monopoly</th>
<th>Mergers</th>
<th>Concerted Action</th>
<th>Restrictive Competition</th>
<th>Counterfeiting</th>
<th>False, Untrue or Misleading Acts</th>
<th>Damage to Business Reputation</th>
<th>Unlawful Multi-level Sales</th>
<th>Deceptive or Obviously Unfair Conducts</th>
<th>Others</th>
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Note: 1. Number of decisions repealed includes decisions overruled and decisions partially repealed.

2. Number of decisions repealed is not the same with illegal actions due to some cases involved with more than one action or decisions repealed for reason other than the actions involved. (e.g. penalties)
3) Multi-level Sales Enterprises

Statistics on Multi-level Sales Enterprises Reporting to the Commission for Recordation

In accordance with the Supervisory Regulation of Multi-level Sales Enterprises, all multi-level sales enterprises shall report to the Commission for Recordation prior to commencement of their business operation or multi-level sales.

Table 1  Statistics on Multi-level Sales Enterprises Reporting to the Commission for Recordation

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Enterprises Reporting at the End of Previous Year</th>
<th>Number of Enterprises Reporting this Year</th>
<th>Number of Enterprises being Revoked this Year</th>
<th>Number of Enterprises Reporting at the End of this Year</th>
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<td>111</td>
<td>604</td>
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<td>240</td>
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<td>741</td>
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<td>216</td>
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<td>2002</td>
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<td>2006</td>
<td>735</td>
<td>186</td>
<td>217</td>
<td>704</td>
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Table 2  Distribution of Multi-level Sales Enterprises by Region (End of Dec. 2006)

<table>
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<tr>
<th>Region</th>
<th>Number of Enterprises</th>
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<td>704</td>
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<td>Miaoli County</td>
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</table>
# Chronological Table of Cases

The numbers in the first column represent the times of Commissioners’ Meetings at which the case was decided. The numbers within parentheses represent the date and the year when the Commissioners’ Meetings were held. Next to the commissioners’ Meetings dates, the names of the cases are listed. The last number after the name of the case represents the reference page for the case.

<table>
<thead>
<tr>
<th>Date</th>
<th>Name of the Case</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>739(01/05/06)</td>
<td>Taipei City Photography Association was complained for violating the Fair Trade Law by unifying the prices of extra prints of self-photocomposition digital passport-size photo and passport-size color photos</td>
<td>23</td>
</tr>
<tr>
<td>741(01/19/06)</td>
<td>Hsi Chi Enterprise Co., Ltd. violated the Fair Trade Law by not giving the &quot;stub copy for client&quot; of signed “Purchase Agreement&quot; immediately to some of its consumers, an obviously unfair act that is sufficient to affect trading order</td>
<td>155</td>
</tr>
<tr>
<td>742(01/26/06)</td>
<td>Several real estate agencies violated the Fair Trade Law by designating Land Administration Agents to handle real estate’s transfer registration in the standardized contract</td>
<td>158</td>
</tr>
<tr>
<td>744(02/09/06)</td>
<td>NVIDIA BVI Holdings Limited filed a merger report to the FTC regarding its intention to merge with ULI Electronics Inc.</td>
<td>9</td>
</tr>
<tr>
<td>745(02/16/06)</td>
<td>Happy Holidays International Co., Ltd. was complained for violating the Fair Trade Law in its sale of membership cards for overseas vacation resorts</td>
<td>161</td>
</tr>
<tr>
<td>745(02/16/06)</td>
<td>Sunonwealth Electric Machine Industry Co., violated the Fair Trade Law by publishing false messages in the patent litigation announcement on its website, a deceptive and obviously unfair conduct that is able to affect trading order</td>
<td>164</td>
</tr>
<tr>
<td>Case No. 746(02/23/06)</td>
<td>Taichung County and Taichung City Cylinder Gas Enterprises was complained for the joint price hikes and violated the Fair Trade Law</td>
<td></td>
</tr>
<tr>
<td>------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Case No. 748(03/09/06)</td>
<td>Yung Chi Paint &amp; Varnish Mfg. Co., Ltd. was complained for making false representation on the passive fire protection material “Huo Pa F-100” and its advertisement</td>
<td></td>
</tr>
<tr>
<td>Case No. 748(03/09/06)</td>
<td>Taipei Fubon Bank Co., Ltd. violated Article 21 Paragraph 1 of the Fair Trade Law by making false and misleading representation in its advertisement of New Taiwan Dollar certificate of deposit and publishing the said advertisement in the relevant newspaper and magazines</td>
<td></td>
</tr>
<tr>
<td>Case No. 749(03/16/06)</td>
<td>C.K.S International Airport violated the Fair Trade Law by adopting differential treatment of restricting the bidder’s qualification without justification in the property rental tender of “The Placement of Commercial Advertising at Terminal 1 and Terminal 2”</td>
<td></td>
</tr>
<tr>
<td>Case No. 749(03/16/06)</td>
<td>Chu Ho Fa Construction Co., Ltd. violated Article 21 of the Fair Trade Law in its “Ti Ching Villa” pre-sale house advertisement</td>
<td></td>
</tr>
<tr>
<td>Case No. 750(03/23/06)</td>
<td>Far Glory Life Insurance Company was complained for violating the Fair Trade Law by improperly exercising acceleration clause</td>
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</tr>
<tr>
<td>Case No. 751(03/30/06)</td>
<td>An ex officio investigation initiated by the Fair Trade Commission on the successive adjustments of wholesale gasoline prices by the two largest gasoline suppliers in Taiwan, in violation of the Fair Trade Law</td>
<td></td>
</tr>
<tr>
<td>Case No. 751(03/30/06)</td>
<td>An ex officio investigation initiated by the Fair Trade Commission into the two largest gasoline suppliers in Taiwan engaging in a concerted action by successively adjusting wholesale gasoline prices</td>
<td></td>
</tr>
<tr>
<td>Case No. 751(03/30/06)</td>
<td>Far Eastern Electronic Toll Collection Co., Ltd. was complained for violating the Fair Trade Law by making false ETC advertisement on television, and the</td>
<td></td>
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<tr>
<td>No.</td>
<td>Date</td>
<td>Case Description</td>
</tr>
<tr>
<td>------</td>
<td>------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
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<tr>
<td>751</td>
<td>03/30/06</td>
<td>Save and Safe Tech. Co., Ltd. violated Article 21, Paragraph 1 of the Fair Trade Law by making false and misleading representation as to the value of air ticket prize in the advertisement of lucky draw</td>
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<td>751</td>
<td>03/30/06</td>
<td>The American World Gym Fitness Co., Ltd. violated Article 21 of the Fair Trade Law by making false and misleading representation in its service content when soliciting for new members</td>
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<td>NTUDOCTOR Co., Ltd. was complained for violating the Fair Trade Law by publishing “the nation’s largest tutoring network”, “NTUDOCTOR Tutoring Center is the nation’s largest tutoring web” on the webpage, exploiting the metatag function of website design and improperly using the “104” symbol of 104 Corporation</td>
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<td>Jung Shing International Co., Ltd. was complained for violating Article 21 and Article 24 of the Fair Trade Law by making false advertisement on debt coordination</td>
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<td>Compal Electronics, Asustek Computer and Quanta Computer filed a concerted action application to the FTC regarding to its intention for the joint plan of developing standardized components for notebooks</td>
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<td>Chinese Educational Development and Cooperation Association (CEDCA) was complained for violating Article 19, Paragraph 1, Subparagraph 3, Article 22 and Article 24 of the Fair Trade Law by disseminating fliers “BELI is not equivalent to the Language Center of</td>
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University of California, Berkeley” and “Don’t Forget Your Rights and Interests”

757(05/11/06) American Genesis Microchip Corporation was complained for violating the Fair Trade Law by improperly disseminating false accusation letters that affect the business reputation of another

757(05/11/06) Eleven sandstone companies from the central region, including Hung Chen Sandstone Company, violated the Fair Trade Law by maliciously hoarding sandstone to drive prices up

758(05/18/06) Executive Yuan forwarded letters stating that Chanson Sporting Goods Co., Ltd. and Presicarre Corp. violated Article 21 of the Fair Trade Law by publishing untrue advertisement regarding their product “CS-100 Silver Shark Massage Beetle”

758(05/18/06) CnYes Co. Ltd. was complained for violating the Fair trade Law by exploiting other’s efforts

760(06/01/06) Taiwan Lunchbox United Association, Taichung County Lunchbox Association and Taichung City Lunchbox Association violated the provisions of concerted action in the Fair Trade Law by reaching an agreement to increase the school lunch charges

761(06/08/06) Fei Ma Ferry Co., Ltd. and four other ferry operators, which operate regular routes between Pingtung’s Dunggang and Hsiau Liouchiou, violated Article 14 of the Fair Trade Law by joint determination of the route schedule

761(06/08/06) An ex officio investigation initiated by the Fair Trade Commission into Taichung County Lunchbox Association’s collection of security deposits from its members to prevent its members from price war, which violated the Fair Trade Law

762(06/15/06) An ex officio investigation initiated by the FTC into Surplus International Corp. for engaging in multi-level sales
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<td>The American 3Com Corporation was complained for violating the Fair trade Law by abusively sending of warning letters</td>
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772(08/24/06) The advertisement of “Korea Sanitizing/Fruits & Vegetables Purifying Cabinet” published on Kof World’s website violated the Fair Trade Law by containing exaggerated and untrue statements

773(08/31/06) An ex-officio investigation initiated by the FTC into Fun & Love Corporation as a multi-level sales enterprise

774(09/07/06) Kang Hsuan Educational Publishing Co., Ltd., Nan I Book Enterprise Co., Ltd. Han Lin Publishing Co., Ltd., and Newton Education & Publishing Corporation violated the Fair Trade Law by having joint discussions regarding complimentary items for students and announcing to jointly cease giving workbooks and test sheets to students from the first semester of school year 2006

774(09/07/06) Guei Ting International Fashion Garment Ltd. violated the Fair Trade Law by making false, untrue and misleading representations on the website regarding the origin of its brand “NATURALLY JOJO”

774(09/07/06/) Chunghwa United Telecom Co., Ltd. was complained for violating the Fair Trade Law by engaging in unlawful multi-level sales

776(09/20/06) The sales prices of CASIO digital cameras sold on PC Home’s website was complained by the public to be untrue and constituted a violation of the Fair Trade Law

776(09/21/06) Nantou Ferry and Yacht Business Association violated the Fair Trade Law by colluding to jointly arranged boat schedule in the Sun Moon Lake area

776(09/21/06) Taiwan Tobacco & Liquor Corporation violated the Fair Trade Law by improperly restraining trading counterparts to purchase bestseller tobacco products during the unbalance between market demand and supply
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