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Summary of Contents

Appendix:

Table of Cases

The numbers in the first column represent the Commissioners' Meetings at which the cases were discussed. The numbers within parentheses represent the dates and the years when the Commissioners' Meetings were held. Next to the Commissioners' Meetings dates, the names of the cases are listed. The numbers after the names of the cases represent the reference pages for the cases.

Chapter 1 Introduction

Chapter 2 Monopoly (§5, §5-1, §10)

Chapter 3 Merger (§6, §11, §11-1, §12, §13)

3.1 Decisions

3.2 Non-Prohibited Cases

Chapter 5 Unfair Competition – Resale Price Maintenance (§18)

Chapter 6 Unfair Competition – Lessening Competition or Impeding Fair Competition (§19)

6.1 Decisions

7.2 Judicial Cases

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 117 selected typical cases decided by the FTC between 2010 and 2012, and 6 judicial cases decided by Supreme 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 7 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 21 cases and 2 judicial cases 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 5 cases on unfair competition, which are related to resale price maintenance and regulated by Article 18 of the Fair Trade Law.
- Chapter 6 compiles 17 cases and 1 judicial case on unfair competition, which are related to lessening competition or impeding fair competition and regulated by Article 19 of the Fair Trade Law.
- Chapter 7 compiles 28 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 on 9 cases of multi-level marketing, which are defined in Article 23 and regulated by Articles 23, 23-1, 23-2, 23-3 and 23-4 of the Fair Trade Law.
- Chapter 9 compiles 28 cases and 2 judicial cases 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

Yichang Foods Co., Ltd.

993rd Commissioners' Meeting(2010)

Case: Complaints from farmers about a slaughterhouse monopolizing the market and imposing tie-in feed sales

Key Word(s): Slaughter, tie-in sale

Reference: Fair Trade Commission Decision of November 17, 2010 (the 993rd Commissioners' Meeting)

Industry: Slaughtering (0811)

Relevant Law(s): Articles 10 and 19(vi) of the Fair Trade Law

Summary:

1. The Council of Agriculture forwarded to the FTC a petition from goose farmers in Tainan County complaining that there was only one legal meat goose slaughterhouse, namely Yichang Foods Co., Ltd. (hereinafter referred to as Yichang Co.), in the south of Yunlin County and the slaughterhouse demanded that all contracted meat goose farmers use only feed of a specific brand. They thought it was market monopoly. Meanwhile, the Control Yuan also requested the FTC to investigate whether the said legal slaughterhouse constituted tie-in sales by requesting contracted meat goose farmers to use only a specific brand of feed and was in violation of the Fair Trade Law(FTL).

2. Findings of the FTC after investigation:

The FTC visited and interviewed the petitioners and Yichang Co., as well as sent a written request to the concerned feed manufacture for explanation. Aaccording to Article 5-1 of the said law, if the market share of an enterprise does not exceed one half of the market in concern or if it does but the total sales of the enterprise

in the previous fiscal year did not exceed NT$100,000,000, the said enterprise is not considered a monopolistic enterprise. Regarding the petitioners accusation that Yichang Co. is a monopolistic enterprise described in the FTL, the FTC's findings showed that there were 18 legal slaughterhouses conducting slaughter of meat geese in this particular market and three of them were located around Tainan County. There was not only one slaughterhouse in southern Yunlin County as the petitioners had stated. Therefore, the meat goose farmers could decide which slaughterhouse they wanted to do business with. The investigation also revealed that the slaughter Yichang was accounted for about 14% of the slaughter among locall legal slaughterhouses. After calculation, the percentage constituted the sales volume of Yichang Co. is about NT$24,660,000 per year. Hence, in accordance with the aforesaid regulations, Yichang was not considered a monopolistic enterprise and no regulations against monopolistic enterprises could apply.

3. As for whether the demand that Yichang Co. imposed on meat goose farmers to use only a specific feed brand constituted tie-in feed sales in the FTL. According to subparagraph 6 of Article 19 of the same law, the so-called "tie-in sale" refers to a situation in which there are two products that consumers can purchase separately but the supplier demands that the buyer purchase both at the same time or will refuse transaction. "Tie-in sales" may help save transaction costs, stabilize quality and promote the result of competition; therefore, it is not per se illegal. It has to be judged on the basis of rule of reason. According to the FTC's investigation, Yichang Co. did not use signing of supply contracts as a condition when dealing with meat goose framers and also did business with meat goose farmers without a contract. This is inconsistent with so-called tie-in sale conduct when the trading counterparts would be told expressly or impliedly that they could not make any purchase without buying the tied-in product. In addition, as the quality of feed could affect the quality of the goose meat, it was justifiable that Yichang, based on its long business experience, wanted to establish an agreement with the contracted farmers to use only feed of a specific brand. Based on the market status of Yichang Co., the structure of the market in concern, and the influence of the contract fulfillment on the market competition,

available evidences were insufficient for regarding the demand the company imposed on the contracted meat goose farmer to use only feed of a specific brand as restricting or impeding competition. Therefore, the FTC decided that Yichang Co. had not violated the FTL.

Summarized by Tseng, Wen-Chun; Supervised by Liao, Hsien-Chou □

Easycard Corporation

1029th Commissioners' Meeting (2011)

Case: The FTC initiated an ex officio investigation on the Easycard Corporation abusing its monopolistic position in transportation payment implements market

Key Word(s): Electronic ticket, EasyCard stored value card, bundled sales

Reference: Fair Trade Commission Decision of May 27, 2011 (the 1029th Commissioners' Meeting)

Industry: Other Unclassified Financial Agent (6499)

Relevant Law(s): Articles 10(ii), 19(ii) (vi) of the Fair Trade Law

Summary:

1. This case concerns reports that the Easycard Corporation (hereinafter referred to as "Easycard") has violated the terms and conditions of the Fair Trade Law through its conduct in the electronic ticketing market: If Easycard contracts with one particular convenience store retailer among the four major ones in Taiwan, thereby excluding the others from joining as partnered agencies and interfering with opportunities to compete, such conduct would be considered in violation of Article 19(ii) of the Fair Trade Law. Further, Easycard compelled parties interested in entering partnership

agreements to purchase terminal equipment under the justification of system integration and interface specifications, in violation of Article 19(vi) of the Fair Trade Law. Moreover, in addition to payment of licensing fees, financial institutions issuing Easycard stored value cards were required to pay issuing fees. The reasonableness of such fees is deemed in accordance with the terms of Article 10(ii) of the Fair Trade Law.

2. Background:

(1) Easycards issued by the Easycard Corporation have not established a share of fifty percent in the small sum consumer payment implements market; however, Easycard has established a fifty-percent share in the transportation payment implements market, and accordingly must comply with the parameters of a monopoly enterprise as defined by Article 5-1(1)(i) of the Fair Trade Law. In addition, the FTC's investigation found that as defined by the terms of the Mass Rapid Transit Act regarding monopolistic enterprises, the scope of the cardholder base for the integrated Greater Taipei MRT and city bus public transportation systems constitutes a competitive advantage over other businesses, and that a high degree of reliance exists among consumers using Easycards for taking public transport. Moreover, the network effect engendered by the bilateral market has raised the conversion costs for trading counterparts. Consequently, the Easycard Corporation commands a dominant position in the transportation payment implement market, and has the capacity to exclude competition, and therefore constitutes a"monopolistic enterprise" as defined by Article 5 of the Fair Trade Law.

(2) Additional investigation showed that the Easycard Corporation's cooperative arrangements authorizing banks to issue Easycard stored value cards were undertaken via open bidding and open solicitation of vendors; any bank that finds the Easycard Corporation's authorization fees unreasonable can choose to cooperate with other parties or issue its own electronic tickets. Agencies contracting with Easycard include mass rapid transit operators, parking lot operators, taxi fleets, and participating small-sum consumer retailers, and that such aspects of cooperation with contracted agencies such as operational workflow, rights and privileges, and fee payments, were

explicitly stated on the Internet and in written contracts. It was further found that the Easycard Corporation does not manufacture Easycard system card readers and terminal equipment itself, and that contracted agencies obtained terminal equipment rights through autonomous consultation and purchase or lease, purchased by the Easycard Corporation, leased from the Easycard Corporation, and furnished by the Easycard Corporation.

3. Findings of the FTC after investigation:

(1) Based on the evidence currently available, the Easycard Corporation has not engaged in such unfair conduct as unfair pricing, discriminatory treatment, or tie-ins via a monopolistic position in the transportation payment implements market in violation of the Fair Trade Law.

(2) The arrangement between the Easycard Corporation and banks issuing Easycard stored value cards was made via open bidding and open solicitation of vendors, where it proposed conditions to the banks regarding such fees and payments as security deposits, royalties, and card issuing royalties for fulfilling the terms of the agreement, and where banks interested in cooperation willingly submitted applications and entered into contracts. Further, whether or not the Easycard Corporation cooperated with banks to jointly issue Easycard stored value cards is a matter of operational freedom, and the banks reserve the right not to issue joint stored value cards with Easycard, instead choosing to cooperate with international credit card or financial firms, or issue their own electronic tickets. Consequently, it is difficult to determine that the Easycard Corporation's determinations regarding licensing fees for banks issuing Easycard stored value cards on the basis of its high share of the mass transit payment mechanism market.

(3) The contracted agencies that the Easycard Corporation selected for cooperation in accordance with the terms of the Provisions Governing Electronic Ticketing Issuance and Management currently include mass transit operators, parking lot operators, taxi cab fleets, and petty consumption retailers, and not exclusively contracted with just one of Taiwan's four major convenience store retailers. Further, in reaching agreements with small sum consumption retailers and assessing related

fees with its own needs in mind, each party must evaluate its own situation before determining whether or not to cooperate with Easycard. Therefore it is difficult determine whether the Easycard Corporation had reasonable justification for discriminatory conduct toward other enterprises by not engaging in contractual agreements with participating enterprises.

In accordance with the terms of the Provisions Governing Electronic Ticketing Issuance and Management, the rights and responsibilities of an electronic ticket issuing firm and a contracted agency must be set forth in a cooperative agreement detailing such items as the installation of electronic ticketing automatic debiting equipment and cost sharing. In addition, the Easycard Corporation itself does not manufacture card reading machines and terminal equipment, hence Easycard electronic ticketing services and system terminal equipment are separable goods or services, and a contracted agency may determine on its own whether or not to purchase Easycard system terminal equipment upon consideration of its own needs. Therefore, it is difficult to deem that the Easycard Corporation engaged in transactions via improper restriction of the conditions under which its counterparties could conduct business activities

Summarized by Chou, Huang-Chun; Supervised by Liao, Hsien-Chou □

Chapter 3
Merger

3.1 Decisions

Nexon Co., Ltd. & Gamania Digital Entertainment Co., Ltd.

1078th Commissioners' Meeting (2012)

Case: Nexon Co., Ltd. and Gamania Digital Entertainment Co., Ltd. violated the Fair Trade Law by failing to file its pre-merger notification to the FTC
Key Word(s): Merger, market share, online game
Reference: Fair Trade Commission Decision of July 4, 2012 (the 1078th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101083
Industry: Software Design Services (6201)
Relevant Law(s): Articles 6, 11 and 12 of the Fair Trade Law

Summary:

1. The FTC was informed that Nexon Co., Ltd. (hereinafter referred to as Nexon Co.) held over one third of the voting shares of Gamania Digital Entertainment Co., Ltd. (hereinafter referred to as Gamania Co.) and as Gamania Co. accounted for one quarter of the domestic online game market share, Nexon Co. had violated the Fair Trade Law for not filing a pre-merger notification with the FTC according to the regulation set forth in subparagraph 2, paragraph 1 of Article 11 of the Fair Trade Law.

2. Findings of the FTC after investigation:

The FTC's investigation revealed that as of April 16, 2012, Nexon Co. was already in possession of 34.6% of the issued shares of Gamania Co. and thus met the description of the merger type set forth in subparagraph 2, paragraph 1 of Article 6 of the Fair Trade Law. According to the statistics compiled by the Industrial

development Bureau of the Ministry of Economic Affairs, the total production value of the online game industry in 2011 was NT$24.7 billion, including NT$5.274 billion of revenues from overseas markets and 19.426 billion from domestic market. Meanwhile, the sales of Gamania Co. from online game business in 2011 in Taiwan was NT$5.543 billion, accounting for about 28.53% of the total share of the relevant market and thus reaching the merger filing threshold set forth in subparagraph 2, paragraph 1 of Article 11 of the Fair Trade Law, that is, "one of the enterprises in the merger has one fourth of the market share." As the merger of Nexon Co. and Gamania Co. involved none of the exceptional circumstances described in Article 11-1 of the Fair Trade Law in which filing of pre-merger notification is not required, Nexon Co. had to file with the FTC before the merger. Therefore, by failing to file with the FTC before the merger, Nexon had violated paragraph 1 of Article 11 of the Fair Trade Law.

3. Grounds for disposition:

Considering the proportion of shares of Gamania Co. held by Nexon Co. and the market share of the relevant market Gamania accounted for being only slightly higher than the filing threshold, the level of the penalty to be imposed, as well as Gamania Co. being a listed company on the open market and the likely impact on stock market transactions and investors' interests, the FTC therefore acted in accordance with paragraph 1 of Article 13 and paragraph 1 of Article 40 of the Fair Trade Law, ordered Nexon Co. to make necessary correction within three months after receiving the disposition, and at the same time imposed on the company an administrative fine of NT$900,000.

Summarized by Tai, Mei-Chin; Supervised by Liao, Hsien-Chou □

3.2 Non-Prohibited Cases

Dafu Media Co., Ltd., Shengting Co., Ltd., & Kbro's cable TV systems

23rd Ad Hoc Commissioners' Meeting(2010)

Case: Dafu Media Co., Ltd. filed a pre-merger notification to the FTC regarding its intention to merge with Shengting Co., Ltd., Kbro Co., Ltd. and 12 cable TV systems operators controlled by Kbro Co.

Key Word(s): Cable TV

Reference: Fair Trade Commission Decision of October 29, 2010 (the 23rd Ad Hoc Commissioners' Meeting), Merger Letter Kung Jie Tzu No.099004

Industry: Cable and Other Subscription Programming (6022)

Relevant Law(s): Articles 6, 11 and 12 of the Fair Trade Law

Summary:

1. Dafu Media Co., Ltd. (hereinafter referred to as Dafu Media) intended to purchase the 80% shares of Shengting Co., Ltd. held by PX Capital Partners B.V. to take control of Shengting's management and personnel appointment or removal. It complied with the types of merger described in subparagraphs 2 and 5 of Article 6 (1) of the Fair Trade Law (FTL). As the 12 cable TV systems operators participating in the merger accounted for over a quarter of the market shares of their operating areas, thus the intended merger reached the filing threshold prescribed in subparagraph 2, Article 11 (1) of the FTL. Without being subject to the exception circumstances described in Article 11-1 of the same law. Dafu Media therefore filed the pre-merger notification to the FTC as required by law.

2. From the structural aspect, the number of subscribers of the cable TV systems controlled by the merging parties did not exceed one third of the total number of those in the country and the number of program channels they provided also did not surpass one quarter of the number of all the channels available. Hence, the FTC

considered that there would be no significant disadvantage resulted from competition restraint. On the contrary, the merger could boost the overall economic benefit through promotion of digital development in cable TV services, improvement of the visual media industry, expedition of digital convergence, and provision of more options to consumers.

3. Taking into consideration the framework of existing regulations and control, market structure and competition, opinions from various sectors, future technological development tendencies, and maintenance of competition on the post-digital convergence market, the FTC deemed the overall economic benefit as greater than disadvantages resulted from competition restraint. However, to prevent likely drawbacks resulted from competition restraint as a result of the merger and ensure the overall economic benefit, the FTC attached the following 13 conditions to the non-prohibition decision in accordance with Article 12 (2) of the FTL:

(1) Without the consent of the FTC, the merged enterprises, their subsidiaries and companies they control may not directly or indirectly obtain the shares of any other cable TV services or their subsidiaries or companies under their control.

(2) Without the consent of the FTC, the board directors, supervisors or managers of the merged enterprises, their subsidiaries and companies they control may not assume the position of board director, supervisor or manager of any other cable TV services or their subsidiaries or companies under their control.

(3) Without the consent of the FTC, the merged enterprises, their subsidiaries and companies they control may not sell any of their shares to Taiwan Mobile Co., Ltd. or any of its subsidiaries or companies it controls (including but not limited to TFN Media Co., Ltd. and cable TV systems under its control; the same applies in the following conditions,) or directly or indirectly hold or obtain the shares of Taiwan Mobile Co., Ltd. or any of its subsidiaries or companies it controls.

(4) Without the consent of the FTC, the board directors, supervisors or managers of the merged enterprises, their subsidiaries and companies they control may not assume the position of board director, supervisor or manager of Taiwan Mobile Co., Ltd. or any of its subsidiaries or companies it controls or appoint any board director,

supervisor or manager of Taiwan Mobile Co., Ltd. or any of its subsidiaries or companies it controls to be the board director, supervisor or manager of any of the merged enterprises or their subsidiaries or companies under their control.

(5) Without the consent of the FTC, the cable TV systems run by the merged enterprises, their subsidiaries or companies they control may not share any headend network, trademark and customer service or participate in co-management or delegated management with any other cable TV services.

(6) Without the consent of the FTC, the merged enterprises, their subsidiaries and companies they control may not add any analog satellite TV programs they produce or act as agents for the existing analog satellite TV programs.

(7) The merged enterprises, their subsidiaries and companies they control may not establish any contract or agreement of any form with other cable TV services, their subsidiaries or companies under their control to make consolidated purchases from cable TV program suppliers, make joint pricing or boycott, or undertake any conduct described in the Fair Trade Law as concerted actions.

(8) The merged enterprises, their subsidiaries and companies they control may not participate in joint program sales with any other cable TV program suppliers or undertake any conduct described in the Fair Trade Law as concerted actions.

(9) Without justifiable causes, the merged enterprises, their subsidiaries and companies they control may not refuse to license the satellite TV programs they produce or act as agents for other cable TV services, satellite TV services, multimedia content services or any other competitors, whether they broadcast through cable or wireless transmission, or undertake any discriminative treatment.

(10) Without justifiable causes, the merged enterprises, their subsidiaries and companies they control may not lincense satellite TV programs they produce or act as agents for other cable TV services, satellite TV services, multimedia content transmission services or any other competitors, whether they broadcast through cable or wireless transmission, at different prices or on different conditions.

(11) The merged enterprises, their subsidiaries and companies they control shall begin on the day after receiving this merger decision to do the following to safeguard the overall economic benefit:

(i) Complete cable TV digitalization and two-way cable TV system network construction to increase program options for consumers.

(ii) Achieve the digital cable TV prevalence target stated in the Digital Convergence Development Project approved by the Executive Yuan on July 8, 2010 for expedition of digital convergence.

(iii) Acquire licensing from satellite TV program suppliers for playing programs through Internet Protocol Television (IPTV) and in turn license network TV operators at fair and reasonable prices to promote fair competition between visual information platforms.

(iv)Develop high-density digital contents and channels in the country to help promote creative and cultural industries.

(12) Within five years starting from the day after receiving this merger decision, Dafu Media is required to present to the FTC for record before July 1 each year the following documents:

(i) The names of and agency contracts for the satellite TV programs the merged enterprises, their subsidiaries and companies they control produce or act as agent for.

(ii) All transaction data in relation to the satellite TV programs the merged enterprises, their subsidiaries or companies they control produce or act as agent for, including price quotations, licensing fees, discounts and buyers.

(iii) A report on the achievements in improvement of the overall economic benefit (including but not limited to all those listed under Point 11.)

(13) Within five years starting from the day after receiving this merger decision, Dafu Media is required to present to the FTC for record all the chairperson, board director, supervisor, manager and company charter changes in the merged enterprise, their subsidiaries and companies they control.

Appendix:
Dafu Media Co., Ltd.'s Uniform Invoice Number: 25147558
Shengting Co., Ltd.'s Uniform Invoice Number: 28010900
Kbro Co., Ltd.'s Uniform Invoice Number: 80173221

Summarized by Lin, Shu-Ling; Supervised by Liou, Chi-Jung □

Epistar Corporation, Japanese Toyota Gosei Co., Ltd. & Twin Hill Group

992nd Commissioners' Meeting(2010)

Case: Epistar Corporation, Japanese Toyota Gosei Co., Ltd. and Twin Hill Group filed a pre-merger notification to the FTC regarding their intention to set up a joint venture

Key Word(s): LED epitaxial chip and crystal, LED packaging

Reference: Fair Trade Commission Decision of November 10, 2010 (the 992nd Commissioners' Meeting)

Industry: Other Optoelectronic Materials and Components Manufacturing (2649)

Relevant Law(s): Articles 6, 11 and 12 of the Fair Trade Law

Summary:

1. Epistar Corporation (hereinafter referred to as Epistar), Japanese Toyota Gosei Co., Ltd. (hereinafter referred to as Toyota Gosei), and Twin Hill Group (hereinafter referred to as Twin Hill) intended to set up a joint venture. As each of the three enterprises would subscribe to a certain number of shares of the new company, the condition complied with the merger types described in subparagraphs 2, 4 and 5 of Article 6 (1) of the Fair Trade Law (FTL). Furthermore, since the revenues of the three enterprises in the previous fiscal year all exceeded the threshold for sales monetary amount for non-financial institutions the FTC had announced and met the threshold for pre-merger notification filing as stipulated in subparagraph 3 of Article 11 (1) of the FTL. Without the exceptional circumstances described in Article 11-1 of the same law, the said enterprises therefore filed the pre-merger notification to the FTC as required by the Law.

2. Market definition:

(1) The product market: The LED market is divided into chip manufacturing in the upstream, crystal manufacturing in the midstream, and packaging in the downstream. Epistar manufactures and sells LED chips and crystals while Toyota Gosei produces

and sells LED crystals and packaged products. Twin Hill markets Toyota Gosei's LED crystals and packaged products in Taiwan as an agent. As most of the upstream and midstream LED businesses involve these two products and the intended joint venture would be selling LED crystal products only, the case was therefore defined as the LED crystal (including chip) market.

(2) The geographic market: The parties involved in the merger were all domestic businesses and the intended joint venture would also operate in the same region. For assessment of the impact of the joint venture on the domestic market, the geographic market was defined as "within the territory of Taiwan."

3. Post-merger competition analysis:

(1) The merging enterprises had always had business relations. The chief function of the joint venture was to simplify the procedure of exportation to Japan. The market share increase after the merger would be limited whereas more sales channels would be created and the competitiveness of domestic LED crystal products would be enhanced. Moreover, since the applications and sales targets of the LED crystal products made by Epistar and Toyota Gosei were dissimilar, both enterprises would carry on their manufacturing and sales of crystal products in the same region. Meanwhile, the numbers of competitors in this industry in and out of the region would still be large, and the markets for applications of the crystals produced would remain different. Both companies would continue their performance competition with the quality and special features of their products and concerned trading counterparts would still have their options and room for bargaining.

(2) Although a major player with patent products in the global LED market, Toyota Gosei's local market share was still small. Moreover, the domestic LED manufacturers were significantly large in scale and had their low price advantage whereas domestic and foreign competitors were large in number. Concerned trading counterparts would still have the capacity to keep the merging enterprises from increasing their product prices or service charges. Lastly, the joint venture would give the merging enterprises more flexibility in delivery of LED crystal products, reducing transaction costs, as well as acquiring licensing for certain patents and

extending patent protection globally. The effect on the domestic LED industry would be positive and uplifting.

(3) Based on the above reasoning, the FTC deemed that the merger would not create disadvantages resulted from competition restraint and the overall economic benefits would be greater than the disadvantages resulted from competition restraint. The FTC therefore decided not to prohibit the merger in accordance with Article 12 (1) of the FTL.

Appendix:
Epistar Corporation's Uniform Invoice Number: 84149786
Twin Hill Group's Uniform Invoice Number: 97432742

Summarized by Liao, Wan-Ting; Supervised by Wu, Lieh-Ling □

Want-China Broadband Co., Ltd., An-Shun Development Co., Ltd., Bo-Kang Development Co., Ltd., and Its Affiliates

1016th Commissioners' Meeting (2011)

Case: Want-China Broadband filed a pre-merger notification to the FTC regarding its intention to merge with An-Shun Development Co., Ltd., Bo-Kang Development Co., Ltd. and its affiliates [including China Network Systems, Global Digital Media Co., Ltd., Jilong and 8 other cable TV operators]

Key Word(s): Cable TV, broadband

Reference: Fair Trade Commission Decision of April 27, 2011 (the 1016th Commissioners' Meeting), Merger Letter Kung Jie Tzu No.100003

Industry: Cable and Other Subscription Programming (6022)

Relevant Law(s): Articles 6(1)(ii)(v) and 11(1)(ii) of the Fair Trade Law

Summary:

1. Want-China Broadband Co., Ltd. (hereinafter referred to as WWCB) intended to purchase from Malaysian Evergreen Jade SDN BHD and Goodwill Tower SDN BHD their holdings of shares of An-Shun Development CO., Ltd. (hereinafter referred to as An-Shun Co.) and Bo-Kang Development Co., Ltd. (hereinafter referred to as Bo-Kang Co.) Once the transactions were completed, WWCB would possess 100% of the shares of both An-Shun Co. and Bo-Kang Co. and gain control of the finances, operations, and personnel appointment and dismissal of both companies and their affiliates [including China Network Systems, Global Digital Media Co., Ltd., Jilong and 8 other cable TV systems. Hence, In line with subparagraphs 2 and 5 of Article 6 (1), and subparagraph 2 of Article 11 (1) of the Fair Trade Law (FTL), WWCB filed a pre-merger notification with the FTC.

2. Findings of the FTC after investigation:

(1) The case involved horizontal, vertical, and conglomerate merging and the product market included the "cable TV service market," "satellite TV program supply market," and "markets of online shopping and mail order without physical retail outlets." In terms of structure, the cable TV operators involved in the said merger did not control over one third of the total cable TV subscribers on the market and the number of channels they provided was also less than one quarter of the total number of channels available to cable TV operators. Therefore, the merger will not bring any significant disadvantages resulting from the restriction on market competition.

(2) The merger could bring overall economic benefits such as expedition of cable TV digitalization, stimulation to visual media industries, promotion of digital convergence and competition, and increase of choices for consumers.

(3) There existed certain concerns about restriction on market competition on the cable TV service market, satellite TV program supply market, and markets of online shopping and mail order without physical retail outlets after the merger. The major concerns rise from the fact that special municipality or county/city would be the minimum operation area when the Cable Radio and Television Act was amended and it would be unlikely to rule out the possibility that such mergers would lead to

conduct similar to coordinated effect or business parallel. Meanwhile, if the merged enterprises abused their dominant market status resulted from the vertical merging in the cable TV service market and satellite TV program supply market and engaged in unjustifiable refusal to transaction, differential treatment or joint boycott with enterprises outside the merger, it would affect the trading order of the cable TV service market and satellite TV program supply market. If WWCB, its affiliates or companies under its control, in pursuing their own interests, exploited the leverage effect from their holdings and refuse to transact with other TV shopping channel operators who wanted to rent designated commercial channels run by cable TV operators that had participated in the merger, treated them differentially, or even boycotted them jointly, the said other TV shopping operators could be forced out of the market due to decrease of their main business revenues as a consequence of competition restriction.

(4) The dominance of the merged enterprises on the cable TV service market, satellite program supply market, and markets of online shopping and mail order without physical retail outlets could be reduced because of future progress in communications technology, cable TV digitalization, competition from the multimedia content delivery service from fixed telecommunications operators, convergence of the 4C industry and service markets resulted from digital convergence, and related regulations. Consequently, the concerns about the abuse of market power by the said enterprises or market foreclosure as the result of the merger would be mitigated. However, the FTC still deemed it necessary to attach conditions with regard to structural and behavioral control to eliminate the disadvantages likely arising from the restriction on market competition in order to protect the overall economic benefits. Hence, the FTC attached certain conditions but did not prohibit the merger.

3. The overall economic benefits from the merger would be greater than the disadvantages from market competition restriction and there was no need to prohibit the merger in accordance with Article 12 (1) of the FTL. However, to eliminate potential competition restriction and ensure the overall economic benefits would be

greater than the disadvantages resulting from market competition restriction, the FTC therefore acted in line with Article 12 (2) of the FTL and attached 11 conditions but did not prohibit the merger.

Appendix:
Want-China Broadband Co., Ltd.'s Uniform Invoice Number: 53095005
An-Shun Development Co., Ltd.'s Uniform Invoice Number: 28445320
Bo-Kang Development Co., Ltd.'s Uniform Invoice Number: 28443532

Summarized by Shih, Ya-Ching; Supervised by Liou, Chi-Jung □

Microsoft Corporation

1041st Commissioners' Meeting (2011)

Case: The Microsoft Corporation filed a pre-merger notification to the FTC regarding its intention over the extraterritorial acquisition of 100 percent shares of Skype Global S.a r.l.
Key Word(s): Information software, operating system, extraterritorial merger
Reference: Fair Trade Commission Decision of October 19, 2011 (the 1041st Commissioners' Meeting)
Industry: Software Design Services (6201)
Relevant Law(s): Article 11 of the Fair Trade Law

Summary:

1. This case concerns the Microsoft Corporation's (hereinafter referred to as Microsoft) Microsoft's intended acquisition of 100% of the issued shares of Skype Global S.a r.l. via its Microsoft International Holdings B.V. subsidiary, which conforms to the definition of "mergers" given in Article 6 (1)(ii) of the Fair Trade Law. In addition, the Microsoft operating system commands more than one-quarter of

the market share in Taiwan, meeting the threshold for reporting mergers as stipulated by Article 11 (1)(ii) of the Fair Trade Law, and given that the exclusions given in Article 11-1 of the same Law are not applicable, Taiwan Microsoft duly submitted an application on its behalf of the proposed acquisition.

2. Findings of the FTC after investigation:

Both Microsoft and Skype are IT software services, and Microsoft is primarily a provider of such software products as its Windows operating system, among which include Windows Live Messenger (WLM). Skype provides Internet communications software, which can be used for communication via desktop or notebook computers, smart phones and tablet devices using any major operating system. Accordingly, the impact of this merger affects the personal consumer communication services market, and is not anticipated to engender appreciable changes to market share in the operating system market. Moreover, although both Microsoft and Skype provide global customers personal consumer communications services, Skype Out can be utilized to place conventional telephone calls, constituting Category 2 telecommunications, and as required by law an enterprise operating such business is obligated to file an application for permission with the competent authority. As concerns this case, the geographical area affected shall primarily concern that within the territory of Taiwan.

3. Evaluation of merger's impact on restricting competition:

(1) Horizontal merger: Numerous enterprises (such as Facebook, Google and Yahoo) are operating in this market in Taiwan at present, and given the free provision of related communications software this does not constitute the capacity for unilateral setting of higher price for goods or remuneration for services not subject to the restraints of market competition. Changes to the market structure following the proposed merger are limited, moreover at present Taiwan does not set legal restrictions or barriers to entry on the consumer communications services market, and a wide range of products and services exists. Hence, the proposed merger is not deemed to harm competition among existing businesses, and will not diminish

the capacity of transaction counterparts to select the products or services of other companies, nor affect their negotiating capacity in the purchase of communications products or services.

(2) Diversified merger: Although both Microsoft and Skype provide voice communications, instant messaging, and video messaging, only SkypeOut can be utilized to place conventional telephone calls, so that the products and services of the two providers are mutually complementary. Microsoft's cross-enterprise operational development plan can be expected to be completed following the merger. In addition, in accordance with the terms of the Telecommunications Act, telecommunications services must file for permission from the competent authority; however, no legal restrictions or barriers to entry are set for other telecommunications products and services in Taiwan. Accordingly, the merger of Microsoft and Skype is not deemed to have any discernible impact on market competition order, nor to pose difficulty in terms of technological advancement for operation of cross-enterprise operation of related products and services by other enterprises. Furthermore, given that there are 62 enterprises in Taiwan that offer similar Internet-based telephone functions to Skype Out, the merger is not expected to have an appreciable detrimental effect on market competition.

(3) In views of the above, the proposed extraterritorial merger of Microsoft and Skype does not raise concerns regarding significant restriction of competition, and that it can be considered to contribute overall economic benefit. Consequently, pursuant to the terms of Article 12 (1) of the Fair Trade Law the FTC will not prohibit the merger.

Summarized by Chou, Huang-Chun; Supervised by Liao, Hsien-Chou □

Yuanta Financial Holding Co., Ltd. & Team Pro Securities Co., Ltd.

1091st Commissioners' Meeting (2012)

Case: Yuanta Financial Holding Co., Ltd. filed a pre-merger notification regarding its intention to merge with Team Pro Securities Co., Ltd.
Key Word(s): Market share, securities
Reference: Fair Trade Commission Decision of October 3, 2012 (the 1091st Commissioners' Meeting)
Industry: Securities Brokerage (6611)
Relevant Law(s): Articles 6 and 12 of the Fair Trade Law

Summary:

1. Yuanta Securities Co., Ltd. (hereinafter referred to as Yuanta Securities), a wholly-owned subsidiary of Yuanta Financial Holding Co., Ltd. (hereinafter referred to as Yuanta Financial Holdings), intended to accept the transfer of the entire business and property of Team Pro Securities Co., Ltd. (hereinafter referred to as Team Pro Securities) and the transaction fell into the category of the merger description set forth in subparagraph 3, paragraph 1, Article 6 of the Fair Trade Law. Yuanta Securities accounted for 19.1% of the credit transaction and margin trading and securities lending market, while Yuanta Securities Finance Co., Ltd. (hereinafter referred to as Yuanta Securities Finance), another wholly-owned subsidiary of Yuanta Financial Holdings, also had a 6.56% market share. The two companies took up 25.66% of the market. Meanwhile, Yuanta Securities also accounted for 25.55% of the warrant market. Both figures reached the threshold set forth in subparagraph 2, paragraph 1, Article 11 of the Fair Trade Law, "one of the enterprises in the merger has one fourth of the market share, while Article 11-1 of the same law did not apply." Hence, a merger notification was filed with the FTC.

2. Findings of the FTC after investigation:
According to the securities firm information from the Securities and Futures

Bureau (hereinafter referred to as the SFB) of the Financial Supervisory Commission and from Taiwan Stock Exchange Corporation (hereinafter referred to as TWSE), Yuanta Securities engaged in securities brokerage, dealing and underwriting, and credit transaction such as margin trading and securities lending business, whereas Team Pro Securities only conducted securities brokerage. The business operations of the two companies overlapped only in the area of securities brokerage while the structure and concentration rate in the dealing, underwriting, credit transaction such as margin trading and securities lending, and warrant markets would not be affected by the merger. Therefore, the focus of the analysis on this merger was the securities brokerage market. According to statistics from the SFB, as of the end of Aug. 2012, there were 85 securities brokers in the country. At the same time, the market share data calculated by Gre Tai Securities Market based on the trading value in 2011 showed that Yuanta Securities accounted for 14.69% of the brokerage market and Team Pro Securities 0.27%, 14.96% in total. Meanwhile, the Four-firm Concentration Rate (CR4) was 32.78% and would be 33.05% after the merger, and there were only three firms with a market share over 5%.

3. Grounds for non-prohibition:

This was a horizontal merger case. Yuanta Securities operated nationwide and had 188 offices in the country. Team Pro Securities only operated in Taipei City where it had two offices. There was a large business scale difference between the two companies. The competitors of Yuanta Securities were other large securities firms with a considerable business scale and Team Pro Securities was not one of them. Hence, the merger could not lead to any significant unilateral effect. After the merger, there would still be 84 securities firms in the country and the market concentration rate would remain basically unchanged. In addition, the business scale of securities firms varied to a great extent and it was difficult to conclude there would be any coordinated effect. Finally, the factors of barriers to entry and countervailing power were also examined and the conclusion was that the merger did not seem able to lead to any substantial impairment. Therefore, the FTC decided not to prohibit the merger according to Article 12 (1) of the Fair Trade Law.

Appendix:

Yuanta Financial Holding Co., Ltd.'s Uniform Invoice Number: 70796749

Summarized by Lai, Hsin-Yi; Supervised by Liao, Hsien-Chou □

3.3 Prohibited Cases

Uni-President Enterprises Corporation & Weilih Food Industrial Co., Ltd.

982nd Commissioners' Meeting(2010)

Case: Uni-President Enterprises Corporation filed a pre-merger notification to the FTC regarding its intended merger with Weilih Food Industrial Co., Ltd.

Key Word(s): Instant noodles, market definition, unilateral effect

Reference: Fair Trade Commission Decision of September 1, 2010 (the 982nd Commissioners' Meeting) , Merger Letter Kung Jie Tzu No.099003

Industry: Noodle Manufacturing (0892)

Relevant Law(s): Articles 6, 11 and 12 of the Fair Trade Law

Summary:

1. Uni-President Enterprises Corporation (hereinafter referred to as Uni-President) intended to merge with Weilih Food Industrial Co., Ltd. (hereinafter referred to as Weilih Food) by indirectly acquiring one third of the shares of Weilih Food and directly or indirectly taking control of its management or personnel appointment or removal. The intended merger met the types of enterprise merger described in subparagraphs 2 and 5 of Article 6 (1) of the Fair TradeLaw (FTL). In accordance with subparagraphs 2 and 3 of Article 11 of the FTL, Uni-President filed the pre-merger notification to the FTC on July 2, 2010.

2. Findings of the FTC after investigation:

(1) The overlapping categories of business in this merger were the manufacturing and sales of instant noodles, beverages, and cooking oils. Uni-President asserted that since cookies, crackers and other ready-to-eat foods had the characteristics of being convenient, easy for consumption and with unique flavor; besides, they were substitutes and competitive with instant noodles and could be defined as belonging to the same market. The merger would not lead to market monopoly or have any impact

on market competition. The company also suggested that the cross-price elasticity of demand between ready-to-eat foods and instant noodles was "supposed" to be positive but failed to provide any data to support the argument. The boundaries of such a market as may be determined by examining industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors.

(2) The FTC cited the practical indicia proposed for market definition in the U.S. case of Brown Shoes Co. (370 U.S. 294,82 S.Ct.1502) in 1962 as an example to support that the boundaries of such a market as may be determined by examining industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and etc. In addition,, in accordance with the domestic CNS9537 Standards and the definition of instant noodles given by the World Instant Noodles Association, the FTC considered instant noodles as with the characteristics of easy to prepare and having unique flavors and long shelf lives. Moreover, as they could serve as complete meals, especially with the cross-price elasticity of demand taken into account, they were rather different from ready-to-eat foods. Therefore, it would be inappropriate to say that there was significant or high interchangeability in between. As a consequence, the FTC defined boundary of the merger involving the instant noodles market, the beverage market, and the cooking oil market.

3. Grounds for prohibition of merger:

(1) Whether from the aspect of the occasions of consumption or demand, there would be no direct substitutability between instant noodles and ready-to-eat foods. As both Uni-President and Weilih Food together had a large share of the domestic instant noodle market, there were concerns about lessening of competition after the merger. Based on the instant noodle market share in 2009 calculated according to the FTC's industrial database, the HHI growth after the merger between Uni-President and Weilih Food would exceed 2,000. The increase of market concentration would be

immense and the unilateral effect had to be seriously considered. Meanwhile, judging from the coordinated effect, smaller manufacturers would be squeezed out of their niche markets after the merger and would have to reduce their assembly lines, which in turn would have an effect on the number of options for consumers.

(2) From the angle of entry barrier to the market, although the capital required to set up and operate an instant noodle plant would not be high, the domestic market was already saturated and there was no appeal to potential competitors. In addition, since brand names and marketing channels were highly important in sales of instant noodles, after the merger, the parties involved would have increased negotiating power for acquisition of sales channels and this could hinder other existing manufacturers from releasing new products. Balance-wise, the parties involved would dominate the market after the merger. The raw material suppliers in the upstream, chain outlets in the downstream, conventional retailers, and consumers would be in no position to cope with such dominance. The disadvantages of restricting competition after the merger would outweigh the overall economic benefit. The FTC therefore prohibited the merger in accordance with Article 12 (1) of the FTL.

Appendix:
Uni-President Enterprises Corporation (UPEC)'s Uniform Invoice Number: 73251209
Weilih Food Industrial Co., Ltd.'s Uniform Invoice Number: 59869913

Summarized by Chien,Hao-Yu; Supervised by Yang,Chia-Hui □

Chapter 4

Concerted Action

4.1 Decisions

4 Major Bottling Plants in Chiayi County

949th Commissioners' Meeting (2010)

Case: An ex officio investigation initiated by the FTC into the agreement between the 4 major liquefied petroleum gas (LPG) bottling plants in Chiayi County against competition for customers

Key Word(s): Bottled LPG, bottling plant, vertical competition, agreement

Reference: Fair Trade Commission Decision of January 13, 2010 (the 949th Commissioners' Meeting)

Industry: Retail Sale of Other Fuel Products in Specialized Stores (4829)

Relevant Law(s): Article 14(1) the Fair Trade Law

Summary:

1. The FTC was informed that Long-hone Co., Ltd. (hereinafter referred to as Long-hone Bottling Plant or the 4th largest bottling plant) attempted to control the market by directly selling bottled LPG at lower prices. After investigation, the FTC concluded that the retail prices of bottled LPG in Chiayi County and Chiayi City matched with the supply costs. Although the said bottling plant cut unnecessary expenses by concurrently operating as a bottling plant and LPG retailer and brought in considerable profit, it also had to face competition from other bottling plants and LPG retailers at the same time. From the view of market mechanism, the conduct could actually stimulate both horizontal and vertical competition and bring multiple benefits. During the investigation, the FTC discovered that the impact of the direct selling at lower prices did not spread anywhere beyond Chiayi City and, as a consequence, caused a wider bottled LPG retail price gap between the county and the city. This was against the common sense of market mechanism thus the FTC initiated

ex officio investigation.

2. Findings of the FTC after investigation:

The bottled LPG markets in Chiayi County and Chiayi City were already saturated. Originally, there were 4 bottling plants, with Long-hone Bottling Plant being the smallest. When the 5th bottling plant was licensed and began its operation, Long-hone Bottling Plant, being the newest and having the smallest capacity among the 4 original ones, fell the impact and decided to change its operating model by retailing at lower prices directly to end users in Chiayi City and Puzih City. The effect of Long-hone's move on the LPG retailers in Chiayi County and Chiayi City was immediate, while the bottling plants also did not escape from the impact. To prevent the competition between the upstream bottling plants from endangering the stability of distribution of bottled LPG, the retail shops in Chiayi City and Chiayi County held frequent meetings and even invited all the 5 bottling plant owners to the meeting, with the intention of talking the 4th bottling plant out of selling directly at lower prices. They requested the bottling plants to coordinate with one another on LPG distribution and not to compete for customers or undercut the price, so that the business of the retail LPG shops would not deteriorate any further. Meanwhile, a number of LPG retailers in Chiayi County expressed their willingness to purchase 50 tons of LPG per month in exchange for termination of expansion of direct sales of bottled LPG to the Puzih area. The FTC's investigation discovered that the owners of Long-hone Bottling Plant and the 5th bottling plant did not get along. Long-hone Bottling Plant was competing with the 5th bottling plant by retailing at lower prices. At the same time, Long-hone, as a bottling plant, also met with the 3 other bottling plants at least twice at Dongsyuanyuan Restaurant in Chiayi City.

3. Reasoning:

(1) Although Article 14 of the Fair Trade Law stipulates that "No enterprise shall have any concerted action unless it has been approved by the central competent authority," sanctions on enterprises participating in concerted actions are based on actual illegal practices proven with evidences. The so-called "evidences" refer to

direct or indirect witnesses or proof sufficient to confirm the illegal conduct. In other words, the evidences required to confirm the fact of crime are not limited to direct evidences but also includes indirect evidences. The so-called "indirect evidences" are those gathered to prove directly the existence of anther fact, while through this another fact, based on reasonable rule of thumb, the illegal action in question can be confirmed. In other words, if the direct evidence is not consistent with reasonable rule of thumb, it will not be accepted legally.

(2) When the LPG retailers in Chiayi City invited the 5 bottling plants to discuss and "request the bottling plants to coordinate with one another on LPG distribution and not to compete for customers by price undercutting, so that the business of the LPG retailers would not deteriorate any further," at the meeting, the 4th largest bottling plant demanded the 5th largest bottling plant to pull out from the bottling market and give up its bottling capacity and the clients but was rejected by the 5th largest bottling plant. Therefore, the likelihood of concerted action as a result of the 5 bottling plants' agreement not to compete for customers was eliminated.

(3) The aforesaid expression of willingness of a number of LPG retailers in Chiayi County to purchase 50 tons of LPG from the 4th largest bottling plant instead of from the 1st largest bottling plant in exchange for termination of direct sales of bottled LPG in Chiayi County was proven to be true.

(4) In addition, according to the testimonies and the market situation the FTC acquired, the market shares of the 5 bottling plants in the LPG distribution market of Chiayi County did not change much. In Chiayi City, however, changes did occur. With the exception of the biggest bottling plant, the market shares of the other 4 bottling plants all went up.

(5) There was no proof that the 4 top bottling plant owners had achieved any agreement on restriction of competition such as coordinated LPG bottling distribution, not competing for customers or undercutting each other's prices, or applying strategic blockade on the 5th bottling plant.

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

6 LPG Distributors in the Cijin Area in Kaohsiung

959th Commissioners' Meeting (2010)

Case: Bottled liquefied petroleum gas (LPG) distributors in the Cijin area in Kaohsiung City violated the Fair Trade Law by engaging in concerted action
Key Word(s): Unified pricing, bottled LPG
Reference: Fair Trade Commission Decision of March 24, 2010 (the 959th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.099039
Industry: Retail Sale of Other Fuel Products in Specialized Stores (4829)
Relevant Law(s): Article 14(1) the Fair Trade Law

Summary:

1. An anonymous informant reported to the FTC that the liquefied petroleum gas (LPG) distributors (LPG retailers) in the Cijin area in Kaohsiung City had adopted concerted pricing by using the same phone call transfer service and selling LPG at the same rates. The FTC staff at the Southern Region Services Center contacted the LPG retailers in the said area to inquire about the prices of bottled LPG and concluded there was a very high possibility that the conduct of the said businesses was a concerted action and therefore the FTC initiated the investigation.

2. Findings of the FTC after investigation:

(1) There were six LPG retailers in the Cijin area (originally eight but one applied for temporary suspension of business and one closed down during the investigation) and one bottling plant (Hongli LPG Bottling Plant). Judging from where they are located, the six LPG shops were divided into two systems. Denan Enterprises (hereinafter referred to as Denan) and Hongcheng LPG Co., Ltd. (hereinafter referred to as Hongcheng) belong to the "Jhongjhou System", whereas Shengguang LPG Co., Ltd. (hereinafter referred to as Shengguang,) Jhenyi LPG Shop (hereinafter referred to as JhenYi,) Yunyisiang Co., Ltd. (hereinafter referred to as Yunyisiang) and Jusheng Co., Ltd. belong to the "Cijin System."

(2) The said six LPG retailers rented a section of Hongli LPG Bottling Plant and relocated from November 2008 to May 2009 all their businesses to the said rented

location and distributed all the bottled LPG from there. Management was delegated to Kuo Yiciang, the owner of Denan. After acquiring the consent of the owners of the LPG retailers, Mr. Kuo set the price of bottled gas of the shops of each system at the same level, with a 10-dollar difference between the (20kg) bottles sold by the two systems (the ones from the Jhongjhou System being 10 dollars cheaper than those from the Cijin System.) Additionally, whenever China Petroleum Corporation (CPC) made price adjustments, Mr. Kuo would also be the person to coordinate with the LPG retailers to determine the range of adjustment of bottled LPG prices. For instance, when CPC lowered the price per kilogram of LPG by 5.5 dollars (or 110 dollars per 20kg bottle) on November 2, 2008, the LPG retailers reached an agreement to cut only 50 dollars per bottle.

3. Grounds for disposition:

The Cijin area is long and narrow in contour, connected to downtown Kaohsiung only by the cross-harbor tunnel. In other words, it is somewhat isolated and bottled LPG suppliers from outside the area do not provide much service for the Cijin area. The amount of LPG sold by the said six LPG shops between November 2008 and May 2009 accounted for 78.5% of the total gas supply. Obviously, the agreement among the LPG retailers had a serious effect on the bottled LPG distribution in the Cijin area and was in violation of Article 14(1) of the Fair Trade Law. These LPG retailers were therefore fined between 50,000 to 110,000 dollars respectively.

Appendix:

Denan Enterprises' Uniform Invoice Number: 79636998
Shengguang LPG Co., Ltd. 's Uniform Invoice Number: 82033710
Jhenyi LPG Shop's Uniform Invoice Number: 79350108
Yunyusiang Co., Ltd. 's Uniform Invoice Number: 81000965
Jusheng Co., Ltd. 's Uniform Invoice Number: 79701667
Hongcheng LPG Co., Ltd. 's Uniform Invoice Number: 82028337

Summarized by Hung, Chin-An; Supervised by Sun, Ya-Chuan □

Cheng Loong Corp., Long Chen Paper Co., Ltd., & YFY Packaging Inc.

962nd Commissioners' Meeting (2010)

Case: Cheng Loong Corp., Long Chen Paper Co., Ltd., and YFY Packaging Inc. violated the Fair Trade Law by engaging in concerted price increase
Key Word(s): Industrial paper, concerted price increase
Reference: Fair Trade Commission Decision of April 14, 2010 (the 962nd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.099054
Industry: Cardboard Manufacturers (1513)
Relevant Law(s): Article 14 the Fair Trade Law

Summary:

1. Cheng Loong Corp. (hereinafter referred to as Cheng Loong), Long Chen Co., Ltd. (hereinafter referred to as Long Chen), and YFY Packaging Inc. simultaneously adjusted the prices of industrial paper between November 2009 and March 2010 and were suspected of concerted price increase. The FTC initiated ex officio investigation in accordance with Article 26 of the Fair Law.

2. Findings of the FTC after investigation:

(1) The said three enterprises occupy more than 90% of the supply of first-level industrial paper in the domestic market. They also run second- and third-level downstream operations through vertical integration. High level of chain effects between the upstream and the downstream exist because of the interrelations. Additionally, the three enterprises are involved in two markets. On the one hand, they are the buyer on the waste paper market; on the other hand, they are seller on the industrial paper market. Waste paper is important material for industrial paper, accounting for about 60% to 70% of the material sources. Therefore, the prices of waste paper will those of industrial paper.

(2) The FTC requested the three enterprises to explain the reasons for price increase and to provide the quotations to their downstream business associates. At the same time, the FTC also compared the testimonies of 19 independent second-level

cardboard manufacturers with the statements of the three said enterprises.

(3) The prices of waste paper have gone up recently. The FTC sent a written request to the Bureau of Foreign Trade for information regarding the list of exporters, as well as the items and amounts exported. The data showed that the export prices were indeed lower than domestic prices in the same period. The FTC also obtained the production, marketing and import/export data of the overall market from the Industrial Development Bureau. The statistics indicated that the supply and the demand were still in balance.

3. Grounds for disposition:

(1) Cheng Loong and the two other enterprises concertedly raised the prices of first-level industrial paper between November 2009 and March 2010:

(i) The prices of core paper provided by the offenders were compared with the invoices from the second-level manufacturers and the price increase appeared consistent. In addition, comparing the rises in waste paper cost with the offenders' industrial paper prices, the levels of price increase as indicated in the invoices all exceeded the rises in waste paper cost.

(ii) In contrast, the industrial paper price fluctuations as a result of the rises in waste paper cost in the period from October 2007 to May 2008 were larger than the range of the aforesaid price adjustment. Again, when compared with international competitive prices, the range of domestic industrial paper price increase this time did appear inconsistent with international price rises. The three enterprises differ in the quantity, cost, and self-controlled percentage of their waste paper purchases. Consequently, the cost pressure and the level of cost transfer also have to vary. However, the price increase of the three enterprises was consistent.

(iii) The industrial paper market is a highly concentrated one and it is not easy at all for new businesses to step in the market. The offenders have different cost structures and various self-controlled percentages, yet the price adjustment was quite consistent. It could not possibly have been independent price adjustments that happened to coincidentally. Besides, the offenders would quote in accordance with the listed prices in order to make their competitors understand the upper limits of

price adjustment and other price-related information, so that the price increase would be consistent. At the same time, the fact that the offenders often met and socialized with one another was really contradictory to the normal behavior of competitors and it is not common at all in other competitive industries. Hence, combining the above, it is obvious that these enterprises established taciturn or implicit agreement to maintain increase of industrial paper prices and avoid price competition.

(2) The offenders Chen Loong and Long Chen used the advantage of vertical integration to jointly boost up the prices of second-level cardboard on the domestic market:

(i) Together, the three offenders enjoy a 54.79% share of the corrugated cardboard market. 19 other independent and sizable second-level manufacturers split the remaining 45.21%. Any of the independent second-level manufacture is undoubtedly no match to the offenders in terms of market share. In other words, the three major enterprises are able to bring a rather significant impact on the market when they raise the prices or try to undercut the prices. They run first-, second- and third-level plants under the same management. The vertical integration results in high-level solid internal control. If the offenders adopt concerted actions to uplift the prices of second-level cardboard for profit, while on the horizontal competition market the other independent second-level manufactures, limited in production scale and paper sources, will be unable to compete on the market and the joint price increase will definitely render serious damage to market competition.

(ii) The domestic sales and the internal cost of second-level cardboard of the offenders Chen Loong and Long Chen are dissimilar and their processing costs and attrition rates are also subject to different factors. But for the existence of an agreement, there is really no justifiable explanation for the consistent price increase on a number of products. In addition, these two enterprises made no price competition and, on the contrary, jointly boosted the prices of cardboard, third-level cardboard box makers had no choice but to purchase from their second-level plants. Therefore, their use of vertical integration to control the sources and joint manipulation of the prices of second-level cardboard could not be any more obvious.

(iii) The independent second-level manufacturers rely on the upstream suppliers

to a rather high extent and their paper supply is under the control of the upstream businesses. If the three major industrial paper suppliers consolidate their resources and retaliate, these smaller businesses will have no means to stand up against them. Cheng Loong and Long Cheng have the capacity to influence the prices of the products from the second-level plants. Therefore, by lifting the prices at the second-level which increase the price pressure the third-level paper plants can withstand, these two enterprises are able to maneuver the competition on the market.

(3) Taking into consideration the financial situation of the offenders, the impact of the violation, the punishment they deserve for the violation of their Administrative Law obligations, and the profit they made as a result of the violation, Cheng Loong was fined 5 million NT dollars, Long Chen 300 million, and YFY 2 million.

Appendix:
Cheng Loong Corp. 's Uniform Invoice Number: 33085508
Long Chen Paper Co., Ltd. 's Uniform Invoice Number: 34202841
YFY Packaging Inc.'s Uniform Invoice Number: 27719048

Summarized by Huang, Chia-Chi Supervised by Yang, Chia-Hui □

Taiwan Bar Association (TBA)

963rd Commissioners' Meeting (2010)

Case: Taiwan Bar Association violated the Fair Trade Law by achieving decision and notifying all local bar associations in writing to request their members to withdraw from the legal consultation service platform of Lifelaw

Key Word(s): Attorney, online platform, legal services

Reference: Fair Trade Commission Decision of April 21, 2010 (the 963rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.099060

Industry: Legal Service Industry (6911)

Relevant Law(s): Article 14 the Fair Trade Law

Summary:

1. Lifelaw Co., Ltd., (hereinafter referred to as the informer) informed the FTC that Taiwan Bar Association (hereinafter referred to as TBA) achieved decision at its 3rd Meeting of the 8th Executive Directors of TBA to notify all local bar associations to request their members to withdraw as quickly as possible from the online legal consultation platform set up by the informant with the purpose of providing legal services. As a result, Hsinchu Bar Association, Taipei Bar Association and Taichung Bar Association respectively on April 8, 14 and 15 passed the message to their members and requested those already providing legal services on the said platform to withdraw from the operation as quickly as possible. The conduct was considered as in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

Due to advancements in Internet and telecommunications technologies, it has become possible for attorneys at law to provide legal services through the Internet and telephone and fulfilled consumers' needs of legal consultation services. This has been a new legal service channel and supply-demand matching through online platforms can reduce the transaction cost, increase consumers' options and economic benefits. There is no regulation in the Attorney Regulation Act on channels through

which attorneys at law can provide legal services. Hence, attorneys at law have the liberty to provide consultation services through their own websites or through online platforms such as the one set up by the informer. According to the opinion of Ministry of Justice and Taipei District Prosecutors Office, investigation findings and existing evidences, the online platform set up by the informer and the recruitment of attorneys at law to provide legal consultation services did not appear to be in violation of Article 48 and Article 50 of the Attorney Regulation Act. Therefore, TBA's decision and written notification to inform local bar associations to request their members to withdraw from the legal consultation service platform was an act of restriction on the choice of channels of attorneys at law to provide legal services. It deprived the opportunities of attorneys at law to participate in fair competition and night put an end to the market developed with technological creativity to facilitate supply-demand matching.

3. Grounds for disposition:

(1) TBA is an organization as described in Subsection 3 of Article 2 of the Fair Trade Law. The 3rd Meeting of the 8th Executive Directors was indeed convened to discuss the reply from the Ministry of Justice regarding the informer's online platform and recruitment of common members (private citizens) and specialist members (attorneys at law) is not against Article 48 of the Attorney Regulation Act. A resolution was reached and written notifications were sent on April 1 to local bar associations to inform their members that anyone already participating in the operation of the informer's platform was advised to withdraw as quickly as possible.

(2) TBA is composed of local bar associations in accordance with the regulation of subparagraph 3 of Article 11 of the Attorney Regulation Act. As stipulated in Articles 11, 39 and 40 of the same act, an attorney at law is not entitled to practice until he/she has become a member of a bar association and an attorney at law in serious violation of the attorney code of ethics may be sanctioned by the Bar Association Disciplinary Committee upon the resolution of the Bar Association Assembly or the Joint Council of Bar Association Directors and Supervisors. The above, put together, means a bar association has rather significant influence on the practice of an attorney

at law. When Hsinchu Bar Association, Taipei Bar Association and Taichung Bar Association received and forwarded the resolution of TBA to their members, some attorneys at law did withdraw from the legal consultation platform set up by the informer. Therefore, the conduct of TBA was indeed an act of restriction on the activity of these attorneys at law. The action of TBA, in addition to restricting the professional activities of the attorneys at law already providing legal services through the online platform set up by the informer, would also make other attorneys at law to give up their interest in providing legal consultation services through the online platform set up by the informer or similar operations established by other enterprises and thus decrease the number of opportunities for consumers to choose legal services through various transaction channels. Without question, this conduct already affected the supply-demand function of the domestic legal service market and was in violation of subparagraph 1 of Article 14 of the Fair Trade Law concerning that “No enterprise shall have any concerted act" TBA was therefore imposed a fine of NTD500,000.

Summarized by Lai, Mei-Hua; Supervised by Chen, Yuhn-Shan □

Taichung City Driving School Association

972nd Commissioners' Meeting (2010)

Case: Taichung City Driving School Association and its members violated Article 14 of the Fair Trade Law

Key Word(s): Association, Taichung Driving School Association, driving school

Reference: Fair Trade Commission Decision of June 23, 2010 (the 972nd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.099077

Industry: Unclassified Organizations (9499)

Relevant Law(s): Article 14(1) the Fair Trade Law

Summary:

1. The FTC received an anonymous letter informing that the joint operation or joint operation in disguise to monopolize the driving training market by Taichung City Driving School Association (hereinafter referred to as the Association) was detrimental to the interests of consumers. Accordingly, the Association charged the members a membership fee in line with the ratio of the number of students enrolled at each driving school. Any schools accepting excessive students would be fined a punitive amount of money as the mutual aid fund whose purpose is to subsidize the ones with substandard enrollments. Through the supervisory mechanism, the Association requested the members to abide by established regulations of the Association and charge tuitions at a unified rate. The conduct was in violation of both Article 14 of the Fair Trade Law that prohibits concerted actions and subparagraph 4 of Article 19 that forbids restriction of competitive activities by coercion.

2. Findings of the FTC after investigation:

(1) The FTC's investigation revealed that the Association was not a trade union established in accordance with the Commercial Group Act, although its members had all applied to the competent authority of highway administration for permission to operate and acquired their business certificates for student recruitment. They did not need to register in pursuance to the Business Registration Act or register as profit-making operations. However, as they charge tuitions in exchange for driving training services, their operations meet the definition of "enterprise" – "any other person or organization engaging in transactions through the provision of goods or services" as prescribed in Subsection 4 of Article 2 of the Fair Trade Law.

(2) The Association had 25 members, 15 in Taichung City and 10 in Taichung County. 23 of them participated in the said concerted action, accounting for about 70% of the 33 driving schools in the Taichung County and Taichung County. The said 23 driving schools decided the mutual aid fund system under the arrangement of the Association. Each of them was required to sign an affidavit for the aforementioned fine payment and collection of the mutual aid fund. The agreed restriction on their

business activities had an impact on the driving training market in Taichung County and Taichung City and led to the decrease of interest in offering better prices, quality and service to attract trading counterparts on the market. The conduct is sufficient to affect the supply-demand function of the market.

3. Grounds for disposition:

(1) The Fongjia Private Driving School of Taichung City and 22 other driving schools jointly decided the mutual aid fund system through the Association. By so doing, they also established tuition criteria and a supervisory mechanism to mutually restrict the prices and amounts of service to be provided. The conduct had a detrimental effect on the supply-demand function of the driving training service market in Taichung County and Taichung City. It was considered a concerted action as prescribed in the Fair Trade Law and in violation of Article 14(1) of the Fair Trade Law.

(2) Fongjia and Siyuan Driving Schools were fined NTD200,000 each. Jhongshan, Jhongtai, Shichuan, Shihua, Liming and Shude were fined NTD150,000 each. Gaosu and Lingdong were fined NTD120,000 each. Dasin, Yuantai, Taichung City Huaci, Donghai, Huajiang, Guofong and Rueilian were fined NTD100,000 each. Dacian, Datong, Dafong, Taichung County Huaci, Siouping and Fongnian were fined NTD50,000 each. The total fine was NTD2.54 million.

Summarized by Shen, Li-Wei; Supervized by Liou, Chi-Jung □

Bottled LPG Distributors

985th Commissioners' Meeting (2010)

Case: The FTC initiated an ex officio investigation to find out if domestic bottled LPG distributors had undertaken any concerted action or unjustifiable discriminative treatment in violation of the Fair Trade Law
Key Word(s): Bottled LPG supplier, distributor, bottling plant
Reference: Fair Trade Commission Decision of September 21, 2010 (the 985th Commissioners' Meeting)
Industry: Retail Sale of Other Fuel Products in Specialized Stores (4829)
Relevant Law(s): Articles 14 and 19(ii) of the FTL

Summary:

1. The media reported in February 2010 that the price difference per LPG bottle among domestic counties or cities could be as high as NT$210, even in the same county or city it could be over NT$100. The FTC therefore initiated an investigation to find out if related LPG businesses had undertaken any conducts in violation of Article 14 and subparagraph 2 of Article 19 of the Fair Trade Law (FTL).

2. The domestic bottled LPG market structure is basically divided into four levels, namely production and importation (the suppliers), distribution, bottling, and retailing (the LPG shops). The following is a general description of the market:

(1) The suppliers: Currently there are three LPG suppliers in the country. They are China Petroleum Corporation, Taiwan (hereinafter referred to as CPC), Formosa Petrochemical Corporation (hereinafter referred to as FPC), and LCY Chemical Corp. (hereinafter referred to as LCY). As LCY only imports a relatively small amount of LPG and thus CPC and FPC are the two major suppliers.

(2) The distributors: At present, there are ten distributors under the two major suppliers, seven of them belongs to the CPC distribution system and three the FPC system.

(3) The bottling plants: There are 112 LPG bottling plants in the country currently. Market competition among the LPG bottling plants is fierce and most of them run

cross-country/city operations.

(4) The LPG shops: The threshold for setting up an LPG shop is low and there are currently over 3,400 of them across the country. Since their trading counterparts are mostly end users (including restaurants, street stands, etc.), high mobility is required. Most shops deliver LPG bottles by motorcycle and normally operate within the radius of 5-10 kilometers.

3. The suppliers, distributors, bottling plants and LPG shops had not conducted any of the concerted action described in Article 14 (1) of the FTL. The explanation is as follows:

(1) The suppliers: CPC has adopted the Floating Gas Price Mechanism since January 2007. Based on the CP prices at the beginning of each month, the company determines and announces the LPG prices according to the calculation measure approved by the government. The prices are public information and apply to all distributors. Since CPC has a larger market share and the prices are information accessible by the public, FPC, not without taking its own production and marketing capacity into account, often follows the LPG price adjustments of CPC but decides the actual prices in accordance with the trading terms with different distributors and the condition of competition in the local market. The synchronized price fluctuations over the years have been the result of CPC's price leadership. The FTC's investigation revealed that both suppliers had been selling LPG to their distributors at different prices and there were no concrete evidences at all showing that the two enterprises had established any contract or agreement that resulted in any joint pricing or other conduct in violation of the FTL.

(2) The distributors: The FTC's investigation showed that the price increases made by the distributors between July 2009 and February 2010 ranged between 27.8% and 31.96%, generally lower than the their cost increases (29.18% to 34.85%) when they purchased from the suppliers. Each distributor had its own pricing strategy and the prices and price increases therefore differed. The evidences available did not point to any joint price increase.

(3) The bottling plants: Most of the bottling plants raised their selling prices

between July 2009 and February 2010 by 20% to 28%. Again, these increases were generally lower than the incoming wholesale prices the distributors paid and each bottling plant, due to the pricing policy, sold LPG at rather different prices and price increases. The evidences available did not prove any joint price increase.

(4) The LPG shops: The FTC's investigation revealed that the large retail price differences in various counties and cities had been the consequence of the geographic environment, severity of competition and rents in different retail markets over the years. The retail prices within the same county or city between July 2009 and February 2010 also varied significantly, with the price difference per bottle ranging between NT$15 and NT110 without any consistency at all. The price differences between counties and cities were huge and the difference in price increases was also quite large, falling between 14.1% and 26.36% but still smaller than the cost increases for the shops (20% to 28%.) Moreover, as each county or city had a large number of LPG shops and product homogeneity was high, price competition on the market was fierce and no price or price increase consistency was discovered. The evidences available did not show any joint price increase.

4. It is determined that the suppliers, distributors, bottling plants and LPG shops had made no discriminative treatment described in Article 19 (2) of the FTL. The explanation is as follows:

(1) The suppliers:

(i) CPC had over 60% of the market share and signed a 2-year contract with its distributors for each contract renewal. Each distributor established its pricing policy mainly in accordance with the location where it picked up the supply. CPC supplies at prices decided according to the location where the supply was provided and the prices were public information and applied to all of CPC's distributors. After agreeing on the terms and entering the contract with CPC, each distributor, depending on its business condition, could propose to revise the amount of LPG it was supposed to sell each month. Available evidences at the present time did not show that CPC had taken advantage of its market position to place any competition restrictions on its distributors or undertake any conducts that could have hampered fair market

competition in violation of subparagraph 2 of Article 19 of the FTL.

(ii) FPC occupies about 30% of the market share. It signed a 3-year contract with its distributors for each contract renewal. Besides providing the amount of supply the distributor proposed as able to sell, FPC also gave different and even high discounts in accordance with the supply amount and transportation distance to encourage the distributors to work harder and expand the market share and the distributors were aware of the discount policy. Available evidences did not show that FPC had adopted any discriminative treatment against any distributors in violation of subparagraph 2 of Article 19 of the FTL.

(2) The distributors: Among the ten distributors in the country, only two of them had a market share of more than 10% for the distribution market. Findings of the FTC's investigation showed that these two major distributors had adjusted their price policies in line with the condition of competition in the market and for bottling plants that had to seek supply from different distributors to meet their demand. Bottling plants interviewed by the FTC also acknowledged that they had to seek supply from a single or multiple sources because of their different business considerations. Based on the above, despite the two major distributors had occupied more than 10% of the market share and were in a relatively advantageous market position against the bottling plants, they still had to determine their prices in accordance with market competition, transportation distances, ways of payment from the customers (including factors of cash payment and check clearing period length) and the amount of supply acquired. In other words, the distributors would be unable to determine the prices unilaterally. The available evidences did not show that the two major distributors had imposed any competition restrictions or unjustifiable discriminative treatment that could obstruct fair market competition.

(3) The bottling plants: There were around 120 bottling plants in the country. Market competition was fierce and LPG shops could choose to get supply from a single bottling plant or different bottling plants due to their own business concerns. This broke the past limitation that LPG shops could only get supply from the bottling plant that issued the refill certificate in order to obtain their business permits. In other words, the situation in which LPG shops had to rely on a specific or sole bottling

plant for supply no long existed. Since LPG shops could freely decide where to get their supply, the bottling plants had no reason to apply any discriminative treatment without justification.

Summarized by Wang, Hung-Chu; Supervised by Sun, Ya-Chuan □

Taoyuan County Photographic Studio Association

985th Commissioners' Meeting(2010)

Case: Taoyuan County Photographic Studio Association violated the Fair Trade Law by undertaking concerted action
Key Word(s): Digital ID photo, charge criteria
Reference: Fair Trade Commission Decision of September 21, 2010 (the 985th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.099098
Industry: Photographic Studios (7601)
Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. An informant complained that many photographic studios and film developers in the Taoyuan area were charging extra money for their printout service for digital ID photos that consumers had taken themselves and the conduct could be concerted action. The FTC's investigation showed that the Taoyuan Photographic Studio Association had 128 members. They were either photographic studios or film developers in Taoyuan County. At the same time, according to the Industry, Commerce and Service Census conducted by the Directorate-General of Budget, Accounting and Statistics of the Executive Yuan, the numbers of photographic studios and film developers in Taoyuan County from 2007 to 2009 were respectively 139,

136, and 135. In other words, the members of the said association accounted for over 90% of all the photographic studios and film developers in the area. Although the association never insisted that its members had to charge extra money when making prints of digital ID photos consumers had taken themselves, it did establish a set of "Charge Criteria" and distributed it to the members.

2. Findings of the FTC after investigation:

According to the explanation of the Taoyuan Photographic Studio Association, there had been members complaining that the association had not taken any measure for the benefit of the members and therefore refused to pay any more membership fees when Liao Zhongkang had been the chairman of the association. To appease the discontentment, a set of charge criteria was established in accordance with previous charge standards, while adjustments were made to some of the service items based on the general economic developments (such inflations) before the Second Member Assembly of the 12th Association was convened on September 30, 2008. The charge criteria were distributed to the members at the assembly for their reference. The said criteria included three major categories: ID photo taking (120 film and digital,) digital development of conventional film, and wedding photo taking. The first category covered photo taking (divided into picking up the same day and picking up the following day,) extra prints, print enlargement or reduction and fast prints, with the corresponding charges for various specifications clearly listed. Under the category of digital development of conventional film were 135 negative film development and prints, 120 negative film development and manually enlarged prints (digital portrait photos,) digital prints (daily life photos,) prints from positive film, photo scanning, and so on, with clearly listed corresponding charges for development, cataloging, scanning, compact disc production, and each unit of 2x3 to 40x60 prints. The last category included the charges for wedding photo taking, oil painting effect and mounting, canvas effect, color painting effect, engagement and wedding makeup service, ampoule makeup sealer, and each unit of 2x3 to 40x60 prints." Attached in the charge criteria was a sentence saying "the charge for 4x6 prints from ID photos taken and arranged by customers themselves will be NT$80 for each set of four

prints." According to the Taoyuan Photographic Studio Association, the charge criteria did not carry the title of the association and was for reference only and there was not a "no bargaining" note. Plus, since the chairperson of the Taipei County Professional Photographer Association at the time was present at the assembly and cautioned the association to be aware of the regulations in the Fair Trade Law (FTL), the members were therefore requested to return the criteria. Unfortunately, this happened when the assembly meeting was coming to an end and only a small portion was retrieved. As a remedy, the association advised the members who had kept the criteria not to post the criteria at their business venues and the criteria were for private reference only. Despite the explanation from the association, the members interviewed all concurred that the association had indeed established and distributed the said charge criteria and some members had charge for their services accordingly.

3. Grounds for disposition:

The Taoyuan Photographic Studio Association had clearly listed in the said charge criteria three major categories, namely ID photo taking (120 film and digital,) digital development of conventional film, and wedding photo taking. ID photo taking included photo taking (divided into picking up the same day and picking up the following day,) prints, print enlargement or reduction, and fast prints, with the corresponding charges for various specifications clearly listed. The category of digital development of conventional film covered 135 negative film development and prints, 120 negative film development and manually enlarged prints (digital portrait photos,) digital prints (daily life photos,) prints from positive film, photo scanning, and so on, with clearly listed corresponding charges for development, cataloging, scanning, compact disc production, and every unit of 2x3 to 40x60 prints. Wedding photo taking included the charges for wedding photo taking, oil painting effect and mounting, canvas effect, color painting effect, engagement and wedding makeup service, ampoule makeup sealer, and each unit of 2x3 to 40x60 prints. Attached in the charge criteria was a sentence that said "the charge for 4x6 prints from ID photos taken and arranged by customers themselves will be NT$80 for each set of four prints." The details of the charge criteria involved the most important

and most sensitive information – prices. The objective was to regulate the charges for photo taking and development services and it restricted each member's liberty to decide the prices as well as the price competition between the members. Since the members of the Association took up over 90% of the market in concern and the sense of identification, sense of belonging and sense of trust of the members for the association were able to generate a collective regulatory power, the said charge criteria had certain substantial binding force on the members with regard to their price decision. It was concerted action able to affect the supply-demand function of the concerned market. The conduct met the horizontal concerted action description in Article 7 (4) of the FTL and was in violation of Article 14 (1) of the same law. The association was therefore imposed with an administrative fine of NT$200,000.

Summarized by Hsu, Cho-Yuan; Supervised by Liao, Hsien-Chou □

Taipei Bar Association

1004th Commissioners' Meeting (2011)

Case: Taipei Bar Association violated the Fair Trade Law for printing and distributing a consultation fee standard notice requesting its members to follow

Key Word(s): Legal consultation service, consultation fee standards, bar association

Reference: Fair Trade Commission Decision of January 26, 2011 (the 1004th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100016

Industry: Professional Associations (9422)

Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. The FTC was informed that Taipei Bar Association had printed and distributed

a notice requesting that "members of this association must charge consultation fees in accordance with the established standards." The FTC initiated an ex officio investigation into the matter regarding suspected violation of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

During the 1970s, Taipei Bar Association printed a notice to request "members of this association MUST charge consultation fees in accordance with the established standards" to eliminate the doubt of concerned parties regarding the legality and standard of lawyer's consultation service fees. The notice was given to new members when they joined the association. According to the explanation of the Ministry of Justice, the said notice appeared to have been misworded from the intended meaning that the members "SHALL charge consultation fees in accordance with the established standards." To end the controversy and make the wording consistent with the intended meaning, the language used in the said notice could be revised.

3. Grounds for disposition:

(1) The notice from Taipei Bar Association to request that "members of this association must charge consultation fees in accordance with the established standards" was normally given to new members when they joined the association. The matter in concern – consultation service – is one of the legal service types. It covers more than just litigations and can be provided for cases under the jurisdiction of any court. People from other places may seek legal consultations in Taipei. Considering the costs of time and transportation required for the trading counterparts to acquire legal services as well as the corresponding distances and travel practices, the FTC therefore deemed the geographic market involved in this case as encompassing Taipei City, New Taipei City and Keelung City, while the product market was the legal service market.

(2) According to Article 11 of the Attorney Regulation Act, "an attorney at law is not entitled to practice until he/she has become a member of a Bar Association." Hence, it is understandable that the notice from Taipei Bar Association would have

a rather significant binding effect on the members. Judging from its content, the notice was indeed intended to demand that the members charge consultation fees for their service and this had an effect on the choice of the member attorneys and people seeking consultation service to decide whether and how much a fee was to be collected. Taiwan Bar Association's requesting its member attorneys to charge for the consultation service every time was imposing a restriction on the transaction between people seeking legal consultations and the member attorneys and would probably cause attorneys originally not charging consultation fees to start charging and thus creating competition restriction in the legal service market and consequently jeopardizing the choice of the trading counterparts to decide between paying and not paying to receive legal consultations. In the end, the supply-demand function of the legal service market would be affected.

(3) The stipulations in the Attorney Regulation Act regarding standards for attorney service fees and the charter of Taipei Bar Association only suggest that attorneys may refer to established fee standards when providing legal services. There are no clauses indicating that collection of consultation fees is a requirement at all. The notice from Taipei Bar Association, however, did carry the connotation that its member attorneys had to charge for their consultation service and this was inconsistent with the association's allegation that the notice was meant to be a reference for the members only. In addition, this did not comply with the regulation of "where there is any other law governing the conducts of enterprises in respect of competition, such other law shall govern" stipulated in Article 46 of the FTL. Apparently, when related laws were legislated or when Taipei Bar Association decided to print and issue the notice, fair market competition and the impact on the market supply-demand function were not taken into consideration and, as a result, the freedom and fairness in market competition were hampered. As free legal consultation service centers have been in operation all over the country, there was really no need to insist that attorneys had to charge for the consultation services they provided. Consequently, the conduct of Taipei Bar Association to continue to issue the said notice was in violation of the regulations stipulated in the FTL against concerted action. According to Article 46 of the FTL, the association could not be exempted from the regulation of the FTL.

(4) Based on the above reasoning, by printing and issuing the notice requesting that "members of this association must charge consultation fees in accordance with the established standards," Taipei Bar Association already restricted the business activities of its members and the conduct was sufficient to affect the market function of supply and demand of service. It was in violation of Article 14 (1) of the FTL. Acting in line with the First Section of Article 41 of the FTL, the FTC ordered the association to immediately cease the unlawful act.

Appendix:
Taipei Bar Association's Uniform Invoice Number: 78379129

Summarized by Tsai, Jing-Hui; Supervised by Chen,Yuhn-Shan □

Yuan Jie Co., Ltd. & 30 Other Enterprises

1008th Commissioners' Meeting (2011)

Case: Yuanjie Co., Ltd. and 30 other businesses violated the Fair Trade Law by engaging in concerted increase of cigarette prices
Key Word(s): Tobacco product
Reference: Fair Trade Commission Decision of March 2, 2011 (the 1008th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100027
Industry: Manufacture of Tobacco Products (1000)
Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. After receiving phone calls in May 2010 from private citizens reporting that 31 imported cigarette distributors had jointly increased cigarette prices on June 1, 2010, the FTC initiated an ex officio investigation to understand whether the said

distributors were in violation of the regulation against concerted actions set forth in Article 14 of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

The FTC's investigation revealed that Yuan jie Co., Ltd. and 30 other distributors had indeed met frequently through the "Taiwan Distributor Association" to discuss their business practices and the condition of the cigarette market over a long period of time. The market competition over wholesale price was particularly fierce between January and April in 2010. The price of a carton Mild Seven Series, for example, even dropped below NT$660 during the said period. As a result, the aforesaid distributors held three meetings in May 2010 and reached an agreement to raise their wholesale prices starting in June. The wholesale price of the Mild Seven series was therefore increased to NT$680 per carton. It was also decided on that meeting that each distributor was to open a separate account in the same bank (in Taipei City) and deposit NT$15 for every carton of the Mild Seven series and the Mine series and NT$10 for other series, such as Winston and More, into the account. The purpose of this agreed practice was meant to demonstrate the determination to execute the decision.

Meanwhile, to ensure the concerted action would be executed and continued without any obstacles, the said association also hired an accountant to monitor the above accounts and regularly check whether each distributor had made the bank transfer on time. The action was meant to reduce the cash flow and circulating capital of each distributor to suppress and prevent each distributor from undertaking price competition.

3. Grounds for disposition:

(1) The establishment of the mutual understanding regarding the concerted action: For a long period, the 31 distributors had held meetings through the "Taiwan Distributor Association" to discuss their business practices and the condition of the cigarette market. As fierce market competition between January and April of 2010 made it impossible for anyone to have any profit, they met intensively in May 2010

to work out a practical measure to stabilize the market and decided to raise the wholesale prices of cigarettes starting in June 2010. They also visited the office of the aforesaid accountant together to arrange the account opening.

(2) Content of the mutual understanding regarding the concerted action:

(i) Mutual understanding on the prices: The wholesale prices of the Mild Seven series, the most popular products, were increased to NT$680 per carton, starting in June 2010.

(ii) Appropriation: "NT$15 for each carton of the Mild Seven and Mine series and NT$10 for each carton of other series were to be appropriated." In line with the quantities of each purchase, every distributor was required to deposit the corresponding amount into a separate account in Chang Hwa Bank's downtown branch in Taipei. The appropriation would last two years and the amount in the account could be withdrawn only once every three months.

(iii) Supervision: An accountant was hired and paid NT$10,000 per month by the Taiwan Distributor Association to guard each distributor's bankbook for the said account and check regularly to see whether money was being transferred into the account on time. The accountant was to report to the chairperson or the chief financial officer of the association if anyone failed to transfer money on time.

(iv) Purpose of appropriation: Some of the distributors admitted that the appropriation was a complementary measure for the purpose of stabilizing cigarette prices. As the money deposited into Chang Hwa Bank's downtown branch in Taipei could not be withdrawn right away, the total amount of money that a distributor could not touch between June and September of 2010 already reached several million. This money was regarded the cost to push up cigarette prices and actually had the effect of cost increase for each distributor. By doing so, the distributors expected one another to refrain themselves from lowering prices to boost sales.

(v) Restriction on business activities: Through the cohesion or collective influence among the members, the Taiwan Distributor Association was able to make all the members abide by the decision and put their business activities under control. Without any exception, all the 31 distributors acted in line with the understanding. Undoubtedly, it was restriction on business activities.

(3) Impact of the concerted action on the supply-demand function of the market: As cigarette smokers normally have certain brand loyalty to the tobacco products they purchase, cigarettes therefore have the characteristic of non-interchangeability. By jointly raising the wholesale prices of cigarettes, the 31 distributors not only jeopardized the competition function of the distribution market but also directly increased the purchase prices of the retailers who had no choice but shifted the burden onto consumers in order to maintain their profits. The conduct was indeed disadvantageous to fair competition on the market and the interests of consumers.

(4) According to the above, the joint increase of cigarette prices by the 31 distributors in June 2010 was able to affect the supply-demand function of the domestic cigarette market in violation of the regulation against concerted actions set forth in Article 14 (1) of the FTL. The FTC therefore imposed administrative fines NT$900,000, NT$600,000 and NT$300,000 respectively on the said distributors. The fines totaled NT$21,900,000.

Appendix:
Deen Herr Trading Co., Ltd.'s Uniform Invoice Number: 75963436
Ri Sheng Wine and Tobacco Co., Ltd.'s Uniform Invoice Number: 97250432
Lu Yi Enterprise Co., Ltd.'s Uniform Invoice Number: 28037099
Ming Hwai Enterprise Co., Ltd.'s Uniform Invoice Number: 25087307
Chuan Hsin Wine and Tobacco Co., Ltd.'s Uniform Invoice Number: 86510306
San He Wine and Tobacco Co., Ltd.'s Uniform Invoice Number: 13011923
Yu Hwa Co., Ltd.'s Uniform Invoice Number: 84916816
Hong Zhi Co., Ltd.'s Uniform Invoice Number: 86436257
Miao Sheng Co., Ltd.'s Uniform Invoice Number: 13007842
Zhang Mei Wine and Tobacco Co., Ltd.'s Uniform Invoice Number: 97417904
Xin Mao Xin Enterprise Co., Ltd.'s Uniform Invoice Number: 84237325
Fu Yi Jian Co., Ltd.'s Uniform Invoice Number: 89566330
Li Peng Co., Ltd.'s Uniform Invoice Number: 97087404
Yuan Jie Co., Ltd.'s Uniform Invoice Number: 86223043
Xing Hwa Company's Uniform Invoice Number: 25323225

Da Wu Wine and Tobacco Company's Uniform Invoice Number: 36615614
Bo Li Co., Ltd.'s Uniform Invoice Number: 25052659
Shen Yi Marketing Co., Ltd.'s Uniform Invoice Number: 28532605
Song De Enterprise Co., Ltd.'s Uniform Invoice Number: 28306072
Fu Mao Wine and Tobacco Co., Ltd.'s Uniform Invoice Number: 27632486
Long Ting Co., Ltd.'s Uniform Invoice Number: 70644595
Jing Jiu Co., Ltd.'s Uniform Invoice Number: 13017481
Yi Jie Enterprise Co., Ltd.'s Uniform Invoice Number: 13026067
Tai Jie Co., Ltd.'s Uniform Invoice Number: 24414986
Lu Yi Imported Wine and Tobacco Co., Ltd.'s Uniform Invoice Number: 86697999
Song Yi Company's Uniform Invoice Number: 93845124
Jia Li An International Co., Ltd.'s Uniform Invoice Number: 27497480
Cheng De Fa Enterprise Co., Ltd.'s Uniform Invoice Number: 86980159
Bie Yun Wine and Tobacco Co., Ltd.'s Uniform Invoice Number: 84118398
Cha Li Shi Co., Ltd.'s Uniform Invoice Number: 16169714
Cheng Tai Wine and Tobacco Co., Ltd.'s Uniform Invoice Number: 28548677

Summarized by Huang, Hsiao-Yin; Supervised by Yang, Chia-Hui □

Taiwan Securities Association

1013rd Commissioners' Meeting (2011)

Case: Taiwan Securities Association violated the Fair Trade Law by deciding and requesting its members to charge no less than 2% of the amount underwritten for the book building service when accepting underwriting cases

Key Word(s): Securities underwriting, book building, listed company, association

Reference: Fair Trade Commission Decision of April 6, 2011 (the 1013rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100044

Industry: Securities Brokerage (6611)

Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. At its Second Underwriting Business Committee Meeting on March 7, 2007, Taiwan Securities Association (hereinafter referred to as the TSA) reached the decision that when its member underwriters considered a fee was required for the book building service they provided, the fee should not be lower than 2% of the underwritten amount. The conduct was in violation of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

(1) At the TSA's First Underwriting Business Committee Meeting in 2007, a motion was presented to the members for the purpose of discussing their charges for book building service. On March 7 of the same year, the TSA reached the decision at the Second Underwriting Business Committee Meeting that "underwriters may act in line with the condition of each case and stipulate in the book building and underwriting announcements whether to charge a book building service fee. If an underwriting case is determined as requiring payment of a book building service fee, the fee shall be collected from the allotee only and at the rate no less than 2% of the underwritten amount." The decision was approved by the Board Director and Supervisor Joint Meeting on March 13, 2007 and all the members were notified on

March 15, 2007 to abide by the decision.

(2) On December 9, 2004, the TSA added paragraph 6 to Article 26 of the "Rules Governing Underwriting and Resale of Securities by Securities Firms" to stipulate that "when a securities underwriter accepts a book building bid for processing, it may collect a book building processing fee from the bidder, in accordance with the Taiwan Securities Association Rules Governing Securities Underwriters' Allocation of Securities by Book Building", laying the legal basis for underwriters to charge for book building. Another finding revealed that the aforesaid "Rules Governing Securities Underwriters' Allocation of Securities by Book Building" only prescribed the operating procedure of book building and set no regulations on collection of charges. Therefore, there was no stipulation regarding the standards of book building fees to be collected.

3. Grounds for disposition:

According to Article 89 of the Securities and Exchange Act, securities firms must join the TSA before they are allowed to operate their businesses. Hence, all securities firms are members of the TSA and are required to abide by the TSA's decisions. In consequence, the said decision had certain influence and binding effects on all TSA members that provided underwriting service. As the "Rules Governing Securities Underwriters' Allocation of Securities by Book Building" only stipulated that underwriters could charge for their book building service but set no regulations regarding the standards of charges, TSA members that were on the same horizontal level should be allowed to consider the competition condition on the market to determine their own rate of charges when providing securities underwriting service so that their business opportunities could increase. On the contrary, the TSA directly set a limit on the standard of book building service fees in its decision. It was actually a restriction on the competition among its members to obtain business opportunities. The data from the TSA showed that in 69 out of the 70 underwriting cases requiring collection of book building fees after the said decision was made no less than 2% of the underwritten amount was collected as the book-building fee. Obviously, the members were collecting the fee according to the aforesaid bottom line and

the decision had indeed set a restriction on their business activities. The conduct was therefore in violation of Article 14 (1) of the FTL and the FTC imposed an administrative fine of NT$1,000,000 on the TSA.

Summarized by Tsao, Hui-Wen; Supervised by Chen, Yuhn-Shan □

Tainan City LPG Business Association

1019th Commissioners' Meeting (2011)

Case: Tainan City LPG Business Association violated the Fair Trade Law for obstructing LPG shops from entering the market for competition
Key Word(s): Association, bottled LPG
Reference: Fair Trade Commission Decision of May 18, 2011 (the 1019th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100086
Industry: Retail Sale of Other Fuel in Specialized Stores (4829)
Relevant Law(s): Article 14(1) of the Fair Trade Law

Summary:

1. Huo Li Wang Gas Stove Shop intended to add LPG retail to its business and applied to Tainan City Government for a permit. However, before acquiring the permit, it started on May 1, 2009 to offer discounts to promote its sales in Li Siang Community in Anping District of Tainan City. Members of Tainan City Liquefied Petroleum Gas Association (hereinafter referred to as the offender) complained that the promotion by two LPG shops had a disadvantageous effect on their business. In response, the offender convened on the 16th of the same month an ad hoc board meeting in which the chairperson was authorized to handle the matter. The chairperson thus distributed a handout insinuating that the LPG shops conducting the promotion in the said community not only did not have insurance for its products

but also were cheating on the volume of LPG in each bottle. Its action was designed to bar the said LPG shops from competing in the bottled LPG distribution (retail) market.

2. Findings of the FTC after investigation:

(1) Between May 1 and June 21 of 2009, only Huo Li Wang Gas Stove Shop and An Ji LPG Shop were conducting promotion in Li Siang Community. Huo Li Wang Gas Stove Shop was in charge of delivery while An Ji LPG Shop was the one in charge of selling LPG. After Huo Li Wang Gas Stove Shop acquired its business permit on June 22, the two shops sold LPG separately.

(2) The offender did authorize the chairperson to handle the matter regarding the promotion made by the two LPG shops and notified its members of its decision. The chairperson then acted accordingly and had printed more than 20,000 copies of handout that have been distributed in Li Siang Community on May 26 and June 8 respectively. The said handout was aimed at certain targeted competitor and the information it contained is not true. Therefore, the intention to affect the entry into market competition was obvious.

3. Grounds for disposition:

(1) A trade association is composed of businesses of the same trade that compete horizontally and a concerted action is normally engendered through an official decision that has a binding effect on the members. Those who disobey the decision are likely to face sanctions. Therefore, out of their trust in the association, the members usually follow the association's decisions. Once a decision is announced to the members, there is a proliferation effect and the members may demand the association to act similarly to handle other matters.

(2) The offender convened a meeting in response to the complaints from members about emerging competitors and authorized the chairperson to handle the matter. It was therefore reasonable to expect that the offender would resort to the same solution when similar events took place in the future. Eventually, the bottled LPG distribution market in Tainan City would grow rigid for lack of new or potential competitors and consumers would not be able to benefit from strong market competition. In addition,

there were currently 105 LPG shops in Tainan City, with 100 of them being members of the offender. Hence, the conduct of the offender could have significant impact on the supply-demand function of the bottled LPG distribution market in Tainan City. It was in violation of Article 14 (1) of the Fair Trade Law and the FTC imposed on the offender an administrative fine of NT$100,000.

Summarized by Hung, Chin-An; Supervised by Sun, Ya-Chuan □

Wei Chuan Corporation

1041st Commissioners' Meeting (2011)

Case: Wei Chuan Corporation violated the Fair Trade Law by engaging in concerted price increases for fresh milk with three dairy industry corporations

Key Word(s): Raw milk, fresh milk, suggested sales price list

Reference: Fair Trade Commission Decision of October 19, 2011 (the 1041st Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100204

Industry: Dairy (0850)

Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. Newspapers reported in August 2011 that the Central Animal Husbandry Association's Milk Pricing Evaluation Committee passed a resolution approving a rise in the purchase price of raw milk of NT$1.9 per kilogram, effective October 1. Given that the purchase price of raw milk is closely related to the sales price of fresh milk products, in order to monitor and prevent upstream dairy operators from taking advantage of the situation to institute a concerted adjustment of the price of fresh milk, an ex officio investigation was initiated by the Fair Trade Commission.

2. Findings of the FTC after investigation:

(1) Upon investigation the FTC found that a low degree of flexibility for milk substitutes, and given that in general adjustments to fresh milk prices are not sufficient to affect sales, substitution is fairly limited. The specialized market concerning this case is defined as the "domestic fresh milk market." Wei Chuan Corporation (hereinafter referred to as Wei Chuan), Uni-President Enterprises Corporation (hereinafter referred to as Uni-President), and Kuang Chuan Corporation (hereinafter referred to as Kuang Chuan) currently claim market shares of 37 percent, 30 percent, and 18 percent, respectively, constituting an oligopolistic market structure.

(2) In the past, the Wei Chuan, Uni-President, and Kuang Chuan dairy companies customarily issued a price adjustment notification prior to engaging in renegotiation of pricing with downstream enterprises, following up by providing a comparative table of suggested retail prices before and after the price adjustment as well as a comparison of purchase prices for various items before and after adjustment, simultaneously listing a balance sheet of profits for channel retailers. Appearance of consistent conduct in the adjustment of suggested pricing by the three concerns.

(3) Consistent excessive adjustment of suggested pricing:

(i) Taking the example of a one-liter package of fresh milk, Wei Chuan's Lin Feng-ying brand was adjusted upward from NT$77 to $83, Uni-President's Ruisui brand from NT$76 to $82, and Kuang Chuan's Milk Family brand from NT$76 to $82, for a uniform price rise of NT$6. In addition, all three parties were consistent in the upward adjustment of two-liter packages of fresh milk.

(ii) Three competing products maintained uniform price range: The three parties raised the price of one liter of fresh milk from between NT$77 to $83; from NT$149 to $160 for two liters, and from NT$210 to between $230 and $240 for three liters. Notably, the Kuang Chuan brand, which had been a more discount brand, moved closer to the others with the adjustments.

(iii) Uniform excessive adjustment setting rate: comparison of post-adjustment pricing to previous suggested retail pricing among the three main brands' products clearly shows that the three parties adjustment rate is highly consistent.

(iv) Consistent timing of pricing negotiations and raises: Despite slight differences in the timing of the three parties' price negotiation notifications, downstream enterprises provided evidence that notifications of price adjustments were received via e-mail from Wei Chuan on September 27, Uni-President on September 27, and Kuang Chuan on September 26, confirming the consistency of price adjustment timing.

3. Grounds for disposition:

(1) In addition to prohibition of "concerted action" demonstrated by means of contract or agreement, the FTC may also draw inferences upon evidence conforming to empirical and rational bases for determining unlawful conduct. Notably, the FTC has disposed of numerous concerted action cases in the past through indirect evidence, earning the support and recognition of the highest administrative court. Consequently, on the basis of related evidence it can be ascertained that the uniformity of milk price adjustments by the three dairy companies concerned in this case constitute concerted action, thus the three parties are responsible for presenting evidence for concerted price adjustments due to increased costs.

(2) It is reasonable to suspect collusive intent among the three dairy enterprises in their uniform upward adjustment of suggested retail prices. Moreover, the three concerned parties are unable to provide evidence demonstrating objective reasonable market factors to justify such price adjustments. Absent collusive intent over price adjustments, the aforementioned consistent price adjustment conduct cannot be reasonably explained.

(i) The market structure is an incentive that facilitates concerted collusion: the domestic fresh milk market is an oligopolistic market not contended by the three concerned parties, and the two key factors related to concerted action in an oligopolistic market are discovering transgressions and instituting reliable checks. Furthermore, corroboration of the suspected uniform conduct in the fresh milk market is found in "ancillary factors" related to the agreement of the parties involved.

(ii) Each of the three parties considered different factors for price adjustments, and failed to produce reasonable explanation and supporting evidence for the uniform

price hike: Over the course of investigation, the three parties were asked to produce favorable evidence such as policy-making meeting reference materials or price adjustment analysis. None of the parties produced such items, and each gave different justifications for the upward price adjustments. Further, the three parties all claimed that the price increases were made separately with individual cost considerations in mind, and that they were completely unaware of price adjustments in the industry. Given the three parties' failure to provide proof of uniform price adjustments, the possibility of joint collusion over uniform price adjustments cannot be discounted.

(iii) Correlation among suggested retail prices is extremely high, and would not be as consistent absent joint agreement: Similarity among suggested retail prices obtained following the three parties' calculations shows clear discrepancies; moreover, each price ended in an odd number, calculated to complete lack of discrepancy. Price differences before and after adjustments were so close as to be impossible absent agreement. In particular, given the timing as winter began, a steady decrease in market demand could be anticipated, yet no enterprise was willing to make a "micro adjustment" or merely "reflect" purchase prices and claim market share, counter to standard commercial competition.

(iv) Excessive price increase decision-making demonstrates joint agreement: investigation showed that there was an increase in the purchase price of raw milk of NT$3 in 2007, and that the price for fresh milk increased by NT$7-8 per liter for a twofold increase in fresh milk over raw milk. However, the increase in the purchase price of raw milk in this case was just NT$2, yet all concerned parties enacted price adjustments of over NT$6 per liter for a threefold increase. Isolated conduct not made out of agreement would go against economic rationality, consequently it is evident that the three parties engaged in concerted action over excessive price adjustments and avoided price competition.

(v) The stabilizing effect of public date related to fresh milk products on concerted action: investigation showed media reports with relevant information between August 15 and October 9. On September 6 the media reported "increased fresh milk prices next month," followed on September 23 with information on "a milk price increase of 12%," and on September 26 that "from next month the price of fresh milk will

increase by more than NT$6 per liter," which was corroborated by subsequent price adjustments. This information reduced the risks of detecting price adjustments among competitors and of not following suit, facilitating the cohesiveness of concerted action.

(3) The three dairy firms command an eighty-percent share of the fresh milk market. A joint price increase among the three is sufficient to influence the fresh milk market function, to the harm of consumer interests. Excluding price leadership and following from the milk firms' price adjustment, the FTC found the three dairy companies' joint increase to fresh milk prices in violation of the prohibitions of joint conduct in the terms of Article 14-1 of the Fair Trade Law, and levied fines of NT$12 million to Wei Chuan, NT$10 million to Uni-President and NT$8 million to Kuang Chuan.

Appendix:

Wei Chuan Corporation's Uniform Invoice Number: 11347802

Uni-President Enterprises Corporation's Uniform Invoice Number: 73251209

Kuang Chuan Corporation's Uniform Invoice Number: 04313172

Summarized by Huang, Hsiao-Yin; Supervised by Yang, Chia-Hui □

Chain Convenience Stores

1043rd Commissioners' Meeting (2011)

Case: Four chain convenience stores violated the Fair Trade Law by simultaneous price increase of freshly brewed coffee
Key Word(s): Chain convenience stores, coffee
Reference: Fair Trade Commission Decision of November 2, 2011 (the 1043rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100220
Industry: Retail Sale in General Merchandise Stores with Food, Beverages or Tobacco Predominating (4711)
Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. The Fair Trade Commission (FTC) learned on October 4, 2011 that chain convenience stores intended to raise the price of freshly brewed coffee due to an increase in the price of fresh milk. Upon making contact with convenience store operators, the FTC learned that the President Chain Store Corporation (operators of 7-ELEVEN chains, hereinafter referred to as President Convenience Stores), Taiwan FamilyMart Co., Ltd. (hereinafter referred to as FamilyMart), HiLife Co., Ltd. (hereinafter referred to as HiLife), and OK Mart Co., Ltd. (hereinafter referred to as OK Mart), raised prices by similar sums within a close time proximity, raising suspicion of violating the provisions of Article 7 and Article 14 of the Fair Trade Law prohibiting concerted action. Pursuant to its duties and authorities, the FTC initiated an ex officio investigation in accordance with legal procedures on October 5.

2. Findings of the FTC after investigation:

The FTC requested the four chain convenience stores in writing to provide written information, comply with interviews, and appear at the FTC to provide their views and related evidence in writing. Further, 10 domestic chain coffee operators were asked in writing to provide data on freshly brewed coffee sales, resulting in the following findings: FamilyMart (October 4), President Convenience Stores and

HiLife (October 5), and OK Mart (October 6) all raised the retail price of freshly brewed coffee during the first week of October; each of the four raised the price of a cup of freshly brewed coffee containing milk, no matter the size, by NT$5.

3. Grounds for disposition:

(1) Grasping consumers' pursuit of convenience, chain convenience stores constantly offer new and more diversified products in "convenient goods," "urgent necessities," and other ancillary services such as fax transmission, photocopying, utility payments, courier and package delivery, on-line shopping pick-up, and ATMs. As of 2009 the number of convenience stores throughout Taiwan surpassed 9,000 outlets, for an average of one store every 0.26 square kilometers, serving over 2.5 billion customers per annum and rising by the year, demonstrating the density, accessibility, and 24-hour operation had engendered a high degree of reliance among everyday consumers; chain convenience store freshly brewed coffee is prepared by clerks manning coffee machines selling self-brand coffee with fresh milk, coffee, and consumable materials distributed via logistics services, distinct from the simple reselling of food, beverages, or regular everyday items by chain convenience stores. If the marketing strategy of freshly brewed coffee incorporating pricing, display, and promotion were not autonomously decided by chain convenience stores, rather controlled via concerted action, then the chain convenience store freshly brewed coffee market should be subject to the regulations of the Fair Trade Law concerning concerted action.

(2) Regarding the FTC's determinations on unlawful concerted action, in addition to such direct proof as contracts or agreements, other indirect evidence conforming with experiential and theoretical hypotheses can form the basis for determining unlawful conduct. Following investigation the FTC found that the chain convenience store freshly brewed coffee market is highly concentrated, and that although the four enterprises asserted that the rise in prices for freshly brewed coffee reflected the cost of fresh milk, the price for all 48 coffee beverages containing milk – whether a small hot latte containing a larger amount of milk, a large iced latte containing less milk, or

other freshly brewed coffee products such as cappuccino, mocha, caramel macchiato, regardless of size or formula – was raised across the board by NT$5 per serving. Moreover, in order to respond to price rises for freshly brewed coffee the working hours necessary for subsequent promotional activities varied among the four chain convenience stores, yet they acted in an urgent, rushed, and synchronized manner.

(3) The FTC undertook a careful review of related evidence, observing the four chain convenience stores' sales volume, the number of outlets nationwide, and found that adjustments to the price of related goods by the four firms would surely trigger vertical and horizontal communication across various departments. However, none of the four was able to explain in detail the economic rationale for the NT$5 price increase for coffee beverages containing milk. Each of the four chain convenience stores had different operating costs and management efficiency, yet manifested exactly the same degree of price increase, timing, and products. Thus, it can be deduced that this uniform price adjustment was the result of agreement among different enterprises.

(4) The FTC found that the joint increase of the price of freshly brewed coffee among President Chain Store, FamilyMart, HiLife, and OK Mart excluded mutual competition and together pursued unfair joint profit, harming the competitive functions of the related market sufficient to impact the supply and demand market functions of chain convenience store freshly brewed coffee, in violation of the terms of Article 14(1) of the Fair Trade Law concerning concerted action. Accordingly, President Chain Store was ordered to pay a fine of NT$16 million, FamilyMart NT$2.5 million, HiLife NT$1 million, and OK Mart NT$500,000.

Appendix:
President Chain Store Corporation's Uniform Invoice Number: 22555003
Taiwan FamilyMart Co., Ltd.'s Uniform Invoice Number: 23060248
HiLife Co., Ltd.'s Uniform Invoice Number: 23285582
OK Mart Co., Ltd.'s Uniform Invoice Number: 22853565

Summarized by Chen, Ying-Ju; Supervised by Hung, Hsiu-Hsing □

LPG Bottling Plant and Distributers in Chiayi City

1057th Commissioners' Meeting (2012)

Case: The leading LPG bottling plant and distributers in Chiayi City violated the Fair Trade Law by openly announcing its price increase plan for 50 competitors to follow

Key Word(s): Bottled gas (liquefied petroleum gas), open exchange of market information, deviation detection

Reference: Fair Trade Commission Decision of February 8, 2012 (the 1057th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101013

Industry: Retail Sales of Other Fuel Products in Specialized Stores (4829)

Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. As a result of Long Hong LPG Bottling Plant directly retailing LPG at lower prices, the bottled LPG in Chiayi City had been the cheapest in the country between 2008 and 2010. However, the LPG distributers in Chiayi made use of the "Suggested Prices for LPG for Household Use" announced by the Ministry of Economic Affairs on December 7, 2010 for different regions and jointly increased the prices of bottled LPG during the period that the government declared LPG prices should not to be raised. As a consequence, each bottle of LPG, originally selling for NT$750 in December 2010 and lower than the announced suggested price range of NT$778 to NT$841 for southern Taiwan, was increased to NT$840, pushing close to the upper limit of the suggested range, in January 2011. After receiving several complaints, the FTC thought it necessary to find out whether joint price increase was involved and therefore initiated the investigation.

2. On January 2, 2011, Long Hong first posted in a newspapers advertisement about the imminent price increase and also proclaimed that its current customers would be given a three-day buffer period, which was actually designed with the purpose of having the competitors to follow suit. After the public announcement of

price increase by Long Hong, 50 other distributers contacted one another to make sure everyone would make a price increase to reduce the risk of competition from any retailer that chose to act against price increase, before they increased the price one after another. Afterwards, the said distributers and Long Hong telephoned other distributers to inquire about their prices and establish their consensus of not to compete for customers in order to strengthen the concerted action. Among the 51 distributers, 41 of them raised the price per bottle to NT$840, while 43 of them admitted having exchanged information and reaching the agreement on price increase and 24 of them confessed to have reached the consensus of not to compete for customers. In addition, among the 41 distributers increasing the price per bottle to NT$840, 37 of them turned out to make better sales whereas 2 of the 10 that did not increase to NT$840 per bottle suffered a sales setback.

3. Grounds for disposition:

(1) When Long Hong publicly announced in a newspapers advertisement its price increase intention, it was already an "open invitation" to solicit the agreement of other distributers. By doing so, Long Hong apparently expected positive response in spite of the illegality of the conduct of single-sided proclamation of price increase. Such expectation could not have been possible without certain degree of consensus established in advance. Otherwise, it was unlikely that over 80% of the local distributers would adjust their price to Long Hong' s target of NT$840 per bottle of LPG and the remaining distributers, close to 20%, also made their price adjustments while there was no significant cost increase of LPG. Furthermore, those making the price adjustment first did not lose any customers whereas the ones not raising the price all the way to NT$840 did not gain any new customers. This was a phenomenon absolutely inconsistent with the principle of market competition. Undoubtedly, it was a concerted action through pre-establishment of consensus and the market mechanism was jeopardized. Consequently, all the businesses involved were given sanctions.

(2) As a result of the aforesaid joint price increase by the LPG distributers in Chiayi City, the retail price became unjustifiably higher in February 2011 than in December 2010 while the LPG purchasing cost in February 2011 was actually

lower than in December 2010. There was no doubt that the said 51 businesses made undue profits. Considering the motive and purpose of the unlawful act, the scale and management condition of the businesses involved, the type of the unlawful act, and the level of damage thereof incurred to the order of competition and market structure, the FTC imposed on the said parties administrative fines ranging from NT$50,000 to NT$4,000,000.

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

Appendix:

The Fines Imposed on the 51 LPG Businesses in Chiayi City for the Joint Price Increase Case

	Offender	Uniform Invoice Number	Fine (thousand)
1	Long Hong Co., Ltd.	12918104	4000
2	Chang Shun li Enterprise Co., Ltd.	12728630	500
3	Da An Quan LPG Shop	65190165	350
4	Rong Ji LPG Shop	65802616	300
5	Tian Yuan LPG Shop	65058497	300
6	Guo Guang LPG Shop	66390129	250
7	Yong Quan LPG Co., Ltd.	89543061	250
8	Hong Yu LPG Co., Ltd.	65966960	200
9	Da Shan LPG Shop	65009525	200
10	San Jia LPG Shop	65009784	200
11	Ren Wen LPG Co., Ltd.	65003542	200
12	Rong Feng LPG Shop	65803678	150
13	Rong Guan LPG Shop	66389951	150
14	De Sheng LPG Shop	66409422	150
15	Jia LPG Shop	66311504	150
16	Quan Xin LPG Shop	66392581	150
17	You Wen LPG Co., Ltd.	66418745	150
18	Zhong Mei Hang LPG Co., Ltd.	65079303	150

	Offender	Uniform Invoice Number	Fine (thousand)
19	Feng Nian LPG Shop	98878670	100
20	Rong Guang LPG Co., Ltd.	65797711	100
21	Jia You LPG Shop	98877481	100
22	Jin Yi LPG Shop	66295096	100
23	Nan Shan Xing Gas Co., Ltd.	65408950	100
24	Chang Feng LPG Shop	25754292	100
25	Ming Yu LPG Co., Ltd.	65374115	100
26	Yi He Cheng LPG Co. Ltd.	65407158	100
27	Jing Du LPG Shop	65279370	100
28	Li Dong LPG Co., Ltd.	66308917	100
29	Yu Cheng LPG Co., Ltd.	65117828	100
30	Tian Zhao LPG Co., Ltd.	67018789	100
31	Yuan Jing LPG Co., Ltd.	65284389	100
32	Zhong Ben Xing Ji Enterprise Co., Ltd.	66521993	100
33	Guang Cheng Store	65799247	50
34	Jia Yi LPG Co., Ltd.	65798198	50
35	Cheng Feng Gas Co., Ltd.	66466083	50
36	Tian Qi LPG Shop	65058932	50
37	Quan Cheng LPG Co., Ltd.	65201108	50
38	San Yang Xing LPG Co., Ltd.	65005393	50
39	Long Cheng LPG Shop	65601527	50
40	Jin Yong Feng LPG Shop	65292509	50
41	Da Ya LPG Shop	98875913	50
42	Da Zhan LPG Shop	65009932	50
43	Zheng Cheng LPG Co., Ltd.	65133708	50
44	Xiao Ya LPG Shop	98877588	50
45	Hai Guo LPG Shop	65506805	50
46	Wei Sheng LPG Shop	36695200	50
47	Dong Mei Store	19729439	50
48	Sheng Chang LPG Shop	19386481	50

	Offender	Uniform Invoice Number	Fine (thousand)
49	Si Chuan LPG Shop	66270503	50
50	Zhong Fu LPG Shop	65109307	50
51	Da Li LPG Shop	65005703	50
	Total		**10,150**

Jiu Ru Parking Lot & Shi Quan Parking Lot

1078th Commissioners' Meeting (2012)

Case: Jiu Ru Parking Lot and Shi Quan Parking Lot violated the Fair Trade Law by jointly increasing their parking fees
Key Word(s): Parking lot, parking fee, tour bus
Reference: Fair Trade Commission Decision of July 4, 2012 (the 1078th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101082
Industry: Parking Lots (5241)
Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. The FTC received complaints about Jiu Ru Parking Lot and Shi Quan Parking Lot jointly sending notices to various hotels in Kaohsiung City that during the Chinese New Year holiday from February 3 to 7 the parking fee they charge for each tour bus would be 500 NT (the same currency applies hereinafter) dollars and starting from February 8 after the Chinese New Year the parking fee would be raised by 100% from 200 dollars to 400 dollars on weekdays and 500 dollars on Saturdays. The person who filed the complaint believed that the joint price increase by the two parking lots was in violation of the regulations against concerted actions set forth in Article 14 of the Fair Trade Law and therefore requested the FTC to initiate an investigation.

2. Findings of the FTC after investigation:

(1) The FTC's investigation revealed that the operator of Jiu Ru Parking Lot Mr. A started at the end of 2010 to urge the co-operators of Shi Quan Parking Lot Mr. B and Mr. C to stop making any destructive competition and both sides eventually reached an agreement on January 25, 2011 to increase the parking fee by 50 dollars and begin to charge the daily parking fee for 400 dollars on weekdays and 500 dollars on Saturdays, plus no more discount would be given. Mr. A also drew up the joint price increase statement, on which both parties applied their seals, and sent it to Holiday Garden Hotel, Shihzuwan Hotel, and Garden Plaza Hotel. The statement basically included that "a) The parking fee during the Chinese New Year Holiday from February 3 to 7, 2011 will be 500 dollars... b) Starting on February 8, 2011, the parking fee will be officially adjusted to 400 dollars on weekdays and 500 dollars on Saturdays…and this is a joint statement from Jiu Ru Parking lot and Shi Quan Parking Lot."

(2) Other findings showed that before February 8, 2011, Jiu Ru Parking Lot charged 350 dollars a day on weekdays and there were special offers between 200 and 300 dollars depending on the number of tour buses there were from the hotels and also because of market competition. Shi Quan Parking Lot also charged the same amount on weekdays but usually collected only 300 dollars depending on the number of buses from the hotels and the distances of the trips and even 200 dollars sometimes when the market competition was tough. However, after both parties reached the above agreement, the parking fee was raised to 400 dollars per day on weekdays and 500 dollars on Saturdays after February 8, 2011 and there were no more discounts. As a result of the joint price increase, other parking lots also followed suit. The tour bus parking spaces in the two said parking lots made up 31% of the tour bus parking service market in the downtown area of Kaohsiung City. Even if the unlicensed tour bus parking lots were included, the market share of the offenders still reached 25%.

3. Grounds for disposition:

The actual operator of Jiu Ru Parking Lot Mr. A and the co-operators of Shi Quan Parking Lot Mr. B and Mr. C met the description of "any other person or organization

engaging in transactions through the provision of goods or services" set forth in subparagraph 4, Article 2 of the Fair Trade Law. They were competitors on the horizontal level and the subjects in the concerted action. There was solid evidence of the way they reached the mutual understanding and the content of their mutual understanding, In addition, both parties also admitted to have jointly increased the tour bus parking fee. Therefore, the conduct belonged to "reaching the agreement to jointly increase the fees for their tour bus parking service." The conduct also led other parking lots to follow suit and subsequently pushed up the tour bus parking fees around the downtown area of Kaohsiung City. This is sufficient to affect the supply-demand function of the tour bus parking service market around the said area. As a result, the FTC concluded that the conduct was a concerted action as described in Article 7 of the Fair Trade Law and in violation of paragraph 1, Article 14 of the same law, and therefore imposed an administrative fine of 300,000 dollars on Mr. A and 80,000 dollars separately on Mr. B and Mr. C.

Summarized by Shen, Li-Wei; Supervised by Liou, Chi-Jung □

6 sand and gravel businesses in Hsinchu Region

1090th Commissioners' Meeting (2012)

Case: 6 sand and gravel businesses in Hsinchu region violated the Fair Trade Law by conducting joint purchase of sand and gravel

Key Word(s): Sand and gravel excavation, consolidated production and sales, public property

Reference: Fair Trade Commission Decision of September 26, 2012 (the 1090th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101138

Industry: Other Mining and Quarrying (0700)

Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. Excavation of sand and gravel in rivers in the Hsinchu area was banned for years. When sand and gravel excavation on land met obstructions as a result of growing eco-environment awareness, the supply of sand and gravel had to rely on the surplus from construction projects in the county and sand and gravel from river dredging in neighboring counties and cities. However, longer transportation would push up the cost while there could also be transportation and environmental protection issues. Hence, between 2009 and 2010, Hsinchu County Government put up the sand and gravel from the dredging work in You Luo Creek for tender to increase the supply of sand and gravel in the county. After Typhoon Morakot hit Taiwan in August 2009, the riverbed scouring in many places produced more supply of sand and gravel than the market demanded and sand and gravel prices went down as a consequence. During the investigation of another case, however, it is discovered by the FTC that the prices of sand and gravel in Hsinchu County, instead of dropping, had gone up. As a result, the FTC decided to initiate an ex-officio investigation.

2. Findings of the FTC after investigation:

It was revealed during the investigation that the total dredge volume that Hsinchu County Government had publicly announced was 600,000 cubic meters and the price per cubic meter was NT$322 (NT$140 per ton). Nine sand and gravel businesses had obtained the right to purchase the dredge (sixty-seven thousand cubic meters each). Mr. A, Chienshih Industrial Co., Ltd. (hereinafter referred to Chienshih) and Yising Gravel Limited (hereinafter referred to as Yising) began to persuade the other businesses to participate in a concerted action. Three of them turned down the proposal and the six remaining businesses, namely Mr. A, Chienshih, Yising, Joystar Enterprise Co., Ltd. (hereinafter referred to as Joystar), New Chungli Environmental Science and Technology Co., Ltd. (hereinafter referred to as New Chungli) and Mountains Earth and Rock Co., Ltd. (hereinafter referred to as Mountains), reached the agreement to make a joint purchase. They worked together to provide the funds, excavate and transport, process and store, and allocate and market the sand and gravel. Then, by raising the resale prices of the products, these businesses gained

unjustifiable profits. As a result, the prices of related products in the Hsinchu area went up abnormally and the supply-demand function of the local sand and gravel market was affected.

3. Grounds for disposition:

(1) All business entities should act according to factors such as management costs, market competition and others to decide independently whether they want to enter a market and choose their trading counterparts. Any agreement established against the abovementioned principle of business independence, such as joint purchases of supply, excavation and transportation, storage, processing, distribution and sales, will end up with jointly controlling the production and distort the production-sales structure. This is a practice of competition restriction.

(2) In this case, the six businesses first singled out the two quarries and Songyi because of their advantageous locations for transportation and sales. Chienshih and Mr. A then negotiated with these two suppliers and made them surrender their rights to purchase the sand and gravel in You Luo Creek. Mr. A fronted the funds needed to make the purchase for all the businesses, except Chienshih. Joystar was in charge of transportation and processing. The procedure of purchasing sand and gravel involved providing the funds needed, presenting the application and required documents, storing sand and gravel, transporting, processing and selling the product, and it was obvious that the process could not have been completed without establishing mutual understanding in advance. Therefore, the purchase, transportation and storage were carried out jointly and this constituted a concerted action of "consolidated production and sales."

(3) After assessing each business' motive and purpose in the unlawful act, its operation scale and management condition, the type of the violation, and the level of damage to the market competition, and the market structure in this case, the FTC imposed on the said businesses administrative fines ranging from NT$200,000 to NT800,000. The fines totaled NT$3,000,000.

Appendix:

Fines Imposed on the 6 Sand and Gravel Businesses in Hsinchu Region for their Concerted Action

	Offender	Uniform Invoice Number	Fine Amount (NTD)
1	Joystar Enterprise Co., Ltd.	47083706	800,000
2	Mr. A (an individual)		800,000
3	Chienshih Industrial Co., Ltd.	47226303	500,000
4	Yising Gravel Limited	28785798	500,000
5	New Chungli Environmental Science and Technology Co., Ltd.	80551151	200,000
6	Mountains Earth and Rock Co., Ltd.	80256833	200,000
	Total		**3,000,000**

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

Waste Electronic and Electrical Equipment Disposal Businesses

1092nd Commissioners' Meeting (2012)

Case: Domestic waste electronic and electrical equipment disposal businesses violated the Fair Trade Law by setting-up operation center

Key Word(s): Waste electronic and electrical equipment, disposal business, operation center

Reference: Fair Trade Commission Decision of October 3, 2012 (the 1092nd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101142

Industry: Non-Hazardous Waste Treatment and Disposal (3821)

Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. The FTC received phone calls from private individuals complaining that the waste electronic, electrical and information equipment disposal businesses had offered different purchasing rates before they set up a joint operation center and, after the center was set up, the disposal businesses met regularly to decide purchasing rates. After an investigation, the FTC decided at the 1059th Commissioners' Meeting on Feb. 22, 2012 that E&E Recycling (hereinafter referred to as E&E) and 11 other domestic waste electronic and electrical equipment disposal businesses had violated Article 14(1) of the Fair Trade Law for their joint decision of purchasing rates for recyclable objects and proportional distribution of disposal work. Both practices were likely to affect the supply-demand function of the domestic waste electronic and electrical equipment disposal market. The offenders found the FTC's decision unacceptable and filed a petition. The Executive Yuan revoked the original decision and instructed the FTC to reconsider whether the businesses in question had been organized as a result of the encouraging policy of the competent authority of the industry, the Environmental Protection Administration (hereinafter referred to as the EPA), and also to investigate the profits they had obtained from the unlawful act and the profit percentages to serve as reference for decision of the fines.

2. Findings of the FTC after investigation:

(1) Initially, the FTC met with the Recycling Fund Management Board (hereinafter referred to as the RFMB), the competent authority of the industry, to understand the related laws and regulations and the structure and current status of the industry. The FTC also sent the RFMB a written request for the list of the enterprises involved and the RFMB replied that there were 12 (13 plants) waste electronic and electrical equipment disposal businesses. Then, the FTC requested the EPA to provide a list of rates of subsidies offered to these businesses from 2003 to 2011 as well as how many businesses received the subsidies and the amount of subsidies each enterprise received between 2005 and July 2011. The data obtained were sorted and compiled into the "Ratios of Subsidies Given to Waste Electronic and Electrical Equipment

Disposal Businesses by the RCMB" which indicated that the ratio of subsidies each business received was more and less the same.

The FTC then requested the Financial Supervisory Commission, the Fiscal Information Agency, and the banks at which the businesses had set up accounts for access to the account details. From that access, the FTC discovered that large amounts had been transferred from the other businesses to E&E between 2003 and November 2010. Another finding showed that the businesses had opened an account under the name of "Joint Waste Electronic and Electrical Equipment Recycling and Disposal Management Team" at the Pingtung Branch of Union Bank. The FTC sent staff members to the involved businesses to record their statements and found out that the supply in the north was more sufficient than the south and large quantities were shipped from the north down to the south, usually by hiring returning trucks. Meanwhile, according to the statements the businesses provided to the FTC, their purchasing rates were about the same.

The FTC also sent staff members to attain the statements of the downstream trading counterparts of the involved businesses and learned that the recycling operations could be divided into ordinary recycling operations, official recycling stations, and temporary recycling stations, according to their business scale and level of cooperation with the disposal businesses. The ones with the 'station' status offered higher purchasing rates for waste electronic and electrical equipment than ordinary recycling operations. Afterwards, the FTC invited these operators to present their arguments, which were recorded. They were able to provide related evidences during the presentation. In total, the FTC obtained 14 pieces of evidences, including the minutes of some meetings on waste electronic and electrical equipment disposal.

(2) Acting according to the decision of the Executive Yuan, the FTC investigated the financial reports of the offenders and the amount of waste electronic and electrical equipment they processed annually, obtained the general data on the net profit rates of waste disposal businesses from the Ministry of Finance, and also sent a written request to seek the opinion of the EPA about the arrangement of the joint recycling and disposal operations.

3. Grounds for disposition:

(1) Parties intending to enter the waste electronic and electrical equipment disposal market have to apply for permissions from the EPA, according to related regulations and passed written and onsite evaluation, before they can begin the business of dismantling waste electronic and electrical equipment generated in the country each year. Therefore, the product market was the domestic waste electronic and electrical equipment disposal market. Meanwhile, since no waste electronic and electrical equipment was imported into the country and waste electronic and electrical equipment came from all over the country without any regional restriction, the geographic market involved in this case was defined as the entire country.

(2) The data showed that there were 12 waster electronic and electrical equipment disposal businesses registered with the EPA, namely E&E, Hong Kuang, Han Lin, Jiu Fa, Liuh Jian, Perfect, FGD, Hong Chin, Ke Bai Sheng, Rui Yuan, Da Nan Fang and Da Qi. These businesses first acquired the status to apply for subsidies from the EPA before they collected waste electronic and electrical equipment themselves and from recycling operations, dismantle the objects, and then applied to EPA for subsidies. They were horizontal competitors of the same production-marketing stage. Between March 2001 and October 2011 (each business joined the concerted action at different times), they signed the "Joint Waste Electronic and Electrical Equipment Recycling and Disposal Agreement" and established the "Joint Waste Electronic and Electrical Equipment Recycling Management Regulations," as well as a set of penalty provisions. To ensure the fulfillment of the agreement, each business turned in a check or promissory note for NT$3,000,000 as the guarantee. Although Hong Kuang and Han Lin claimed that they had never signed the agreement or participated in the division of recycling and disposal work, the investigation indicated that they had indeed attended the negotiations, filled out daily recycling reports, made adjustments to their inventories, and split the expenses of Guo Meng Recycling Co., Ltd. As a matter of fact, Hong Kung joined the "joint waste electronic and electrical equipment recycling and disposal" operation at the latest in April 2011 and Han Lin in September of the same year. There was no doubt that the two businesses were part of the concerted action.

(3) The regulations regarding the ratio of recycling and disposal work of each participant, the approaches to confirm inventories and quantities disposed, the establishment of the joint recycling and disposal operation fund and organization, the amount of the agreement fulfillment guarantee required, and the penalties for breach of agreement were all specified in the agreement for the concerted action. Meanwhile, it was set forth in the Joint Waste Electronic and Electrical Equipment Recycling Management Regulations that the council of signees was the highest decision-making body, with a management team and operation center under it. Also specified in these regulations were the purchasing rates for recyclable objects, execution of stock inventories, establishment of daily reports, work distribution and balance calculation, coverage of the agreement, management of the operation fund, as well as penalty provisions against "price increase manipulations," "hoarding" and cross-district acquisition. Each agreement signee took turns to serve as the convener. The management team meeting was convened each month and meeting minutes were taken every time. During these meetings, the businesses discussed and determined the purchasing rates. At the same time, the council of signees, the highest decision-making body, met quarterly to discuss important issues, such as acceptance of new members, work distribution ratios, handling of violations by the members, and so forth. The operation center under the management team was responsible for execution of decisions made at team meetings and enforced the management regulations. It also presented business reports to the management team on a regular basis and was in charge of distribution of recycling and disposal work among the plants, accounting, custody of documents of the management team, and general affairs.

(4) E&E and the other waste electronic and electrical equipment disposal businesses signed the "Joint Waste Electronic and Electrical Equipment Recycling and Disposal Agreement" and operated through the management team and the operation center to allocate waste electronic and electrical equipment evenly among the businesses (except for E&E's Taipei plant which was given a slightly larger quantity) regardless of the capital expenditure, cost structure, and management capacity of each business. To achieve the established distribution ratios, those capable of collecting more recyclable equipment had to turn their surpluses over to

the ones unable to collect as much through the operation center. As a consequence, the capacity utilization rate of most of the businesses was low, the resources were distributed inappropriately, the purchasing rates were stiff, and there was no competition at all.

(5) According to the Huan-Shu-Ji-Zi Letter No.1010083251 dated September 13, 2012 from the EPA, the EPA had never instructed or requested the said businesses to establish a recycling disposal team. It had never given its approval or received any document for reference. Therefore, there was no way for the EPA to have any knowledge of the distribution practice or exercise supervision. Apparently, the offenders' argument that the Joint Waste Electronic and Electrical Equipment Recycling and Disposal Team had been organized as a result of the EPA's policy was nowhere near the truth. The EPA, the competent authority of the industry, had repudiated the said argument made by the businesses.

(6) E&E and the 11 other waste electronic and electrical equipment disposal businesses had violated Article 14 (1) of the Fair Trade Law. The length of time each business participated in the concerted action varied and the longest was about 10 years. After considering all the factors, the FTC made the decision according to the first section of paragraph 1, Article 41 of the same law, ordered the businesses to cease the unlawful act, and also imposed an administrative fine of NT$17 million on E&E, NT$10 million on FGD, NT$10 million on Perfect, NT$10 million on Hong Chin, NT$8 million on Liuh Jian, NT$7 million on Jiu Fa, NT$7 million on Da Qi, NT$7 million on Da Nang Fang, NT$1.7 million on Rui Yuan, NT$1.7 million on Ke Bai Sheng, NT$ 800,000 on Hong Kuang, and NT$300,000 on Han Lin. The fines totaled NT$80.5 million.

Summarized by Chen, Shu-Hua; Supervised by Wu, Lieh-Ling □

Ice makers at Yanpu Fishing Port

1095th Commissioners' Meeting (2012)

Case: Ice makers at Yanpu Fishing Port, Donggang, Pingtung County violated the Fair Trade Law by jointly increasing ice price for fishing boats in August, 2011
Key Word(s): Ice for fishing boats, ice making
Reference: Fair Trade Commission Decision of October 31, 2012 (the 1095th Commissioners' Meeting), Disposition Kung Ch'u Tzu 101166
Industry: Frozen Fish, Crustaceans and Mollusks Manufacturing (0821)
Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. The FTC received an email complaining about the makers of ice for fishing boats in the neighborhood of Donggang Fishing Port in Pingtung County jointly increasing the price from NT$100 to 150 per chunk in August 2011. It was estimated that the cost for each fishing boat had been pushed up by NT$1,000 under the presumption that 20 chunks of ice for one boat are needed each time. The FTC therefore initiated an ex officio investigation.

2. Findings of the FTC after investigation:

(1) Zhen Shun Ice Manufacturing Co., Ltd. first invited the ice makers in the Donggang area to meet at Fuwan Zhuangyuan to discuss price increase. The participants included Zhen Shun, Mi Jiu Enterprise Co., Ltd., Yong Quan Enterprise Co., Ltd., Sheng Xing Ice Manufacturer, and Dong Gang Ice Maker.

(2) At the meeting, the said ice makers reached the conclusion that the price of ice would be raised to NT$150 per chunk, starting on August 1, 2011.

(3) After the meeting, except for Dong Gang Ice Maker, every one of the four other companies put up outside its factory signs saying "Announcement: Due to cost increase, the price of ice will be raised to NT$150 per chunk, starting today. We apologize for any inconvenience thereof incurred. XXX (name of business)"

(4) The FTC made inquiries and a sign maker confirmed that the advertising signs had all been made in the same format and the number of signs produced was consistent with the number of signs hung up outside the four ice makers.

3. Grounds for disposition:

The product market involved in this case was the market of ice for fishing boats. As ice melts quickly and is difficult to preserve, sales of ice has a regional limitation. Therefore, the geographic market in this case was defined as Yanpu Fishing Port in Donggang, Pingtung County and the subjects of the concerted action were Zhen Shun, Mi Jiu, Yong Quan and Sheng Xing who attended the meeting held at Fuwan Zhuangyuan and established the mutual understanding to jointly raise the price of ice to NT$150 per chunk, starting from August 1, 2011. The joint price increase for ice for fishing boats in the area at issue was able to affect the supply-demand function of the fishing boat ice market at Yanpu Fishing Port in Donggang, Pingtung County. The conduct was in violation of the regulation against concerted actions set forth in Article 14 (1) of the Fair Trade Law. The FTC therefore imposed an administrative fine of NT$50,000 on each of the ice makers.

Summarized by Huang, Chia-Chi ; Supervised by Yang, Chia-Hui □

Taichung Bookkeepers Association

1100th Commissioners' Meeting (2012)

Case: Taichung Bookkeepers Association violated the Fair Trade Law by engaging in the concerted action of prohibiting members from advertising to solicit business
Key Word(s): Trade union, concerted action, advertising prohibition
Reference: Fair Trade Commission Decision of December 5, 2012 (the 1100th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101083
Industry: Accounting Services (6920)
Relevant Law(s): Articles 7 and 14 of the Fair Trade Law

Summary:

1. The FTC received an anonymous complaint revealing that a certain bookkeepers association had prohibited its members from advertising to gain their businesses. The FTC initiated an ex officio investigation and discovered that, as indicated in the 2011 Member Handbook, Article 3 of the Membership Rules of the Taichung City Bookkeepers Association specified that "members of this association should not take inappropriate measures or use advertising to gain business." The conduct was in violation of the regulations against concerted actions set forth in the Fair Trade Law.

2. Findings of the FTC after investigation:

The Taichung City Bookkeepers Association decided at the 13th ad hoc Board of Directors Meeting on May 31, 2008 and the 3rd Member Assembly during the First Term on June 13 to stipulate in Article 3 that no members are allowed to advertise to gain their businesses. The purpose was to prevent the members from engaging in price competition through advertising and the association had indeed intervened when members posted price advertisements in the past.

3. Grounds for disposition:

(1) The prohibition imposed by the Taichung City Bookkeepers Association was not on price, production, trading area or trading counterparts. However, if it did lead to market competition restrictions and could not be rightfully justified as

a measure of promoting market competition, it had to be considered a concerted action as described in the Fair Trade Law. The said prohibition was imposed not only upon exaggerated, untrue or misleading advertising, but also truthful and non-misleading advertising. It was a restriction against all types of advertising posted by its members who provided standard and routine bookkeeping services such as tax filing, bookkeeping, business registration, and so on, to companies and various types of business operations, not to ordinary consumers. Therefore, there was no high-level information asymmetry between the provider and recipient of such services. On the one hand, the prohibition obstructed the conveyance of information between the members of the association and potential clients and thus increased the cost of potential clients to find a bookkeeper. On the other hand, under the prohibition the members of the association were unable to convey price messages to potential clients and they would not be able to get enough quantity of clients even though the services they offered were cheaper than those from the competitors. The incentive for the members to engage in price competition was thus reduced and the conduct could not be justified under the argument of promoting market competition. Therefore, it was considered a competition restriction.

(2) The members of the Taichung City Bookkeepers Association accounted for 10.9% of the bookkeepers operating in the relevant market and, therefore, their collective market power was strong enough to influence the supply-demand function of the market. The conduct at issue met the description set forth in Article 7 (4) of the Fair Trade Law, that is, "the act of a trade association to restrict activities of enterprises by means of … a resolution of a general meeting of members or a board meeting of directors or supervisors, or any other means," and was in violation of Article 14 (1) of the same law. The FTC therefore acted according to the first section of paragraph 1 of Article 41 of the same law, ordered the association to cease the unlawful act. However, as there had been no precedent of similar practices and the Taichung City Bookkeepers Association also revised its advertising prohibition regulation in the Membership Rules, the FTC did not impose any administrative fine on the Association.

Summarized by Tai, Mei-Chin; Supervised by Liao, Hsien-Chou □

4.2 Approvals

Uni-President Enterprises Corp. and 16 Other Enterprises

949th Commissioners' Meeting (2010)

Case: Uni-President Enterprises Corp. and 16 other enterprises applied to extend the concerted actions regarding shared shipping of corn procurement
Key Word(s): Approval of concerted actions, corn, shared shipping
Reference: Fair Trade Commission Decision of January 13, 2010 (the 949th Commissioners' Meeting), Letter Kung Lian Tzu No.099001
Industry: Prepared Animal Feeds Manufacturing (0870)
Relevant Law(s): Article 14(1)(v) of the Fair Trade Law

Summary:

1. Uni-President Enterprises Corp. (hereinafter referred to as "Uni-President") and some other enterprises previously filed a concerted application to the FTC for shared shipping of corn procurement. The FTC resolved in its 794th Commissioners' Meeting to approve such concerted application on January 25, 2007. The approval was valid through January 25, 2010 (FTC Disposition Kung Lian Tzu No.096001) with undertakings required. Since the approval was about to expire, in November 2009 Uni-President, as the representative of all applicants, applied to the FTC for an extension of the approved share shipping of corn procurement for another three years.

2. Findings of the FTC after investigation:

It showed that through the shared shipping of corn procurement, the import costs, storage loss, burden of capital backlog and interests, and procurement risks can be decreased and reduced. In case of any trade dispute occurred, the ability to negotiate collectively can also be increased. Therefore, shared shipping could be beneficial to the overall economic interest. Additionally, corn is subject to free importation. The government has no restrictions on the qualifications of the importers. Enterprises may freely choose shared shipping to apply for importation of corn. Importers that

do not participate in shared shipping can also import corn in parcels directly from the suppliers or by cargos. Since there remain numerous import channels without any centralized control by few enterprises, the shared shipping of corn procurement in this case should have only limited impact on the corn market. Furthermore, this concerted action should be so beneficial to the economy as a whole and in the public interest that the application for which shall be approved in accordance with Article 14(1)(v) of the Fair Trade Law.

3. The FTC imposes undertakings with regard to this approval pursuant to Article 15 of the Fair Trade Law. The applicants shall submit a quarterly execution report of this concerted action in writing to the FTC with regard to each importer's registered procurement quantity, actual procurement quantity, procurement loading date, loading port name, date when the ship arrives the loading port, date when the ship departs from the loading port, date when the ship arrives our domestic port, procurement price, each importer's quantity of monthly import, sales, and stocks. In addition, the applicants may not engage in other concerted actions by exploiting this approval or prevent any applicant from freely deciding its procurement quantity, or prohibit any applicant from procuring and importing corn on its own, or refuse other enterprises, without a justifiable ground, to participate in this concerted procurement. Moreover, a report shall be submitted to the FTC for any changes in the applicants of this concerted action. The applicants shall not exploit their market position obtained through this approval and make improper decisions on, maintain, or alter the prices, or impede the fair competition of other enterprises, or engage in other behaviors arising from the exploitation of their market position.

Appendix:
Uni-President Enterprises Corp.'s Uniform Invoice Number: 73251209

Summarized by Li, Shih-Che; Supervised by Liao, Hsien-Chou □

Formosa Television Co., Ltd., Taiwan Television Enterprise Ltd., China Television Co., Ltd., and Chinese Television System

1081st Commissioners' Meeting (2012)

Case: Application for joint broadcast of the 2012 London Summer Olympics by Formosa Television Co., Ltd., Taiwan Television Enterprise Ltd., China Television Co., Ltd., and Chinese Television System
Key Word(s): Joint broadcast, London Summer Olympics
Reference: Fair Trade Commission Decision of July 25, 2012 (the 1081st Commissioners' Meeting), Letter Kung Lian Tzu No.101005
Industry: Television Broadcasting (6021)
Relevant Law(s): Article 14(1) of the Fair Trade Law

Summary:

1. Formosa Television Co., Ltd. (hereinafter referred to as FTC), Taiwan Television Enterprise Ltd. (hereinafter referred to as TTV), China Television Co., Ltd. (hereinafter referred to as CTV), and Chinese Television System (hereinafter referred to as CTS), the four major broadcast (or over-the-air) television operators in the country (hereinafter referred to as the four broadcast TV stations), intended to jointly broadcast the 2012 London Summer Olympics and filed an application for approval of their concerted action.

2. Contents of the concerted action application:

(1) Duration: July 28 to August 13, 2012.

(2) Broadcast range: the main island, Penghu, Kinmen, and Mazu.

(3) Contents of the concerted action:

(i) Joint purchase of broadcasting rights: The four broadcast TV stations would negotiate with ELTA TV to acquire the rights to broadcast the 2012 London Summer Olympics on broadcast television, satellite television and cable television. The four broadcast TV stations would broadcast the games jointly and share the fees.

(ii) Joint renting of satellite transmission and fiber-optic lines: The organizer of

the 2012 London Summer Olympics requested all authorized broadcasters to use the Multi-channel Distribution Service (MDS). ASIASAT-5 would be used to receive signals and 3 submarine cable lines also had to be rented to transmit signals for news and events involving contestants from Taiwan. To achieve all the goals, the four broadcast TV stations signed a contract with ELTA TV for joint renting of satellite transmission and fiber-optic lines and broadcasting.

(iii) Distribution of events to be broadcasted: Through ELTA TV, the four broadcast TV stations would acquire the authorization to broadcast the 2012 London Summer Olympics on broadcast TV, Cable TV and satellite TV. Besides the opening and closing ceremonies that the four broadcast TV stations would broadcast at the same time, the remaining games and events would be divided into four groups and the four broadcast TV stations would draw lots to decide the group each station was to broadcast.

(iv) Distribution of advertising clients and determination of advertising rates: Since the four broadcast TV stations would evenly share the costs for broadcasting the Olympics while the income and expenditure balance of each station also had to be taken into consideration, the advertising clients for the period would be evenly divided but each station would conduct its own marketing.

3. Grounds for approval:

(1) Joint acquisition of broadcasting rights: Broadcast rights fees have always been the largest burden for broadcasters of the Olympics. Because of the broadcast rights fees, the four broadcast TV stations had been unable to acquire the rights to broadcast the 2012 London Summer Olympics directly from the International Olympic Committee. After ELTA TV obtained the rights by paying an exorbitant amount of fees, the Ministry of Culture helped the four broadcast TV stations enter a contract with ELTA TV to get the authorization of broadcasting the London Summer Olympic games. If each of the four broadcast TV stations had tried to obtain the authorization on its own through price competition, it would have pushed up the fees for the broadcast rights. Meanwhile, cable TV and IPTV (MOD of Chunghwa Telecom) in the country were subscription-based and not as prevalent as broadcast

TV. Therefore, the joint acquisition of broadcast rights by the four broadcast TV stations could not only enable them to share the costs and avoid increase of rights fees as a result of making competitive offers, but also serve the purpose of having the Olympics broadcasted extensively. It would help reduce the costs for the enterprises participating in the concerted action and viewers would also be able to watch the Olympics on broadcast TV and other platforms. Hence, the FTC acted according to the provision set forth in Article 14 (1) of the Fair Trade Law and an approval from the FTC was given for the concerted action.

(2) Joint renting of satellite transmission and fiber-optic lines: The expenses required to rent satellite transmission and fiber-optic lines were also part of the costs for broadcasting the Olympics. The purpose was the same as the joint acquisition of the broadcast rights - to increase the market power of the purchasing side and decrease the rent for fiber-optic lines, including 11 lines from the MDS and the use of 3 submarine cable lines. If the applicants had rented satellite transmission and the submarine cable lines individually, it could create waste as certain bandwidths would become idle. For this reason, the FTC believed that joint leasing would benefit the overall economy and public interest and therefore gave its approval.

(3) Distribution of events to be broadcasted: The 2012 London Summer Olympics included 302 events in 26 sports to be completed in 17 days (include the opening and closing ceremonies). On average, there would be 20 events per day. Hence, despite the addition of digital channels to broadcast the events, it would be impossible for any of t he stations to broadcast the entire events on its own. Distribution was thus necessary. Moreover, as the Olympics would only last for a short period of time, any negative impact on market competition would be limited and such distribution would not impair the competitiveness between the applicants when the Olympic events were broadcasted. Therefore, the FTC believed such distribution would benefit the overall economy and public interest and gave the approval.

(4) Distribution of advertising clients and determination of advertising rates: Since the four broadcast TV stations would distribute the Olympic events to be broadcasted and, besides the opening and closing ceremonies, no events would be jointly broadcasted, issues regarding consistency of signal transmission and time difference in running of commercials did not exist. There would be no need to divide

the advertising income. At the same time, the distribution of advertising clients had no connection with the joint acquisition of the rights to broadcast the Olympics, nor would it involve cost reduction and efficiency enhancement that would be grounds for approval of concerted actions. On the contrary, the distribution of advertising clients could only lessen competition in gaining advertising business. Hence, the FTC did not give its approval for the application regarding the advertisement part of the concerted action.

(5) To maintain fair competition in advertising during the concerted action period, to prevent any of the applicants from using the concerted action approval to engage in other concerted actions, and also to facilitate supervision, the FTC reminded the applicants not to increase advertising rates without justification or make joint rate decisions, divide advertising clients together, or take advantage of the approval for this concerted action to engage in other concerted actions. The applicants were required to present written reports of the income and expenditure during the concerted action period within one month after the concerted action terminated.

Summarized by Hsu, Cho-Yuan; Supervised by Chiou, Shwu-Fen □

4.3 Judicial Cases

Taiwan Cement Corporation

Supreme Administrative court (2010)

Case: Taiwan Cement Corporation filed an administrative appeal against the FTC's decision of its violation of Fair Trade Law and was overruled by Supreme Administrative Court
Key Word(s): Ready-mixed concrete, synchronous price increase, consistency
Reference: Supreme Administrative Court Judgment (2010) Pan Tzu No.503
Industry: Ready-mixed Concrete Manufacturers (2332)
Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. The appellee, the Fair Trade Commission (FTC), conducted investigation on complaints from the public and discovered that the conduct of the appellants, Taiwan Cement Corporation and 10 other ready-mixed concrete manufacturers, to consult with one another and jointly increase the prices of ready-mixed concrete in the Chiayi area was a concerted action having the capacity to affect the supply and demand in the ready-mixed concrete market of the said area and therefore violated paragraph 1 of Article 14 of the Fair Trade Law. The said offenders were subsequently sanctioned in accordance with the regulation of the first section of Article 41 of the same law. After the appeal of the offenders overruled, and the offenders filed the administrative litigation.

2. The term "concerted action" does not refer only to price increase of the same amount or at the same margin. When competing enterprises reach an agreement that leads to unusual price invariability or increase and hence has an impact on the supply-demand function of the very market, it is a concerted action. During the period between October 2004 and January 2005, there was apparently no price increase in cement, gravel, and transportation that are the three major variable costs in concrete

production. However, the appellant and the other offenders increased their prices by large margins at the same time. The conduct was obviously unjustifiable. The average price per 3,000 pounds of ready-mixed concrete from the aforesaid 11 manufacturers had been rising steadily since the beginning of 2004. Then, between October 2004 and January 2005, when there was no significant cost increase, the price of ready-mixed concrete per cubic meter went up between 150 and 200 NT dollars, and the price increases of the said manufacturers appeared consistent. Moreover, according to certain downstream businesses of the appellant and the other offenders, when they made price inquiries to the appellant and the other offenders between the second half of 2004 and June 2005, the quotations they received were all the same. This indicates that there had to be consensus between the appellant and the other offenders to raise the prices of ready-mixed concrete jointly.

3. Under normal circumstances, as the said manufacturers make similar products, competition on the ready-mixed concrete market should be harsh. The salespeople of each company ought to make active contact with customers, finding out their needs and providing price quotations without being asked in order to get business and makes sales. Nevertheless, during the aforementioned period in which the illegal conduct took place, the appellant and the other offenders stopped providing price quotations and sometimes even refused to quote any prices when receiving inquiries. The fact that the appellant and the other offenders withheld from competing was evidently contradictory to normal behaviors. Undeniably, refraining from actively providing price quotations would be in conflict with the interests of the appellant and the other offenders under normal circumstances. Therefore, this conduct could only be reasonably interpreted as the appellant and the other offenders had established consensus to jointly increase the prices of ready-mixed concrete in the Chiayi area. The conduct was a concerted action with the capacity to affect the supply and demand in the ready-mixed concrete market around Chiayi and was evidently in violation of the first section of paragraph 1 of Article 14 of the Fair Trade Law. There was neither inappropriate application or interpretation of any regulations nor contradiction in the reasons of decision in the original sanctions. The laws and regulations applied were

the ones currently applicable to the case. The original sanctions were not inconsistent with any laws or regulations. The argument of the appellant that the original sanctions were inappropriate should therefore have to be regarded unjustifiable and overruled.

Summarized by Lai,Chia-Ching; Supervised by Lee, Wen-Show □

Rihua LPG Bottling Co., Ltd.

Supreme Administrative Court (2010)

Case: Supreme Administrative Court overruled the appeal by Rihua LPG Bottling Co., Ltd. over the FTC's disposition
Key Word(s): LPG bottling business, concerted price increase, fine imposition
Reference: Supreme Administrative Court Judgment (2010) Pan Tzu No.1343
Industry: Wholesale of Other fuel Products (4639)
Relevant Law(s): Article 14 of the Fair Trade Law

Summary:

1. The Fair Trade Commission (the FTC), the appellee, investigated the suspected concerted action and boycott of the LPG bottling businesses in northern part. The findings showed that Rihua LPG Bottling Co., Ltd. (the appellant) and 29 other LPG bottling businesses had reached an agreement through the Taipei County LPG Association and Taoyuan County LPG Association to jointly increase LPG bottling and transportation costs, and even set up a joint bank account. They had also agreed to restrict the trading counterparts of each LPG shop and not to compete with one another. The conduct was in violation of Article 14 of the Fair Trade Law (FTL) and the FTC therefore imposed dispositions on the appellant and the parties involved in accordance with the First Section of Article 41 of the same law. The appellant found the disposition unacceptable and filed an administrative litigation appeal. The

first ruling as stated in the original 2004 Su-Zi No.1307 Judgment revoked the fines imposed but overruled the rest of the appeal. The plaintiff was responsible to pay for two thirds of the litigation charges and the defendant, the appellee, the remaining third. Both parties found the decision unacceptable and appealed. The Supreme Administrative Court adjudicated, as stated in the 2007 Pan-Zi No.1617 Judgment, that the revocation, the original fines and the decision regarding the litigation charges shall be discarded and the case to be remanded to the original court while at the same time overruled the rest of the appeals. The appellant (excluding the FTC) was responsible to pay for the litigation appeal charges. After further deliberation, the original court decided, as stated in the 2007 Su-Geng-Yi-Zi No.174 Judgment, that"the appeal of the plaintiff is overruled and the plaintiff is responsible to pay for all litigation charges for the first instance and the appeal." The appellant found the decision unacceptable and filed another appeal.

2. According to Article 41 of the FTL when the above agreement was reached, 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 fifty thousand or more than twenty-five million New Taiwan Dollars. Furthermore, Article 36 of the Enforcement Rules to the FTL stipulates that"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; The degree of the act's harm to market order;

(2) The duration of the act's harm to market order;

(3) Benefits derived on account of the unlawful act;

(4) Scale, operating condition, and market position of the enterprise;

(5) 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;

(6) Types of, number of, and intervening time between past violations, and the punishment for such violations; and

(7) Remorse shown for the act and attitude of cooperation in the investigation."

When exercising their administrative discretion in accordance with the authority conferred by law, government agencies have the obligation to be fair and just with each case in compliance with the objective and scope of their regulatory authority conferred by law. At the same time, the principle of equality for administrative agencies must also be exercised within the bounds of the law. It is understandable that the appellee in this case pursued fair and reasonable dispositions and administrative fines. Further, the dispositions and administrative fines had been handed out in accordance with the Reference Table for the Amount of Sanction and Fine Imposed established in pursuance to the principle prescribed in Article 36 of the Enforcement Rules to the FTL. They not only did justice in this very case but also met the principle of equality in compliance with the law and had no conflicts at all with the objective of the FTC's authority conferred by law.

3. After determining the dispositions for the said 30 businesses in line with the Reference Table for the Amount of Sanction and Fine Imposed, the appellee also held a commission meeting and adjusted the fines in accordance with related factors, the aforesaid conditions, the impact of the action on the society and economy, the characteristics of the product and service involved, deterrence of similar illegal conduct in the future, the severity of unfair competition and competition restriction, as well as the bottling capacity and length of operation of each business. In other words, the original dispositions had been decided in accordance with the considerations and factors stipulated in Article 36 of the Enforcement Rules to the FTL as to be taken into account and met the criteria prescribed in the Reference Table for the Amount and Sanction Imposed. The grounds for the dispositions and the corresponding criteria had also been given in detail and there was no violation against the principle of equality. The claim of the appellant that the appellee had reached the dispositions by adopting a different set of criteria was absolutely groundless. The appellant's accusation of the appellee's original decision as inappropriate had to be discarded. The reasons presented by the appellant were found unacceptable and the appeal was overruled.

Appendix:

Rihua LPG Bottling Co., Ltd.'s Uniform Invoice Number: 43632370

Summarized by Lai, Chia-Ching; Supervised by Lee, Wen-Show □

Chapter 5

Unfair Competition – Resale Price Maintenance

Hocheng Corporation

1000th Commissioners' Meeting (2011)

Case: Hocheng Corporation violated the Fair Trade Law for resale price maintenance and cross-district sale coordination
Key Word(s): Bathroom equipment, cross-district sale approval
Reference: Fair Trade Commission Decision of January 5, 2011 (the 1000th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100005
Industry: Manufacture of Ceramic Sanitation Fixtures (2323)
Relevant Law(s): Articles 18 and 19(vi) of the Fair Trade Law

Summary:

1. Residents in Kinmen complained that when trying to purchase from a local distributor for Hocheng Corporation (hereinafter referred to as Hocheng Corp.) on the main island, they were stopped by the general distributor in Kinmen and Hocheng Corp. The FTC investigated the case but found nothing illegal. However, during the investigation, the FTC discovered that Hocheng Corp. was involved in other illegal activities and therefore continued to investigate on this matter.

2. Findings of the FTC after investigation:

(1) Hocheng Corp. has about 20% of the domestic bathroom equipment market share. Its products are sold either through "general distributors (who buy off from Hocheng Corp.)" or "sales offices (run by Hocheng Corp. and their sales areas do not overlap with those of general distributors.)"

(2) The product pricing of Hocheng is divided into "normal dales" and "housing project special offers":

(i) Normal sales: All bathroom equipment from Hocheng Corp. has list prices and different discounts are given when it is sold to general distributors or when a general distributor (sales office) resells it to distributors. This is referred as the "bathroom equipment price policy" of Hocheng Corp.

(ii) Housing project special offers: With housing projects that require large quantities of bathroom equipment, general distributors (sales offices) or their distributors need to fill out the "Housing Project Special Offer Registration Form" for Hocheng Corp. to approve the discount before the contract can be signed officially, and the profit for general distributors is uniformly set to be 7% of the closed deal.

(iii)With "housing project special offers" that involves cross-district transaction, Hocheng Corp. has not established any written regulation but distributors are required to obtain approval from Hocheng Corp. for each case, it is initialed by the concerned general distributor (sales office) filling out the "Housing Project Special Offer and Cross-District Contact Detail List." In principle, when Hocheng Corps receives the document, the distributor who has first filed the document is given the priority to complete the deal. However, when there are two distributors from different districts contending for the business opportunity at the same time, Hocheng Corp. will determine a flat discount rate for the builder to choose one of the said two distributors to close the deal with, on the condition that the general distributor (sales office) with jurisdiction over the location of the project will handle the delivery while the cross-district general distributor (sales office) handling the deal is required to give 2% of the amount of the deal to cover the transportation cost.

3. Grounds for disposition:

(1) Hocheng Corp. established the "bathroom equipment price policy" to set a limit on the resale prices of general distributors in normal sales and demand general distributors to resell in accordance with the discount rates the company determined. This practice restricted the freedom of general distributors to decide their resale prices. It was in violation of Article 18 of the Fair Trade Law (FTL). The FTC therefore imposed on Hocheng Corp. an administrative fine of NT$1,000,000.

(2) Hocheng Corp. restricted the freedom of distributors to contend and pursue

business opportunities in "housing projects" while at the same time requested that distributors had to file "housing project" cases that involved cross-district transaction individually and comply with the company's rules of cross-district transaction registration and coordination. This practice was deemed restriction upon market competition or impediment to fair market competition in violation of subparagraph 6 of Article 19 of the FTL. The FTC therefore imposed on Hocheng Corp. an administrative fine of NT$2,000,000.

Appendix:
Hocheng Corporation's Uniform Invoice Number: 03228304

Summarized by Chang, Ching-Yi; Supervised by Sun, Ya-Chuan □

Chung Hsiang Foods Industry Co., Ltd

1075th Commissioners' Meeting (2012)

Case: Chung Hsiang Foods Industry Co., Ltd. violated the Fair Trade Law by imposing a restriction on RT-Mart International Ltd. for the resale prices of its soda crackers
Key Word(s): Agreement on resale prices, distribution system, retail price agreement, intra-brand competition
Reference: Fair Trade Commission Decision of June 13, 2012 (the 1075th Commissioners' Meeting), Disposition Kung Ch'u Tzu 101068
Industry: Bakery Products Manufacturing (0891)
Relevant Law(s): Article 18 of the Fair Trade Law

Summary:

1. Chung Hsiang Foods Ind. Co., Ltd. (hereinafter referred to as Chung Hsiang Foods) produces the "Natural Series" soda crackers and supplies them to various

hypermarkets and retailers throughout the country. On May 21 of this year (2012), the company sent to certain branches of RT-Mart a price agreement via fax and requested them to sell Chung Hsiang Foods' soda crackers according to the retail prices suggested by Chung Hsiang Foods. The agreement also stated that "if the prices are found incompliant with the suggested rates, Chung Hsiang Foods may suspend the supply of its "Natural Series" soda crackers for three months until the prices are adjusted and compliant with the suggested rates." The conduct violated Article 18 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) The principal sales outlets for Chung Hsiang Foods' "Natural Series" crackers were the four major convenience store chains, the hypermarkets, PX-Mart, and the supply stations of the Military Welfare Department. Among them, the four major convenience store chains and the hypermarkets paid for the supplies with checks upon their deliveries. Hence, the profit that these businesses made was the difference between their purchasing price and selling price. In other words, they were distributors of the products, not agents who earned commissions from their sales. When the Neihu, Jhonghe, Tucheng, and Bitan branches of RT-Mart had a promotional sale on the "Natural Series" soda crackers between April and May of this year, the prices were far lower than those at other retail outlets. This caused a loss of business for other retailers who then, in turn, demanded Chung Hsiang Foods to reimburse them for the price differences. Chung Hisang Foods therefore faxed the aforesaid price agreement on May 21 of the same year to request RT-Mart to stick to the rates suggested in the agreement to stabilize the retail prices.

(2) Chung Hsiang Foods stopped supplying the Neihu, Jhonghe, Tucheng, and Bitan branches of RT-Mart with its "Natural Series" soda crackers on the day it sent the said agreement. RT-Mart contacted Chung Hsiang Foods immediately after receiving the said agreement and the said branches also adjusted the prices of the "Natural Series" crackers to the rates suggested in the price agreement within 2 or 3 days. After confirming on the development, Chung Hsiang Foods resumed its supply to the said branches.

3. Grounds for disposition:

(1) When the Neihu, Jhonghe, Tucheng, and Bitan branches of RT-Mart had a promotional sale on the "Natural Series" soda crackers between April and May of this year, the prices they set were far lower than those at other retail outlets. Chung Hsiang Foods admitted to sending the price agreement on May 21, 2012 to RT-Mart's main office out of the intention to prevent RT-Mart from messing up retail prices and demanded RT-Mart to set its retail prices for the "Natural Series" soda crackers according to the prices listed in the said agreement; otherwise, Chung Hisang Foods would suspend the supply of its "Natural Series" soda crackers. On the day it faxed the said agreement, Chung Hsiang Foods did suspend the supply to RT-Mart's branches that were having the aforementioned promotional sale.

(2) Chung Hsiang Foods admitted that the hypermarkets paid by check when their products were delivered. Therefore, the profit they made was the difference between their purchasing and selling prices. They were distributors that owned the products they had paid for. After supplying the soda crackers to RT-Mart, Chung Hsiang Foods had to allow RT-Mart to decide its own prices. By restricting the freedom of its downstream distributors to decide the retail prices of the soda crackers, Chung Hsiang Foods reduced the intra-brand price competition between distributors and such conduct was in violation of Article 18 of the Fair Trade Law.

Appendix:

Chung Hsiang Foods Industry Co., Ltd.'s Uniform Invoice Number: 04850123

Summarized by Wu, Hsin-Te; Supervised by Yang, Chia-Hui □

Shine-Mei Foods Co., Ltd.

1076th Commissioners' Meeting (2012)

Case: Shine-Mei Foods Co., Ltd. violated the Fair Trade Law by increasing the promotional prices of 2L I-Mei Soybean and Rice Milk
Key Word(s): Maintain resale price, minimum price, retail outlet, soybean milk
Reference: Fair Trade Commission Decision of June 20, 2012 (the 1076th Commissioners' Meeting), Disposition Kung Ch'u Tzu 101076
Industry: Wholesale of Other Foods (4549)
Relevant Law(s): Article 18 of the Fair Trade Law

Summary:

1. When surveying daily commodity price fluctuations, the FTC discovered that Shine-Mei Foods Co., Ltd. (hereinafter referred to as Shine-Mei Foods) had notified by email its downstream retailers to adjust the promotional prices for 2L I-Mei soybean and rice milk to at least NT$55; otherwise, the company would immediately suspend the supply of the products and its cooperation in the promotional activities. As the content of the email was in violation of the regulation against resale price maintenance, the FTC therefore initiated an ex officio investigation.

2. Findings of the FTC after investigation:

Being common breakfast items for a lot of Taiwanese, soybean milk and rice milk (soybean drink and rice drink for other brands) are must-have items for hypermarkets. Some of the downstream retailers of Shine-Mei Foods that were interviewed by the FTC confirmed having received the aforesaid email and consequently increased the prices of the concerned products to the level specified by Shine-Mei, 55 NT dollars (the same currency applies hereinafter), for fear of having the supply suspended. As a result, after March 2012, the promotional prices for the said products became 55 dollars. Another finding of the investigation showed that some retailers did not receive the email but there was an oral notice from Shine-Mei Foods to demand them to raise the prices. The employees of Shine-Mei Foods that delivered the products to different retail outlets would check the price tags and the supply would be suspended

if a retailer was found failing to comply with the demand of Shine-Mei Foods. In order to have the products supplied normally, retailers had no choice but to sell the products at the promotional prices determined by Shine-Mei Foods. Meanwhile, other retailers indicated that upstream suppliers sometimes would raise prices to put a restriction on the promotional prices of hypermarkets.

3. Grounds for disposition:

(1) The main business operation of Shine-Mei Foods is selling frozen and refrigerated products purchased from I-Mei Foods Co., Ltd., I-Mei's soybean and rice milk products being included. Another finding showed that the promotional prices for 2L I-Mei soybean milk and rice milk at the major retail outlets in January and February of 2012 ranged between 49 and 60 dollars but most of them became over 55 dollars after March of the same year. Shine-Mei Foods admitted having given the notice either through email or orally to the hypermarkets, supermarkets, and other retailers, including several retail outlets that were popular among consumers. The FTC's investigation confirmed that the promotional prices of 2L I-Mei soybean and rice milk were mostly over 55 dollars starting from March 2012.

(2) After assessment, the FTC decided that the conduct of Shine-Mei Foods to demand through email or orally hypermarkets, supermarkets, and other retailers to sell I-Mei's soybean and rice milk products at prices not any lower than the minimum price the company determined was a restriction on the freedom of the downstream retailers to set their own prices according to the competition they faced on the market and their management strategies. The conduct reduced the intra-brand price competition between different retail outlets and thus was in violation of Article 18 of the Fair Trade Law. In addition to ordering Shine-Mei Foods to cease the unlawful act, the FTC also imposed an administrative fine of 1,000,000 dollars on the company.

Appendix:

Shine-Mei Foods Co., Ltd.'s Uniform Invoice Number: 22345387

Summarized by Tsai, Hui-Chi; Supervised by Hung, Shui-Hsing □

Commonwealth Publishing Co., Ltd.

1089th Commissioners' Meeting (2012)

Case: Commonwealth Publishing Co., Ltd. violated the Fair Trade Law by restricting the resale price of online bookstores for the book "Steve Jobs"

Key Word(s): Bookstore, online sales

Reference: Fair Trade Commission Decision of September 19, 2012 (the 1089th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101137

Industry: Book Publishing (5813)

Relevant Law(s): Article 18 of the Fair Trade Law

Summary:

1. An individual informed the FTC via email that when marketing the book "Steve Jobs", Commonwealth Publishing Co., Ltd. (Commonwealth Publishing) demanded all bookstores to sell the book at the price of NT$599, the special offer price, and give no further discount; otherwise their supply of the book would be cut off by Commonwealth Publishing. The practice was a typical resale prices maintenance practice which was in violation of the Fair Trade Law. Initially, the FTC surfed the websites of books.com, Kingstone, and Eslite, the three major online bookstores in the country, and found that their retail price for the book was indeed all NT$599. It seemed that Commonwealth Publishing did impose a resale price restriction on online bookstores. Hence, the FTC initiated an ex officio investigation.

2. Findings of the FTC after investigation:

(1) Commonwealth Publishing had signed with two online bookstores, PChome Online Inc. and cite Publishing Co., Ltd., an agreement in which both sides agreed that the resale price for the book would be NT$599 and the bookstores were disallowed to lower the price or offer any discount; otherwise, Commonwealth had the right to file a lawsuit, cancel the distributorship for the book, as well as seek damage compensation.

(2) PChome Online Inc. confirmed that it had sold every copy of the book at the price suggested by Commonwealth Publishing and cite Publishing Co., Ltd. said the same thing.

(3) Commonwealth Publishing expressed that it had established the agreement with the two aforesaid companies mainly as a statement that it would not provide any further offer if any bookstore should sell the book at prices lower than NT$599 or give bigger discounts.

3. Grounds for disposition:

The agreement Commonwealth Publishing established with PChome Online Inc. and cite Publishing Co., Ltd., specified that the resale price for the book had to be NT$599 and provisions on handling of breach of the agreement were also stipulated. This meant that intra-brand price competition between different distributors would be impaired and this deprived the distributors of their freedom to determine their resale price and also damaged the price competition mechanism of the market. The conduct of Commonwealth Publishing violated Article 18 of the Fair Trade Law. Therefore, the FTC followed the first section of paragraph 1, Article 41 of the same law and ordered Commonwealth Publishing to immediately cease the unlawful act, and also imposed on the company an administrative fine of NT$200,000.

Appendix:

Commonwealth Publishing Co., Ltd.'s Uniform Invoice Number: 20905449

Summarized by Wang, Hsing-Yuan; Supervised by Yang, Chia-Hui □

Giant Manufacturing Co., Ltd.

1093rd Commissioners' Meeting (2012)

Case: Giant Manufacturing Co., Ltd. violated the Fair Trade Law by conducting resale price maintenance and forbidding distributors engaging in online sales
Key Word(s): Bicycle, suggested retail price, online sales
Reference: Fair Trade Commission Decision of October 17, 2012 (the 1093rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101153
Industry: Bicycles Manufacturing (3131)
Relevant Law(s): Articles 18 and 19(vi) of the Fair Trade Law

Summary:

1. After finding out that the distributor contract of Giant Manufacturing Co., Ltd. (hereinafter referred to as Giant Co.) contained provisions to resale price maintenance, the FTC sent a letter to in early 2010 urging Giant Co. to reexamine its contract clauses and advised it not to use any wording in relation to resale price maintenance agreement in order to avoid violation of competition restraints. However, in 2011, comments about the stiffness of prices of Giant bicycles could still be seen on the Internet. Meanwhile, when the FTC visited a number of bicycle businesses to investigate the restriction against online sales imposed on its distributors by Merida Industry Co., Ltd., most of the investigated businesses expressed that the contract of Giant Co. also had the same clauses. The FTC reviewed the distributor contract of Giant Co. and found out the contract was indeed stipulated that the distributors were prohibited from displaying or selling Giant products online and there were also provisions on the breach of the contract.

2. Findings of the FTC after investigation:

It was set forth in paragraph 3, Article 1 of the contract Giant Co. signed with its distributors, "Without the written consent of Party B (Giant Co.) in advance, Party A (the distributor) may not directly or indirectly display or sell products from Party B on the Internet." subparagraph 3 of Article 3 also specified that "Party

A is required to sell products from Party B according to the prices suggested by Party B." Meanwhile, according to the approaches for handling breach of contract prescribed in Articles 13 and 17, Giant Co. could terminate the contract and demand compensation from the distributor if the distributor should violate the agreement or fail to fulfill its obligations prescribed in the contract. Giant Co. denied having demanded its distributors to sell its products at certain prices or give certain discounts and contested that the provisions against online sales had been stipulated because there could be safety concerns when consumers purchased parts online to assemble bicycles. The purpose was to protect the brand image and reputation of the company. Moreover, no distributors had ever had their distributorship revoked for failing to sell according to the suggested retail prices or engaging in online sales. The FTC visited the distributors of Giant Co. to understand the prices suggested for nearly 30 bicycle models and the actual prices they were sold for. The actual prices ranged between 80% of the suggested prices and full prices. Giant Co. also disclosed that the profit of a distributor was about 22-25% and all the distributors had expressed the willingness to set their prices according to the suggested prices. The investigation indicated that the distributors seldom gave any discount better than 20% off and this had to be related to the regulation in the contract. The FTC also paid random visits to the distributors of Giant Co. 13 out of the 16 distributors visited all confirmed that Giant Co. had indeed imposed a restriction upon their online sales and the penalties included issuance of warnings, revocation of distributorship and discontinuation of supply. Lastly, the FTC ran a check on the use of the Internet for business purposes by the 260 distributors of Giant Co., only 2 of them had posted prices online but none of them took orders online.

3. Grounds for disposition:

Giant Co. definitely played a rather significant role in the domestic bicycle market. By stipulating in its distribution contract the restriction on its distributors selling online and threatening to revoke distributorship as a penalty to force distributors to stick to the suggested retail prices and not to engage in online sales, the company had deprived the distributors of their freedom to determine their prices and marketing

approaches and therefore violated Article 18 of the Fair Trade Law. Meanwhile, the restriction imposed upon the distributors who conduct online sale was an unjustifiable practice of limiting the business activities of trading counterparts. It was a competition restriction or impediment to fair competition in violation of subparagraph 6, Article 19 of the same law. According to the first section of paragraph 1 of Article 41 of the same law, the FTC imposed an administrative fine of NT$3.5 million on Giant Co. and ordered it to cease the unlawful act immediately.

Appendix:
Giant Mfg. Co., Ltd.'s Uniform Invoice Number: 56054251

Summarized by Lin, Hui-Mei; Supervised by Wu, Lieh-Ling □

Chapter 6

Unfair Competition – Lessening Competition or Impeding Fair Competition

6.1 Decisions

Long-hone Corp.

949th Commissioners' Meeting (2010)

Case: Long-hone Corp. was complained for violating the Fair Trade Law by selling bottled liquefied petroleum gas(LPG) at low prices to control the market and making it impossible for existing LPG retailers to carry on their business

Key Word(s): Bottled liquefied petroleum gas (LPG), bottling plant, direct selling, price squeeze

Reference: Fair Trade Commission Decision of January 13, 2010 (the 949th Commissioners' Meeting)

Industry: Retail Sale of Other Fuel Products in Specialized Stores (4829)

Relevant Law(s): Article 19(iii) the Fair Trade Law

Summary:

1. Liquefied petroleum gas (LPG) is indispensable in our everyday life. Normally, the "suppliers" sell it through the "distributors" to bottling plants where it is pumped into steel bottles and distributed to LPG retailers that deliver to end users. The total monthly demand of the 200 LPG retailers in Chiayi County and Chiayi City is approximately 3,500 tons (the 66 LPG retailers need about 1,200 tons per month). Originally there were 4 bottling plants in Chiayi County and Chiayi City. When the fifth bottling plant opened for business in 2007, it brought an impact on the market structure and the market competition. Being the last one to enter the market and having the smallest bottling capacity among the 4 original plants, Long-hone Corp. (hereinafter referred to as the accused) changed its management strategy in October

2007. In addition to refilling LPG for and delivering the bottles to the retailers, it also started to sell bottled LPG directly to consumers. In other words, the accused was using its bottling plant capacity to run retail business and, consequently, this created a price squeeze on the LPG retailers.

2. Findings of the FTC after investigation:

Before the accused began direct selling of bottled LPG at lower prices, each business-use 20kg bottled LPG was sold for over 630 dollars. Yet the accused was selling it directly to consumers for 500 dollars, lower than the wholesale cost of some LPG retailers and at least 90 dollars cheaper than in Chiayi County. As a result, more than 10 LPG retailers in Chiayi City had to pull out from the market. Longhone was therefore accused of unfair competition out of the intention to control the market.

3. Grounds for disposition:

(1) As prescribed in Article 4 of the Fair Trade Law, the term "competition" means any conduct of one enterprise to contest trading opportunities in the same market with another one or more enterprises by offering more favorable prices, quantities, quality, services or other conditions. Therefore, "competing by offering lower prices" is not considered a violation of the Fair Trade Law. If the conduct involves predatory pricing with the intention of monopolizing the market, subparagraph 1 of Article 10 of the Fair Trade Law shall apply. On the other hand, if the conduct is not aimed at monopolizing the market but at selling products or services at prices noticeably aberrant from reasonable market price ranges as a means of competition, it is termed enticement with interest and subparagraph 3 of Article 19 of the Fair Trade Law shall apply. Hence, if an enterprise contests for trading opportunities with lower prices that are still above the costs and the conduct does not lead to elimination of competition on the market, it is considered justifiable price competition and neither subparagraph 1 of Article 10 nor Subsection 3 of Article 19 shall apply.

(2) When the accused managed a bottling plant and bottled LPG retail business in Chiayi City at the same time, its retail prices of business-use bottled LPG may have been lower than the wholesale prices it sold to the downstream LPG retailers. At

the same time, the market shares of the aforementioned 4 bottling plants or market concentration was not significantly affected even though the accused had a 20% share of the LPG distribution market in Chiayi City. Consequently, its price-lowering promotion did not result in any monopoly or jeopardize the market mechanism. Moreover, market competition was still possible under the situation. Consumers could only benefit from the price lowering and direct selling, while, at the same time, no evidences showed that the selling price of the accused was lower than its purchasing cost. Therefore, the strategy of the accused to sell bottled LPG at lower prices did not constitute obstruction to fair market competition and could not lead to monopoly in the bottled LPG distribution market in Chiayi City. It was therefore impossible to establish that the conduct was in violation of of the Fair Trade Law.

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

Taipei County LPG Association and 5 other LPG Retailers

951st Commissioners' Meeting (2010)

Case: Taipei County Liquefied Petroleum Gas (LPG) Association, Thefore Energy Inc., Jiang Guoying, Gao Wansheng, Peng Shuzhen, and Lyu Hongtao violated the Fair Trade Law by urging other retailers to rise the retail prices for bottled LPG

Key Word(s): Refrain from price competition, not in competition for customers, sanctions in accordance with applicable laws

Reference: Fair Trade Commission Decision of January 27, 2010 (the 951st Commissioners' Meeting); Dispositions Kung Ch'u Tzu No.099016,099017,099018, and 099019

Industry: Retail Sale of Other Fuel Products in Specialized Stores (4829)

Relevant Law(s): Article 19(iv) the Fair Trade Law

Summary:

1. Thefore Energy Inc. (hereinafter referred to as Thefore), Taipei County Liquefied Petroleum Gas Association (hereinafter referred to as Taipei County LPG Association), Weiduoli LPG Co., Ltd. (hereinafter referred to as Weiduoli), and 4 other businesses jointly applied illegitimate measures to urge the LPG retailers in several districts in the greater Taipei area to rise the retail prices of bottled LPG, to refrain from price competition, and not to compete for customers. The conduct was a restriction on market competition and detrimental to fair competition and was therefore in violation of subparagraph 4 of Article 19 of the Fair Trade Law. The FTC reached its decision at the 853rd Commission Meeting on March 13, 2008 and ordered the said organizations and businesses via Disposition Kung Ch'u Tzu No.0970944 to terminate the said illegal conduct immediately. The FTC also fined Thefore 25 million NT dollars (the same currency applies hereafter,) Taipei county LPG Association 25 million dollars, and Weiduoli 1 million dollars. In addition, according to the Administrative Penalty Act, Chairman of Taipei County LPG Association Gao Wansheng, Secretary General Peng Shuzhen, Theofore Vice General Manager Jiang Guoying were also each fined 1 million dollars, and the actual ownerr Lyu Hongtao of Weiduoli was fined 100 thousand dollars.

2. The aforementioned offenders found the sanctions unacceptable and appealed to the Cabinet. The Cabinet revoked the original sanctions on the grounds that:

(1) Was the violation by Jiang Guoying the result of the decision of Taipei County LPG Association or Thefore, and to whose advantage was the violation contributed?

(2) Should the conduct of Gao Guosheng and Peng Shuzhen be interpreted as the conduct of Taipei County LPG Association?

(3) As Lyu Hongtao was not legally in charge of Weiduoli, should he be considered, in accordance with the regulation of the Fair Trade Law, responsible for what Weiduoli has done just because he was the actual owner of Widuoli?

3. Findings of the FTC from further investigation after revocation of the original

sanctions:

(1) Jjiang Guoying, Gao Wansheng, and Peng Shuzhen made use of the LPG Association's district organization system and contacted with the director of each district or contact person to get in touch with the local LPG retailers. Meetings were held intensively in the month of November in 2007 and the LPG retailers were requested to rise the retail price of each business-use 20kg bottled LPG by 20 dollars to 700 dollars. It was also agreed that the retailers would refrain from competing for customers. After the meetings, Jiang Guoying also demanded through telephone calls or paying visits at shops that refused to cooperate to make the price increase. The price of business-use bottled LPG did later rise to 700 dollars per bottle in several districts in the great` Taipei area. As a result, the price of household-use bottled LPG also went up in some places.

(2) The person legally in charge of Weiduoli confirmed the co-ownership with Lyu Hongtao. As the representative of Weiduoli, Lyu Hongtao assumed the directorship of a district in Taipei County LPG Association. Therefore, he did represent Weiduoli.

(3) Taipei County LPG Association claimed that it had nothing to do with the price increase of business-use bottled LPG in the greater Taipei area after Chairman Gao Guosheng and Secretary General Peng Shuzhen attended the meetings at the end of 2007, and Thefore made the same claim regarding its Vice General Manager Jiang Guoying.

4. Reasoning for Taipei County LPG Association and Thefore's behaviors:

(1) Thefore: The FTC's further investigation did not find concrete evidences that were sufficient to prove Jiang Guoying had attended the said meetings on behalf of Thefore. Besides, Jiang Guoying also claimed to have attended the said meetings out of personal decision. Therefore, the FTC could not prove Thefore was involved in the violation of the Fair Trade Law.

(2) Taipei County LPG Association: The FTC's further investigation did not find concrete evidences that were sufficient to prove Gao Wansheng and Peng Shuzhen had carried out the conduct under the authorization of Taipei County LPG Association. Besides, Gao Wansheng and Peng Guozhen also claimed that they had

attended the said meetings out of personal decision. Therefore, the FTC could not prove Taipei County LPG Association was involved in the violation of the Fair Trade Law.

5. Grounds for disposition against Jiang Guoying, Gao Wansheng, Peng Shuzhen, and Lyu Hongtao:

(1) Jiang Guoying, Gao Wansheng, and Peng Shuzhen acted on their own decision and collaborated with enterprises (individuals) to jointly apply illegitimate measures to urge the LPG retailers in several districts in the greater Taipei area to rise the retail prices of bottled LPG, to refrain from price competition, and not to compete for customers. The conduct was in violation of subparagraph 4 of Article 19 of the Fair Trade Law. According to paragraph 1 and paragraph 2 of Article 14 of the Administrative Penalty Act, the FTC fined each of the offenders 1 million dollars. Their non-enterprise status could not exempt themselves from obligations of Administrative Penalty Act.

(2) Lyu Hongtao did represent Weiduoli when he carried out the said conduct and led to Weiduoli's violation of subparagraph 4 of Article 19 of the Fair Trade Law and punishment in accordance with the first section of Article 41 of the same law. Therefore, in line with paragraph 1 and paragraph 3 of Article 15 of the Administrative Penalty Act, Lyu Hongtao was also fined 100 thousand dollars according to the fine provided by the first section of Article 41 of the Fair Trade Law.

Appendix:
Thefore Energy Inc.' Uniform Invoice Number: 80088772
Weiduoli LPG Co., Ltd.'s Uniform Invoice Number: 35378590

Summarized by Wang, Hung-Chu; Supervised by Sun,Ya-Chuan □

MDS Multimedia Corp. and Zui Ing Co., Ltd.

973rd Commissioners' Meeting (2010)

Case: MDS Multimedia Corp. and Zui Ing Co., Ltd. violated the Fair Trade Law by restricting business activities of distributors
Key Word(s): Karaoke products, MIDI, distributor, restriction through exclusive dealing
Reference: Fair Trade Commission Decision of June 30, 2010 (the 973rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.99078
Industry: Sound Recording and Music Publication Businesses (5920)
Relevant Law(s): Article 19 the Fair Trade Law

Summary:

1. The FTC was informed that MDS Multimedia Corp. (hereinafter referred to as MDS) and Zui Ying Co., Ltd. (hereinafter referred to as Zui Ing Co.) demanded their distributors not to participate in any marketing activities of other companies selling karaoke products. Their conducts might be in violation of Article 19 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) MDS and Zui Ing Co. convened the "2009 MIDI Distributor Meeting" in which they announced that "since all subcontractors, distributors as well as all collaborating business associates are expected to make all their efforts to promote karaoke products (from MDS and Zui Ing Co.) in designated areas, they are therefore advised not to undertake any activities in any form (including but not limited to agency, brokership, distributorship, etc.) to participate in marketing for the karaoke products of other companies otherwise…their contracts (with MDS and Zui Ing Co.) shall be terminated." The statement was again released on Aug.13 and 21 of 2008 respectively. In addition, the same stipulation could also be found in the contracts MDS and Zui Ing Co. signed with their regional subcontractors.

(2) In the contracts MDS and Zui Ing Co. signed with their regional subcontractors, it was stipulated that regional contractors could not rent out or distribute MIDI

products at prices lower than the agreed rates.

3. Grounds for disposition:

(1) The market involved in this case is defined as that of MIDI karaoke products because they use computer music coding formats different from those applied in VOD for unicast or multicast karaoke products and the authorization fees vary a lot. For the end users—the shops, there is no substitution on the market; whereas for agents for these products, the costs and marketing channels are also entirely different. As the market shares of MDS and Zui Ing are respectively 37% and 50%, they have rather considerable influence on the market.

(2) The conducts of MDS and Zui Iing Co. to restrict distributors from representing, brokering or distributing MIDI karaoke products of other brands are already in violation of subparagraph 6 of Article 19 of the Fair Trade Law:

(i) Restriction on market competition through exclusive dealing is meant to block out the opportunities of existing or potential competitors from participating in competition. Intimidated by the market influence of MDS and Zui Ing Co. as well as to avoid having their deposits confiscated and contracts terminated, the downstream distributors had no choice but to turn away from karaoke products made by MDS and Zui Ing Co.'s competitors. The conduct of exclusive dealing of MDS and Zui Ing Co. could obstruct opportunities for their competitors to expand or obtain sales channels and thus block the market from their competitors. The result would be weakening or even eliminating "competition between brands," bringing substantial damage to market competition, and thus impose restriction upon market competition.

(ii) MDS and Zui Ing Co. contended that if the distributors also distributed other companies' karaoke products, the distributors would have to increase the rental rate and the shops would be less interested in renting the products. In addition, it would be "more likely" to give rise to copyright controversies. However, the FTC's investigation revealed that when the distributors distributed only MIDI karaoke products from MDS and Zui Ing Co., the interest of the shops to rent the products did not necessarily increase. As a matter of fact, the only thing that happened was the opportunities for the distributors and the shops to choose karaoke products of other

brands were greatly reduced. Also, the FTC found the argument regarding copyright controversies made by MDS and Zui Ing Co. to defend their exclusive dealing and restriction on the distributors unjustifiable.

(3) MDS and Zui Ing Co. violated subparagraph 6 of Article 19 of the Fair Trade Law by setting limits on the rates at which the distributors could rent out MIDI karaoke products.

(i) It was stipulated in the contracts MDS and Zui Ing Co. signed with their regional subcontractors that the regional subcontractors could not charge users rental prices for the MIDI products lower than the rates agreed in the contracts, otherwise MDS and Zui Ing Co. would terminate the contracts. The FTC's investigation showed that each regional subcontractor had already given MDS and Zui Ing Co. a check as the deposit in accordance with the rental prices determined in the contract. The actual amount of sales was then deducted from the deposit. In other words, each regional subcontractor was already undertaking the risk that the subcontracted sets of products were not rented out, and the rental prices the subcontractor was to charge users were still stipulated in the contract. The intention to prevent their regional subcontractors from lowering pries to compete for business was obvious.

(ii) As the regional subcontractors were intimidated by the market influence of MDS and Zui Ing Co., it was highly possible that they had to choose to follow the stipulated rental rates in order to avoid the result of contract termination as their punishment. In reality, the conduct already deprived the subcontractors the liberty to decide the rental prices on their own. Consequently, the retail rental prices would be all the same and this would reduce the "inner brand competition" that should be allowed when similar products compete through different sales channels. Although MDS and Zui Ing Co. contended that the said provision in the contract was merely a recommendation, the investigation showed that the contract had its definite binding force. On top of this, due to the market status of MDS and Zui Ing Co., having the contract terminated by these two companies would for sure have a serious impact on the business of any subcontractor. The subcontractors were indeed bound by the aforesaid threat of sanction. Even if MDS and Zui Ing Co. never actually enforced the said provision, the restriction did exist.

(4) Therefore MDS and Zui Ing Co. were fined 700 thousand and 1 million NT dollars respectively.

Appendix:
MDS Multimedia Corp.'s Uniform Invoice Number: 04779781
Zui Ing Co., Ltd.' Uniform Invoice Number: 97123274

Summarized by Chiou,Shwu-Fen; Supervised by Liao,Hsien-Chou □

Bottled LPG Distributors

985th Commissioners' Meeting (2010)

Case: The FTC initiated an ex officio investigation to find out if domestic bottled LPG distributors had undertaken any concerted action or unjustifiable discriminative treatment in violation of the Fair Trade Law
Key Word(s): Bottled LPG supplier, distributor, bottling plant
Reference: Fair Trade Commission Decision of September 21, 2010 (the 985th Commissioners' Meeting)
Industry: Retail Sale of Other Fuel Products in Specialized Stores (4829)
Relevant Law(s): Articles 14 and 19(ii) of the FTL

Summary:

1. The media reported in February 2010 that the price difference per LPG bottle among domestic counties or cities could be as high as NT$210, even in the same county or city it could be over NT$100. The FTC therefore initiated an investigation to find out if related LPG businesses had undertaken any conducts in violation of Article 14 and subparagraph 2 of Article 19 of the Fair Trade Law (FTL).

2. The domestic bottled LPG market structure is basically divided into four levels, namely production and importation (the suppliers), distribution, bottling, and retailing (the LPG shops). The following is a general description of the market:

(1) The suppliers: Currently there are three LPG suppliers in the country. They are China Petroleum Corporation, Taiwan (hereinafter referred to as CPC), Formosa Petrochemical Corporation (hereinafter referred to as FPC), and LCY Chemical Corp. (hereinafter referred to as LCY). As LCY only imports a relatively small amount of LPG and thus CPC and FPC are the two major suppliers.

(2) The distributors: At present, there are ten distributors under the two major suppliers, seven of them belongs to the CPC distribution system and three the FPC system.

(3) The bottling plants: There are 112 LPG bottling plants in the country currently. Market competition among the LPG bottling plants is fierce and most of them run cross-country/city operations.

(4) The LPG shops: The threshold for setting up an LPG shop is low and there are currently over 3,400 of them across the country. Since their trading counterparts are mostly end users (including restaurants, street stands, etc.), high mobility is required. Most shops deliver LPG bottles by motorcycle and normally operate within the radius of 5-10 kilometers.

3. The suppliers, distributors, bottling plants and LPG shops had not conducted any of the concerted action described in Article 14 (1) of the FTL. The explanation is as follows:

(1) The suppliers: CPC has adopted the Floating Gas Price Mechanism since January 2007. Based on the CP prices at the beginning of each month, the company determines and announces the LPG prices according to the calculation measure approved by the government. The prices are public information and apply to all distributors. Since CPC has a larger market share and the prices are information accessible by the public, FPC, not without taking its own production and marketing capacity into account, often follows the LPG price adjustments of CPC but decides the actual prices in accordance with the trading terms with different distributors and

the condition of competition in the local market. The synchronized price fluctuations over the years have been the result of CPC's price leadership. The FTC's investigation revealed that both suppliers had been selling LPG to their distributors at different prices and there were no concrete evidences at all showing that the two enterprises had established any contract or agreement that resulted in any joint pricing or other conduct in violation of the FTL.

(2) The distributors: The FTC's investigation showed that the price increases made by the distributors between July 2009 and February 2010 ranged between 27.8% and 31.96%, generally lower than the their cost increases (29.18% to 34.85%) when they purchased from the suppliers. Each distributor had its own pricing strategy and the prices and price increases therefore differed. The evidences available did not point to any joint price increase.

(3) The bottling plants: Most of the bottling plants raised their selling prices between July 2009 and February 2010 by 20% to 28%. Again, these increases were generally lower than the incoming wholesale prices the distributors paid and each bottling plant, due to the pricing policy, sold LPG at rather different prices and price increases. The evidences available did not prove any joint price increase.

(4) The LPG shops: The FTC's investigation revealed that the large retail price differences in various counties and cities had been the consequence of the geographic environment, severity of competition and rents in different retail markets over the years. The retail prices within the same county or city between July 2009 and February 2010 also varied significantly, with the price difference per bottle ranging between NT$15 and NT110 without any consistency at all. The price differences between counties and cities were huge and the difference in price increases was also quite large, falling between 14.1% and 26.36% but still smaller than the cost increases for the shops (20% to 28%.) Moreover, as each county or city had a large number of LPG shops and product homogeneity was high, price competition on the market was fierce and no price or price increase consistency was discovered. The evidences available did not show any joint price increase.

4. It is determined that the suppliers, distributors, bottling plants and LPG shops

had made no discriminative treatment described in Article 19 (2) of the FTL. The explanation is as follows:

(1) The suppliers:

(i) CPC had over 60% of the market share and signed a 2-year contract with its distributors for each contract renewal. Each distributor established its pricing policy mainly in accordance with the location where it picked up the supply. CPC supplies at prices decided according to the location where the supply was provided and the prices were public information and applied to all of CPC's distributors. After agreeing on the terms and entering the contract with CPC, each distributor, depending on its business condition, could propose to revise the amount of LPG it was supposed to sell each month. Available evidences at the present time did not show that CPC had taken advantage of its market position to place any competition restrictions on its distributors or undertake any conducts that could have hampered fair market competition in violation of subparagraph 2 of Article 19 of the FTL.

(ii) FPC occupies about 30% of the market share. It signed a 3-year contract with its distributors for each contract renewal. Besides providing the amount of supply the distributor proposed as able to sell, FPC also gave different and even high discounts in accordance with the supply amount and transportation distance to encourage the distributors to work harder and expand the market share and the distributors were aware of the discount policy. Available evidences did not show that FPC had adopted any discriminative treatment against any distributors in violation of subparagraph 2 of Article 19 of the FTL.

(2) The distributors: Among the ten distributors in the country, only two of them had a market share of more than 10% for the distribution market. Findings of the FTC's investigation showed that these two major distributors had adjusted their price policies in line with the condition of competition in the market and for bottling plants that had to seek supply from different distributors to meet their demand. Bottling plants interviewed by the FTC also acknowledged that they had to seek supply from a single or multiple sources because of their different business considerations. Based on the above, despite the two major distributors had occupied more than 10% of the market share and were in a relatively advantageous market position against the

bottling plants, they still had to determine their prices in accordance with market competition, transportation distances, ways of payment from the customers (including factors of cash payment and check clearing period length) and the amount of supply acquired. In other words, the distributors would be unable to determine the prices unilaterally. The available evidences did not show that the two major distributors had imposed any competition restrictions or unjustifiable discriminative treatment that could obstruct fair market competition.

(3) The bottling plants: There were around 120 bottling plants in the country. Market competition was fierce and LPG shops could choose to get supply from a single bottling plant or different bottling plants due to their own business concerns. This broke the past limitation that LPG shops could only get supply from the bottling plant that issued the refill certificate in order to obtain their business permits. In other words, the situation in which LPG shops had to rely on a specific or sole bottling plant for supply no long existed. Since LPG shops could freely decide where to get their supply, the bottling plants had no reason to apply any discriminative treatment without justification.

Summarized by Wang, Hung-Chu; Supervised by Sun, Ya-Chuan □

Yichang Foods Co., Ltd.

993rd Commissioners' Meeting(2010)

Case: Complaints from farmers about a slaughterhouse monopolizing the market and imposing tie-in feed sales
Key Word(s): Slaughter, tie-in sale
Reference: Fair Trade Commission Decision of November 17, 2010 (the 993rd Commissioners' Meeting)
Industry: Slaughtering (0811)
Relevant Law(s): Articles 10 and 19(vi) of the Fair Trade Law

Summary:

1. The Council of Agriculture forwarded to the FTC a petition from goose farmers in Tainan County complaining that there was only one legal meat goose slaughterhouse, namely Yichang Foods Co., Ltd. (hereinafter referred to as Yichang Co.), in the south of Yunlin County and the slaughterhouse demanded that all contracted meat goose farmers use only feed of a specific brand. They thought it was market monopoly. Meanwhile, the Control Yuan also requested the FTC to investigate whether the said legal slaughterhouse constituted tie-in sales by requesting contracted meat goose farmers to use only a specific brand of feed and was in violation of the Fair Trade Law(FTL).

2. Findings of the FTC after investigation:

The FTC visited and interviewed the petitioners and Yichang Co., as well as sent a written request to the concerned feed manufacture for explanation. Aaccording to Article 5-1 of the said law, if the market share of an enterprise does not exceed one half of the market in concern or if it does but the total sales of the enterprise in the previous fiscal year did not exceed NT$100,000,000, the said enterprise is not considered a monopolistic enterprise. Regarding the petitioners accusation that Yichang Co. is a monopolistic enterprise described in the FTL, the FTC's findings showed that there were 18 legal slaughterhouses conducting slaughter of meat geese in this particular market and three of them were located around Tainan County. There was not only one slaughterhouse in southern Yunlin County as the petitioners had stated. Therefore, the meat goose farmers could decide which slaughterhouse they wanted to do business with. The investigation also revealed that the slaughter Yichang was accounted for about 14% of the slaughter among locall legal slaughterhouses. After calculation, the percentage constituted the sales volume of Yichang Co. is about NT$24,660,000 per year. Hence, in accordance with the aforesaid regulations, Yichang was not considered a monopolistic enterprise and no regulations against monopolistic enterprises could apply.

3. As for whether the demand that Yichang Co. imposed on meat goose farmers to use only a specific feed brand constituted tie-in feed sales in the FTL. According to subparagraph 6 of Article 19 of the same law, the so-called "tie-in sale" refers to a situation in which there are two products that consumers can purchase separately but the supplier demands that the buyer purchase both at the same time or will refuse transaction. "Tie-in sales" may help save transaction costs, stabilize quality and promote the result of competition; therefore, it is not per se illegal. It has to be judged on the basis of rule of reason. According to the FTC's investigation, Yichang Co. did not use signing of supply contracts as a condition when dealing with meat goose framers and also did business with meat goose farmers without a contract. This is inconsistent with so-called tie-in sale conduct when the trading counterparts would be told expressly or impliedly that they could not make any purchase without buying the tied-in product. In addition, as the quality of feed could affect the quality of the goose meat, it was justifiable that Yichang, based on its long business experience, wanted to establish an agreement with the contracted farmers to use only feed of a specific brand. Based on the market status of Yichang Co., the structure of the market in concern, and the influence of the contract fulfillment on the market competition, available evidences were insufficient for regarding the demand the company imposed on the contracted meat goose farmer to use only feed of a specific brand as restricting or impeding competition. Therefore, the FTC decided that Yichang Co. had not violated the FTL.

Summarized by Tseng, Wen-Chun; Supervised by Liao, Hsien-Chou □

Hocheng Corporation

1000th Commissioners' Meeting (2011)

Case: Hocheng Corporation violated the Fair Trade Law for resale price maintenance and cross-district sale coordination
Key Word(s): Bathroom equipment, cross-district sale approval
Reference: Fair Trade Commission Decision of January 5, 2011 (the 1000th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100005
Industry: Manufacture of Ceramic Sanitation Fixtures (2323)
Relevant Law(s): Articles 18 and 19(vi) of the Fair Trade Law

Summary:

1. Residents in Kinmen complained that when trying to purchase from a local distributor for Hocheng Corporation (hereinafter referred to as Hocheng Corp.) on the main island, they were stopped by the general distributor in Kinmen and Hocheng Corp. The FTC investigated the case but found nothing illegal. However, during the investigation, the FTC discovered that Hocheng Corp. was involved in other illegal activities and therefore continued to investigate on this matter.

2. Findings of the FTC after investigation:

(1) Hocheng Corp. has about 20% of the domestic bathroom equipment market share. Its products are sold either through "general distributors (who buy off from Hocheng Corp.)" or "sales offices (run by Hocheng Corp. and their sales areas do not overlap with those of general distributors.)"

(2) The product pricing of Hocheng is divided into "normal dales" and "housing project special offers":

(i) Normal sales: All bathroom equipment from Hocheng Corp. has list prices and different discounts are given when it is sold to general distributors or when a general distributor (sales office) resells it to distributors. This is referred as the "bathroom equipment price policy" of Hocheng Corp.

(ii) Housing project special offers: With housing projects that require large

quantities of bathroom equipment, general distributors (sales offices) or their distributors need to fill out the "Housing Project Special Offer Registration Form" for Hocheng Corp. to approve the discount before the contract can be signed officially, and the profit for general distributors is uniformly set to be 7% of the closed deal.

(iii) With "housing project special offers" that involves cross-district transaction, Hocheng Corp. has not established any written regulation but distributors are required to obtain approval from Hocheng Corp. for each case, it is initialed by the concerned general distributor (sales office) filling out the "Housing Project Special Offer and Cross-District Contact Detail List." In principle, when Hocheng Corps receives the document, the distributor who has first filed the document is given the priority to complete the deal. However, when there are two distributors from different districts contending for the business opportunity at the same time, Hocheng Corp. will determine a flat discount rate for the builder to choose one of the said two distributors to close the deal with, on the condition that the general distributor (sales office) with jurisdiction over the location of the project will handle the delivery while the cross-district general distributor (sales office) handling the deal is required to give 2% of the amount of the deal to cover the transportation cost.

3. Grounds for disposition:

(1) Hocheng Corp. established the "bathroom equipment price policy" to set a limit on the resale prices of general distributors in normal sales and demand general distributors to resell in accordance with the discount rates the company determined. This practice restricted the freedom of general distributors to decide their resale prices. It was in violation of Article 18 of the Fair Trade Law (FTL). The FTC therefore imposed on Hocheng Corp. an administrative fine of NT$1,000,000.

(2) Hocheng Corp. restricted the freedom of distributors to contend and pursue business opportunities in "housing projects" while at the same time requested that distributors had to file "housing project" cases that involved cross-district transaction individually and comply with the company's rules of cross-district transaction registration and coordination. This practice was deemed restriction upon market competition or impediment to fair market competition in violation of subparagraph

6 of Article 19 of the FTL. The FTC therefore imposed on Hocheng Corp. an administrative fine of NT$2,000,000.

Appendix:
Hocheng Corporation's Uniform Invoice Number: 03228304

Summarized by Chang, Ching-Yi; Supervised by Sun, Ya-Chuan □

China Airlines Co., Ltd. & EVA Airways Corp.

1009th Commissioners' Meeting (2011)

Case: The airlines violated the Fair Trade Law while conducting pricing practice of cross-strait passenger flights
Key Word(s): Cross-strait direct flight, airfare, airline company, China Airlines, EVA Air
Reference: Fair Trade Commission Decision of March 9, 2011 (the 1009th Commissioners' Meeting), Dispositions Kung Ch'u Tzu No.100032 and 100033
Industry: Air Transport (5100)
Relevant Law(s): Articles 19(vi) and 24 of the Fair Trade Law

Summary:

1. On April 7, 2010, the media reported that the cross-strait airfares were overpriced and the prices did not come down in spite of the increased numbers of flights and shortened flight distances. The FTC therefore initiated an ex officio investigation to find out whether the pricing practice of the airlines involved violation of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

(1) According to the plane ticket marketing mechanism of China Airlines Co., Ltd. (hereinafter referred to as China Airlines) and Eva Airways Corporation (hereinafter referred to as EVA Air), the rebate per ticket for ticketing centers (hereinafter referred to as the T/C) for cross-strait direct or transfer flights was merely NT$150, considerably lower than the rates for other routes, normally between NT$600 and NT$700. This rebate is the maximum room allowed for price competition among travel agencies when selling plane tickets. The two airline companies would call up the T/C to understand the ticket sales conditions, especially whether travel agents were selling tickets at prices beyond the rebate would allow. Eva Airways even signed with the T/C the "Memorandum of Understanding of Sales of Eva Airways Tickets by T/C in Taiwan" in which it was stipulated that the T/C were required to sell tickets according to the busy and slow season rates of each air route defined by the company and any violations could lead to termination or suspension of the ticketing agent status, depending on the gravity. The said practice not only greatly impair the possibility for price competition among travel agencies when selling cross-strait air tickets but also facilitated the airline companies in the upstream to perform price supervision on one another and thus allowed them to avoid price war and indirectly helped maintain the price rigidity of the agents (the T/C) in the downstream. Judging from the intention of the said conduct of China Airlines and Eva Air – the two companies, China Airlines 29.2% and Eva Airways 20.6%, together accounting for almost 50% of the cross-strait direct flight market – as well as the highly limited supply-demand adjustment function of the cross-strait air transportation market, the FTC considered the two companies' use of their dominant status on the market to set the said ticketing rebate per ticket for travel agencies for both direct and transfer cross-strait flights at a rate considerably lower than that for any other route an unjustifiable restriction on the business activities of travel agencies and an act of restriction on market competition in violation of subparagraph 6 of Article 19 of the FTL.

(2) Airfares vary greatly with the ticket type, ticket class, and its valid period, with the Y Class being the most expensive among economy seats. The findings of

the FTC's investigation showed that after China Airlines and Eva Air lowered the airfares in April 2010, the number of Y Class seats apparently increased compared to cheaper economy class seats. As a result, the average total prices of tickets issued by the T/C were either equivalent to or only slightly lower than in March and April 2010 before the airfare decreases took place. Since travel agents and consumers could only make reservations through online booking systems, information asymmetry obviously existed between airline companies and consumers. Despite their airfare decrease announcements, China Airlines and Eva Air readjusted the ratio of economy class seats in their planes as a response to the price decrease. Meanwhile, consumers thought the prices had really come down and thus planned their trips. However, due to the said seat ratio adjustment, they found it difficult to obtain tickets for lower-price classes after the price decrease. On the contrary, they had no choice but to make reservations for seats of more expensive classes because the market supply and demand was highly limited. What the two airlines did was deceptive and obviously their conducts are sufficient to affect the trading order of the cross-strait air transportation market in violation of Article 24 of the FTL.

3. Grounds for disposition:

(1) China Airlines and EVA Air stipulated in their T/C ticketing rebate regulations the rebate rate for T/C for cross-strait direct and transfer air tickets considerably lower than that for any other international route. It was an unjustifiable restriction on the business activities of their trading counterparts and an act of competition restriction in violation of subparagraph 6 of Article 19. They announced price decreases starting in April 2010 but changed the ratio of seats of different economy classes in their planes and therefore the price decreases did not achieve the desired goal. It was deceptive and obviously unfair conduct able to affect trading order in violation of Article 24 of the FTL.

(2) In addition to applying the first section of Article 41 of the FTL and ordering the two companies to immediately cease the unlawful act, the FTC also imposed on China Airlines an administrative fine of NT$10,000,000 and on EVA Air NT$7,000,000 for their violation of subparagraph 6 of Article 19 of the FTL as well

as an administrative fine of NT$10,000,000 on China Airlines and NT$5,000,000 on EVA Air for their violation of Article 24 of the FTL. In total, China Airlines was fined NT$20,000,000 and EVA Air NT$12,000,000. The aggregate of the fines was NT$32,000,000.

Appendix:
China Airlines Co., Ltd.'s Uniform Invoice Number: 11145904
EVA Airways Corp.'s Uniform Invoice Number: 23225229

Summarized by Shen, Li-Wei; Supervised by Liou, Chi-Jung □

Manufacturers of Blood Sugar Monitoring Devices and Test Paper

1026th Commissioners' Meeting (2011)

Case: An ex officio investigation initiated by the FTC on the manufacturers of the blood sugar monitoring devices and test paper
Key Word(s): Blood glucose monitors, test paper manufacturers
Reference: Fair Trade Commission Decision of July 6, 2011 (the 1026th Commissioners' Meeting)
Industry: Other medical device and product manufacturer (3329)
Relevant Law(s): Articles 19(iii) and 24 of the Fair Trade Law

Summary:

1. A report was presented during an FTC affairs meeting of August 26, 2010 on the issue of whether medical sales staff for blood glucose monitoring devices and blood glucose test paper manufacturers in the sale and promotion of blood glucose monitors and blood glucose test paper caused the trading counterparts of competitors

to do business with themselves by coercion, inducement, or other improper means, or otherwise violated regulations of the Fair Trade Law. Upon receipt of the report the FTC initiated an ex officio investigation.

2. Findings of the FTC after investigation:

(1) At present there are approximately 13 providers of blood glucose monitors and test paper products on the domestic market, offering 24 device models. Sales channels include medical device chain stores and large chain pharmacies and drug stores.

(2) At present the three main products sold domestically consist of blood glucose monitoring sets, blood glucose test paper, and trade-ins of new units for old units.

(i) Blood glucose monitoring sets: As blood sugar measuring requires the simultaneous use of a blood sugar monitor and test paper, most blood glucose testers on the market are sold together with free blood glucose test paper. The top three major brands sold in Taiwan are Accu-Chek by Roche Diagnostics, One Touch by Johnson & Johnson, and Optium by Abbot, sold for NT$3,000-4,000 per set, whilst local brands sell for under NT$3,000. In addition, sales prices for a given brand's product differ from pharmacy to pharmacy, varying by several hundred NT dollars.

(ii) Blood glucose test paper: As blood glucose test paper cannot be reused, and the test paper cannot be universally used with different brands and models, consumers ordinarily continue to use the test paper from a given brand. Market competition is fairly intense in Taiwan, where the sales price for blood glucose test paper ranges from NT$650-1200, varying in price by up to NT$200 from one pharmacy to another. Compared to prices in other countries and regions, blood glucose test paper is relatively inexpensive in Taiwan.

(iii) Trade-ins: At present most proprietors offering old for new unit exchanges do not specify the brand of the old unit traded in exchange for a new one in the effort to win over the business of patients from other brands' old units. Trade-in specials range in price from NT$850 to $2,450, and most firms offer related products enabling patients to exchange old units for new blood glucose monitors free of change or for a very low price, lowering the cost of switching brands.

3. Grounds for non-disposition:

(1) At present the free gifting of monitoring units is generally limited to charity donations for Type 1 diabetes patients or a small number of disadvantaged patients, in which cases patients are not required to purchase blood glucose test paper or exclude free offers from other brands. Accordingly, donation recipients can receive free units from multiple brands and select blood glucose test paper from various brands at regular retail outlets. In addition, the Bureau of National Health Insurance began reimbursing Type 1 diabetes patients for blood glucose test paper from June 1, 2010, enabling patients to autonomously select National Health Plan participating medical institutions or present a prescription to participating pharmacies to receive blood glucose test paper. Consequently, the free gifting of blood glucose monitors to this type of patient does not constitute restriction of competition or damaging fair market competition.

(2) The free gifting of blood glucose monitors serves merely to reduce the consumption cost of first-time blood glucose monitor purchase or switching to another brand for diabetes patients, permitting patients to freely decide which brand monitor and test paper to use. Further, given the insignificant differences between the blood glucose monitors offered by the major brands, consumers can take advantage of free giveaways or trade-in offers to switch to another brand for a low cost, thus businesses must ultimately differentiate themselves from others through such factors as the accuracy and functionality of blood glucose monitors, and the price of blood glucose test paper in order to compete. In light of the available facts, it is difficult to deem such conduct to violate the terms of Article 19(iii) and Article 24 of the Fair Trade Law.

Summarized by Tseng, Huei-Yi; Supervised by Lin, Gin-Lan □

Easycard Corporation

1029th Commissioners' Meeting (2011)

Case: The FTC initiated an ex officio investigation on the Easycard Corporation abusing its monopolistic position in transportation payment implements market
Key Word(s): Electronic ticket, EasyCard stored value card, bundled sales
Reference: Fair Trade Commission Decision of May 27, 2011 (the 1029th Commissioners' Meeting)
Industry: Other Unclassified Financial Agent (6499)
Relevant Law(s): Articles 10(ii), 19(ii) (vi) of the Fair Trade Law

Summary:

1. This case concerns reports that the Easycard Corporation (hereinafter referred to as"Easycard") has violated the terms and conditions of the Fair Trade Law through its conduct in the electronic ticketing market: If Easycard contracts with one particular convenience store retailer among the four major ones in Taiwan, thereby excluding the others from joining as partnered agencies and interfering with opportunities to compete, such conduct would be considered in violation of Article 19(ii) of the Fair Trade Law. Further, Easycard compelled parties interested in entering partnership agreements to purchase terminal equipment under the justification of system integration and interface specifications, in violation of Article 19(vi) of the Fair Trade Law. Moreover, in addition to payment of licensing fees, financial institutions issuing Easycard stored value cards were required to pay issuing fees. The reasonableness of such fees is deemed in accordance with the terms of Article 10(ii) of the Fair Trade Law.

2. Background:

(1) Easycards issued by the Easycard Corporation have not established a share of fifty percent in the small sum consumer payment implements market; however, Easycard has established a fifty-percent share in the transportation payment

implements market, and accordingly must comply with the parameters of a monopoly enterprise as defined by Article 5-1(1)(i) of the Fair Trade Law. In addition, the FTC's investigation found that as defined by the terms of the Mass Rapid Transit Act regarding monopolistic enterprises, the scope of the cardholder base for the integrated Greater Taipei MRT and city bus public transportation systems constitutes a competitive advantage over other businesses, and that a high degree of reliance exists among consumers using Easycards for taking public transport. Moreover, the network effect engendered by the bilateral market has raised the conversion costs for trading counterparts. Consequently, the Easycard Corporation commands a dominant position in the transportation payment implement market, and has the capacity to exclude competition, and therefore constitutes a"monopolistic enterprise" as defined by Article 5 of the Fair Trade Law.

(2) Additional investigation showed that the Easycard Corporation's cooperative arrangements authorizing banks to issue Easycard stored value cards were undertaken via open bidding and open solicitation of vendors; any bank that finds the Easycard Corporation's authorization fees unreasonable can choose to cooperate with other parties or issue its own electronic tickets. Agencies contracting with Easycard include mass rapid transit operators, parking lot operators, taxi fleets, and participating small-sum consumer retailers, and that such aspects of cooperation with contracted agencies such as operational workflow, rights and privileges, and fee payments, were explicitly stated on the Internet and in written contracts. It was further found that the Easycard Corporation does not manufacture Easycard system card readers and terminal equipment itself, and that contracted agencies obtained terminal equipment rights through autonomous consultation and purchase or lease, purchased by the Easycard Corporation, leased from the Easycard Corporation, and furnished by the Easycard Corporation.

3. Findings of the FTC after investigation:

(1) Based on the evidence currently available, the Easycard Corporation has not engaged in such unfair conduct as unfair pricing, discriminatory treatment, or tie-ins via a monopolistic position in the transportation payment implements market in

violation of the Fair Trade Law.

(2) The arrangement between the Easycard Corporation and banks issuing Easycard stored value cards was made via open bidding and open solicitation of vendors, where it proposed conditions to the banks regarding such fees and payments as security deposits, royalties, and card issuing royalties for fulfilling the terms of the agreement, and where banks interested in cooperation willingly submitted applications and entered into contracts. Further, whether or not the Easycard Corporation cooperated with banks to jointly issue Easycard stored value cards is a matter of operational freedom, and the banks reserve the right not to issue joint stored value cards with Easycard, instead choosing to cooperate with international credit card or financial firms, or issue their own electronic tickets. Consequently, it is difficult to determine that the Easycard Corporation's determinations regarding licensing fees for banks issuing Easycard stored value cards on the basis of its high share of the mass transit payment mechanism market.

(3) The contracted agencies that the Easycard Corporation selected for cooperation in accordance with the terms of the Provisions Governing Electronic Ticketing Issuance and Management currently include mass transit operators, parking lot operators, taxi cab fleets, and petty consumption retailers, and not exclusively contracted with just one of Taiwan's four major convenience store retailers. Further, in reaching agreements with small sum consumption retailers and assessing related fees with its own needs in mind, each party must evaluate its own situation before determining whether or not to cooperate with Easycard. Therefore it is difficult determine whether the Easycard Corporation had reasonable justification for discriminatory conduct toward other enterprises by not engaging in contractual agreements with participating enterprises.

4. In accordance with the terms of the Provisions Governing Electronic Ticketing Issuance and Management, the rights and responsibilities of an electronic ticket issuing firm and a contracted agency must be set forth in a cooperative agreement detailing such items as the installation of electronic ticketing automatic debiting equipment and cost sharing. In addition, the Easycard Corporation itself does

not manufacture card reading machines and terminal equipment, hence Easycard electronic ticketing services and system terminal equipment are separable goods or services, and a contracted agency may determine on its own whether or not to purchase Easycard system terminal equipment upon consideration of its own needs. Therefore, it is difficult to deem that the Easycard Corporation engaged in transactions via improper restriction of the conditions under which its counterparties could conduct business activities.

Appendix:
Easycard Corporation's Uniform Invoice Number: 70765909

Summarized by Chou, Huang-Chun; Supervised by Liao, Hsien-Chou □

Jia Lian Multimedia Co., Ltd. & Zhen Yang Multimedia Technology Co., Ltd.

1030th Commissioners' Meeting (2011)

Case: Jia Lian Multimedia Co., Ltd. and Zhen Yang Multimedia Technology Co., Ltd. violated Article 19(iii)(iv) of the Fair Trade Law
Key Word(s): Karaoke products, MIDI, agent, distributor
Reference: Fair Trade Commission Decision of August 3, 2011 (the 1030th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100142
Industry: Sound Recording and Music Publishing (5920)
Relevant Law(s): Article 19 of the Fair Trade Law

Summary:

1. Jia Lian Multimedia Co., Ltd. (hereinafter referred to as Jia Lian Co.) and Zhen yang Multimedia Technology Co. Ltd. (hereinafter referred to as Zhen Yang Co.)

were reported, after receiving the license for the MIDI karaoke products from Mei Hwa Multimedia Technology Co., Ltd. (hereinafter referred to as Mei Hwa Co.), to have conducted presentations in central and southern Taiwan to announce to distributors and karaoke machine proprietors that they had to rent karaoke products from Jia Lian Co. from then on and the charge for coin-operated karaoke machines would be raised from NT$10 per song to NT$20. The conduct was in violation of Article 19 of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

(1) Zui Ing Co., Ltd. (hereinafter referred to as Rui Ing Co.), together with Hong Yin Multimedia Technology Co., Ltd. (hereinafter referred to as Hong Yin Co.), and Mei Hwa Co. were the top two competitors on the karaoke product market. After Jia Lian Co. and Zhen Yang Co. were established at the end of 2008, they acquired the distributorship and agency for the karaoke products from Mei Hwa Co. and Hwa Te Da Qi Multimedia Technology Co., Ltd. (hereinafter referred to as Hwa Te Co.) On behalf of Jia Lian Co. and Zhen Yang Co., Xiao Jin Hui conducted product presentations in Chiayi, Tainan, Yunlin, Changhwa, Kaohsiung and Pingtung in November and December of 2008 and invited local distributors and karaoke machine proprietors to attend the presentation meetings. At these presentations, Xiao announced that Jia Lian Co. and Zhen Yang Co. had already acquired the agency for the MIDI karaoke products from Mei Hwa Co. and Hwa Te Co. and the rent for the MIDI karaoke products from Jia Lian Co. and Zhen Yang Co. would be NT$2,200 per month from then on. Xiao also claimed that Jia Lian Co. and Zhen Yang Co. would also obtain the agency for the products from Hong Yin Co. and Rui Ing Co. and would be responsible for copyright infringement issues.

(2) When Jia Lian Co. and Zhen Yang Co. conducted a product presentation at a restaurant in Minsiong Township, Chiayi County on November 17, 2008, they handed out to each of the distributors and karaoke proprietors at the venue a sheet containing 16 issues to be discussed during the presentation. After the attendees put down their signatures, the sheets were collected. Afterwards, Xiao Jin Hui continued to hold presentations in Tainan, Yunlin, Changhwa, and Kaohsiung and the "discussion

items" were the same.

(3) The aforesaid "discussion items" included the following: Point 10, "monthly payment of NT$2,200 for two sets of software (Mei Hwa and Hwa Te); Point 7, "rents range from NT$5,500-6,000, with NT$5,500 the minimum, and rents for outdoor equipment are NT$7,500-8,000"; Point 13, "the rent for a machine without accessories but including software is NT$4,500 for MIDI, NT$5,500 for Small V, and NT$4,000 for software only"; and Point 15, "the amount to put in coin-operated machines is readjusted to NT$20 per song", and so forth.

3. Grounds for disposition:

(1) The inappropriate measures Jia Lian Co. and Zhen Yang Co. employed to make the trading counterparts of their competitor to transact with them were deemed impediment to fair competition on the market and in violation of subparagraph 3, Article 19 of the FTL:

(i) After acquiring only the distributorship and agency for the karaoke products from Mei Hwa Co. and Hwa Te Co. in November 2008, and haven't yet receiving the license for the MIDI products from the competitor, Hong Yin Co. and Rui Ing Co., while perfectly aware of the proclamation from Rui Ing Co. on November 24, 2008 that the company "would never have its products marketed together with those from Mei Hwa and Hwa Te by any means," Jia Lian Co. and Zhen Yang Co. still conducted product presentations at various places to announce to distributors that the rental rate for their MIDI karaoke products was NT$2,200 and they would also obtain the agency for the MIDI karaoke products from Hong Yin Co. and Rui Ing Co. and would handle all intellectual property infringement issues. This misled the distributors and karaoke machine proprietors into believing that the MIDI karaoke products distributed by Jia Lian Co. and Zhen Yang Co. were lower than the current market rates and there would not be any intellectual property disputes in the future.

(ii) Some distributors attending the presentations raised the question of what they could do with the expenses they had already paid by checks in advance to Hong Yin Co. and Rui Ing Co. Xiao Jin Hui replied that lawyers would be hired to handle the matter and Zhen Yang Co. would be responsible for the fees. Later on, these

distributors also accompanied Xiao Jin Hui at the presentations held in Yunlin, Changhwa, Tainan, Kaohsiung, and Pingtung and helped explain how to issue legal attest letters to cancel rental leases, withdraw the payments already disbursed in advance, and terminate the contracts. By the beginning of 2009, they helped more than 20 karaoke machine proprietors withdraw over NT$6,000,000 and the success convinced distributors that there wouldn't be any breach of contract or disadvantages in canceling the rental leases for karaoke products with Hong Yin Co. and Rui Ing Co.

(iii) The conduct of sending legal attest letters to Hong Yin Co. and Rui Ing Co. by the distributors and karaoke machine proprietors in Chiayi, Yunlin and Changhwa areas in December 2008 to cancel the renewal of their contracts and request return of the checks issued as advance payments and the switchover to rent MIDI from Zhen Yang Co. was already an impediment to fair competition on the market. The improper measures Jia Lian Co. and Zhen Yang Co. employed to get the trading counterparts of their competitor to transact with them were an impediment to fair competition and in violation of subparagraph 3 of Article 19 of the FTL.

(2) Jia Lian Co. and Zhen Yang Co. were in violation of subparagraph 4 of Article 19 of the FTL for applying inappropriate measures to make other enterprises refrain from price competition as such measures restricted market competition and impede fair competition.

(i) By suggesting the criteria for determining karaoke machine rental rates to the karaoke machine proprietors attending the presentations and requesting them to put down their signatures, Jia Lian Co. and Zhen Yang Co. apparently had the intention to prevent them from engaging in price competition. It was therefore considered that Jia Lian Co. and Zhen Yang Co. "more than suggested" that the karaoke machine rental rates shall serve as reference for karaoke machine proprietors. It was also found that Xiao Jin Hui did express during the presentations that the software and hardware rental rate suggestions were made in the hope that proprietors would not engage in price competition because maintaining the rates could bring better profits. As a result, most proprietors concurred with the suggestions. It was evident that Jia Lian Co. and Zhen Yang Co. made the suggestions for the proprietors to increase their

profits and in turn made them more interested in renting the MIDI karaoke products the two companies presented. During the presentations, they discussed, suggested, and requested the distributors and karaoke machine proprietors to unify their karaoke machine rental rates and increase the price per song to use coin-operated karaoke machines. They also demanded that the attendees to sign their names and collected the papers right on the spot and then to create a psychologically binding effect on the attendees. This binding effect was likely to have influence on the said attendees' karaoke machine rental rate decisions. It was deemed an "inappropriate measure" to make other enterprises not to engage in price competition.

(ii) Starting in 2009, karaoke machine proprietors in various places rented up to two, three thousand sets from Zhen Yang Co. or its distributors each month. The result created actual damage to the competition on the karaoke machine rental market that indeed led to restriction on market competition and impediment to fair competition. Jia Lian Co. and Zhen Yang Co. were therefore deemed in violation of subparagraph 4, Article 19 of the FTL for employing inappropriate measures to make other enterprises refrain from price competition and such measures restricted market competition and impede fair competition.

(3) Considering the motive of Jia Lian Co. and Zhen Yang Co., the damage caused by their conducts, the seriousness of the violation, the scale of their operations, and their attitude after the violation, the FTC acted in line with the first section of Article 41 of the FTL, ordered the two companies to immediately cease the two aforesaid unlawful acts, and also imposed on them an administrative fine of NT$900,000 respectively.

Appendix:
Jia Lian Multimedia Co., Ltd.'s Uniform Invoice Number: 24270904
Zhen Yang Multimedia Technology Co., Ltd.'s Uniform Invoice Number: 24280683

Summarized by Chiou, Shwu-Fen; Supervised by Liao, Hsien-Chou □

He An Co., Ltd.

1035th Commissioners' Meeting (2011)

Case: He An Co., Ltd. violated the Fair Trade Law by selling Lexapro tablets 10 mg at a significantly lower price to exclude competition from other vendors

Key Word(s): Medical center, depression, medicine

Reference: Fair Trade Commission Decision of September 7, 2011 (the 1035th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100163

Industry: Drugs and Medicines Manufacturing (2002)

Relevant Law(s): Article 19(iii) of the Fair Trade Law

Summary:

1. The East Bamboo Company, Ltd. (hereinafter referred to as East Bamboo) is the exclusive sales agent of Epram tablets 10 mg. antidepressant medicine, and the He An Co., Ltd. (hereinafter referred to as He An) is the exclusive distributor of Lexapro tablets 10 mg. In September 2008 the East Bamboo Company received a bid notification from Chung-Ho Memorial Hospital of Kaohsiung Medical University, which it entered at a unit price of NT$9 per 10 mg. Epram tablet. However, upon subsequently learning that He An won the bid at a unit price of NT$1 per 10 mg. Lexapro tablet, East Bamboo contended that He An had excluded other vendors from competition through low pricing so as to monopolize the antidepressant medicine market, conduct that violated the terms of the Fair Trade Law.

2. Findings of the FTC after investigation:

Upon investigation the FTC found that medicine sold at medical centers, local hospitals, and large regional hospitals throughout the country normally require proof of use by other medical centers in order to participate in price bid procedures for hospital purchasing. That is to say, the first use of a given medicine by a medical center in the country is a vital threshold to sales opportunities to medical centers, local hospitals, and large regional hospitals to increase sales volume. If East

Bamboo had successfully won the purchase bid for Chung-Ho Memorial Hospital of Kaohsiung Medical University on September 16, 2008, it would qualify for bidding on subsequent medicine purchases by other medical centers, local hospitals, and regional hospitals, placing considerable price competition pressure on He An.

3. Grounds for disposition:

(1) Upon investigation the FTC found that Lexapro 10 mg. tablets and Epram 10 mg. tablets are covered by the National Health Insurance Plan. At the time of the incident under review, National Health Insurance paid NT$34.4 and 27.5 for Lexapro and Epram, respectively. Although identical in contents, Lexapro 10 mg. tablets are sold by the original manufacturer, and National Health Insurance pays NT$6.9 per tablet more than for the generic Epram 10 mg. tablets. If domestic medical institutions take the profit from the price difference (the difference between the National Health Insurance reimbursement price and actual purchase price) into consideration, then East Bamboo gave away product free of charge, and domestic medical institutions could earn a price differential of NT$27.5 per tablet, whilst as long as He An marketed the product for less than NT$6.9, domestic medical institutions could earn more than the NT$27.5 price differential.

(2) In addition, He An's conduct excluded East bamboo from taking advantage of circumstances to obtain qualifications for taking part in purchase bids for most large hospitals. In addition to being excluded from the purchasing bid market for most large hospitals between 2008 and November 2010, East Bamboo was only able to access the small hospital and clinic non-mainstream market. Further, the Bureau of National Health Insurance of the Executive Yuan's National Health Administration lowered the reimbursement price per 10 mg. tablet of Epram from NT$27.5 to $25.6 on October 1, 2009, preventing East Bamboo from entering the National Health Insurance Plan medicine reimbursement market at the initial stage and gaining access to the market for the majority of large hospitals, severely damaging the sales turnover of Epram 10 mg. tablets and restricting East Bamboo from competing in the related medicine market.

(3) Upon consideration of the motivations for He An's unlawful conduct and

anticipated unfair profits, the damage to the trading order resulting from the unlawful conduct, and the ongoing duration of damage to the trading order from the unlawful conduct, the FTC ordered He An to cease the unlawful conduct described in the previous paragraph immediately and imposed a fine of NT$3 million.

Appendix:
He An Co., Ltd.'s Uniform Invoice Number: 04224381

Summarized by Chen, Haw-Kae; Supervised by Lin, Gin-Lan □

Lian-Hong LPG Bottling Co.

1046th Commissioners' Meeting (2011)

Case: Lian-Hong LPG Bottling Co., Ltd. violated the Fair Trade Law by affecting trading order of bottled LPG market in Kinmen
Key Word(s): Bottled LPG, bottle inspection, Kinmen
Reference: Fair Trade Commission Decision of November 23, 2011 (the 1046th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100228
Industry: Retail Sale of Other Fuel Products in Specialized Stores (4829)
Relevant Law(s): Article 19(ii)(iii) of the Fair Trade Law

Summary:

1. When the FTC visited Kinmen County in 2010 to check the local bottled LPG market, certain LPG shops complained that Lian-Hong LPG Bottling Co., Ltd. (hereinafter referred to as Lian-Hong), who operated the only local LPG bottle inspection center, charged LPG shops that did not have their bottles refilled by Lian-Hong a higher bottle inspection fee to force them to turn to Lian-Hong for LPG

bottle refilling. Besides restricting the liberty of local LPG shops to choose the plant for refilling, Lian-Hong's conduct also had an effect on the competing bottling plant run by the Farmers' Association. Suspecting the conduct was in violation of the Fair Trade Law, the FTC therefore initiated an ex officio investigation into the matter.

2. Findings of the FTC after investigation:

(1) In 2002, there were three bottling plants in Kinmen: Lian-Hong, Fujian Bottling Plant, and the Farmers' Association's Bottling Plant. Fujian Bottling Plant closed down in 2003 and this left two competitors in the market. In addition to the bottling business and three LPG shops under its direct management, Lian-Hong also operated the only LPG bottle inspection center and therefore definitely had its market dominance in Kinman.

(2) When Lian-Hong began to offer the bottle inspection service at the end of 2001, the competent authority approved the company to inspect 2,200 bottles per month. After August 2007, the number was increased to 2,975. However, the utilization rate of Lian-Hong's bottle inspection capacity stayed, on average, below 50%. In recent years, as a result of the fire department's strict demand, the numbers of bottles sent in for inspection went up considerably. LPG shops reflected that Lian-Hong not only delayed the inspection time but also imposed a limit on the number of bottles to be sent in. This put a restriction on the business operations of the LPG shops.

(3) The average sales made by the three LPG shops directly run by Lian-Hong accounted for about 31.01% of the total market between July 2009 and July 2010, yet the rate of inspection of bottles from them achieved 34.96% whereas two other LPG shops that had turned to Lian-Hong for refilling after Fujian Bottling Plant closed down had sales making up 14.25% and 9.58% of the total market respectively but the average rates of their bottles inspected were merely 9.72% and 7.24%.

(4) In the past, there was an LPG shop that had its bottles refilled at both Lian-Hong and the Farmers' Association's bottling plant. When Lian-Hong learned about this fact, it immediately warned the said shop not to have any refilling done at the Farmers' Association's bottling plant again, otherwise the bottle inspection fee the said shop was charged would be raised. The shop tried to reason with Lian-Hong

but to no avail and the bottle inspection fee went up. Eventually the shop had to sever its business relations with the Farmers' Association's bottling plant and have its refilling done only by Lian-Hong since the bottle inspection fee raise had increased its management cost.

3. Grounds for disposition:

(1) Normally when an LPG shop makes good sales, the turnover rate of its LPG bottles is high and more LPG bottles will be needed to cope with the market demand. If bottle inspection cannot be conducted in time, the LPG shop will have to purchase more new bottles. This will not only increase its management cost but also have an effect on its business scale. The ratios of bottles from different LPG shops inspected by Lian-Hong and the testimonies made by some LPG shops regarding the quantity of bottles piling up and waiting for inspection at the inspection site showed that Lian-Hong was indeed partial to its own LPG shops and intentionally treated other shops discriminatorily to suppress the bottle turnover rate and business scale of other shops so that the other shops were put in a disadvantageous position in competition on the retail market. The conduct was in violation of subparagraph 2, Article 19 of the Fair Trade Law and the FTC imposed on Lian-Hong an administrative fine of NT$600,000.

(2) After finding out that certain LPG shops were going to the Farmers' Association' bottling plant for refilling, Lian-Hong used increase of bottle inspection fee as a threat to force them not to have their bottles refilled at the Farmers' Association's bottling plant again. The conduct indirectly jeopardized the competitiveness of the Farmers' Association's bottling plant in the bottle refilling market and this violated subparagraph 3, Article 19 of the Fair Trade Law. Accordingly, the Commission imposed an administrative fine of NT$400,000 on Lian-Hong.

Appendix:

Lian-Hong LPG Bottling Co., Ltd.'s Uniform Invoice Number: 97178875

Summarized by Wang, Hung-Chu; Supervised by Sun, Ya-Chuan □

Shanghai LPG Co., Ltd. & Safeway Gas Co., Ltd.

1050th Commissioners' Meeting (2011)

Case: Shanghai LPG Co., Ltd. and Safeway Gas Co., Ltd. violated the Fair Trade Law by earging LPG shops in Jhushan Town, Nantou to participate in price increase

Key Word(s): LPG, bottling plant, Jhushan Town

Reference: Fair Trade Commission Decision of December 21, 2011 (the 1050th Commissioners' Meeting), Dispositions Kung Ch'u Tzu No.100263 and 100264

Industry: Gas Supply (3520)

Relevant Law(s): Article 19(iv) of the Fair Trade Law

Summary:

1. The FTC received an anonymous call on January 20, 2011 to complain that the LPG bottling plants in Jhushan had organized local LPG shops in mid-January and announced that the LPG price per bottle would be increased from NT$720 to NT$780 for businesses and from NT$750 to NT$820 for regular households starting on January 21. The FTC therefore initiated an ex officio investigation into the matter.

2. Findings of the FTC after investigation:

(1) Testimonies made by the LPG shops in Jhushan:

(i) They had received notices about the meeting to be taking place at Safeway's Nantou Bottling Plant on January 13, 2011 from either Safeway Bottling Plant or Shanghai Bottling Plant. All the LPG shops getting their bottles refilled at the two said plants attended the meeting. During the meeting, the two plants displayed a suggested retail price list for various areas from the Bureau of Energy, Ministry of Economic Affairs and indicated that the reasonable prices for Jhushan area should be NT$820 per bottle for regular households and NT$780 for businesses.

(ii) LPG shops that did not attend the meeting at Safeway's Nantou Filling Plant but was invited to the gathering at Da Tou Seafood Restaurant later on confirmed that the manager of Safeway's Nantou Bottling Plant indeed cited the aforesaid prices.

(iii) Other LPG shops that received notices about the meeting at Safeway's Nantou Bottling Plant but did not attend admitted that they were indeed notified to make the price increase on January 21.

(2) The LPG shops directly operated by Shanghai Bottling Plant made the price increase on January 20, 2011 and the majority of the remaining LPG shops in the area also followed suit one after another.

3. Grounds for disposition:

(1) Both bottling plants denied having organized the LPG shops. However, in response to the government's price freeze policy, upstream LPG suppliers had announced that they would not raise the prices of gasoline and LPG in January 2011. Moreover, as the LPG shops ran their business on various scales at different management costs, it was impossible for them to make almost exactly the same price adjustment at about the same time even if some of them had certain cost burden (such as bottle inspection fees and purchases of new bottles) in common. Undoubtedly, the two bottling plants had something to do with the meeting of the LPG shops on January 13, 2011.

(2) By displaying the suggested LPG retail prices for the central region from the Bureau of Energy as ranging between NT$784 to 846, the two bottling plants indicated that the raise of price per bottle for the Jhushan area from NT$750 to NT$820 for regular households and from NT$710 to 780 for businesses was within the suggested price range and thus reasonable, and they therefore instructed the LPG shops to begin the price raise on January 20 or 21.

(3) After the meeting at Safeway's Nantou Bottling Plant on January 13, 2011, the two LPG shops directly operated by Shanghai Bottling Plant acted according to the price increase decision and made the raise as scheduled (on January 20) to mark up the price per bottle to NT$820 for regular households and to NT$750~770 for businesses. They confessed to have notified the shops they were familiar with about the amounts and time of the increase. Meanwhile, Safeway Bottling Plant also informed its LPG shops on January 20 that the price adjustment will become effective the next day. All the above indicated the intention of the two bottling plants to cause

other LPG shops to go along with the price increase.

(4) Even the LPG shops that did not attend the meeting held at Safeway's Nantou Plant on January 13 were notified later by the two bottling plants about the increase.

(5) The improper practices employed by Shanghai Bottling Plant and Safeway Bottling Plant to push the LPG shops in Jhushan, Nantou to increase the LPG retail price per bottle and refrain from price competition was restriction on market competition and impediment to fair competition in violation of subparagraph 4, Article 19 of the Fair Trade Law. The Commission imposed on the two plants an administrative fine of NT$750,000 and NT$1,500,000 respectively.

Appendix:
Shanghai LPG Co., Ltd.'s Uniform Invoice Number: 00021407
Safeway Gas Co., Ltd.'s Uniform Invoice Number: 86927084

Summarized by Chang, Ching-Yi; Supervised by Sun, Ya-Chuan □

East Bamboo Co., Ltd.

1063rd Commissioners' Meeting (2012)

Case: An ex officio investigation initiated by the FTC against East Bamboo Co., Ltd. for selling the 10mg Epram antidepressant tablets at a low price to prevent other businesses from competing
Key Word(s): Medical center, depression, medicine
Reference: Fair Trade Commission Decision of March 21, 2012 (the 1063rd Commissioners' Meeting)
Industry: Drugs and Medicines Manufacturing (2002)
Relevant Law(s): Article 19(iii) of the Fair Trade Law

Summary:

1. In 2008, 2009, and 2010, East Bamboo Co., Ltd. sold the 10mg Epram tablets to the medical institutions in the country at the average of 19.56 NT dollars (the same currency applies hereinafter), 17.49 dollars, and 14.91 dollars. However, in the second half of 2010, East Bamboo Co., Ltd. won the bid held by the Chang Gung Healthcare System with the offer of 1.3 dollars per tablet. Whether judging on the payment from the National Health Insurance for each 10mg Epram antidepressant tablet (25.6 dollars) or the production cost of the said medicine, 1.3 dollars was obviously incommensurable. Therefore, the low-price offer from East Bamboo Co., Ltd. was aimed at excluding other suppliers from competing was suspected of violating the Fair Trade Law.

2. Findings of the FTC after investigation:

It showed that as a result of Hoan Pharmaceuticals' offer of 1 dollar per tablet, which was far lower than the purchasing cost and beat East Bamboo's bid, in 2008, East Bamboo Co., Ltd. lost the qualification to participate in subsequent procurement tenders held by most large hospitals in the country. Between 2008 and November 2010, East Bamboo Co. was only able to operate in the non-mainstream market that consists of small hospitals and clinics. Before East Bamboo took part in the medicine procurement tenders held by the hospitals under the Chang Gung Medical Foundation and St. Paul's Hospital in the second half of 2010, there was a huge market share difference between Hoan Pharmaceuticals' 10mg Lexapro film-coated tablets and East Bamboo's 10mg Epram tablets (the main ingredient of both being Escitalopram) in the domestic antidepressant market from 2008 to 2010. The advantages of the former included that Hoan's Lexapro tablets directly came from the manufacturer, and the quality, effect and the amount payable by patients for the medicine were all more competitive than Epram that had the same main ingredient but was under a generic name. It was no wonder that East Bamboo's Epram was unable to gain a fair share of the market. However, as East Bamboo Co. was still qualified to get business from other medical centers in the country, it reflected on Hoan Pharmaceuticals' earlier bid

of NT$1 per tablet that was far lower than the purchasing cost and made the decision eventually that the company had to offer better trading terms to gain opportunities to compete in the medicine market.

3. Grounds for disposition:

The sales of the 10mg Epram tablets to the hospitals under the Chang Gung Medical Foundation and St. Paul's Hospital between January and September of 2011 not only meant the acquisition of East Bamboo Co. of the status as a medicine provider to a medical center and its eligibility to take part in competition in the domestic market for antidepressants using Escitalopram as the main ingredient, but also helped alleviate its risk of overkeeping the said medicine that had a limited shelf life as the ratio of its stock to purchases started to go down. The conduct of East Bamboo Co. was indeed able to increase its sales of the 10mg Epram tablets to pharmacies and logistics companies and thus to help boost its business income to compensate for the loss from selling to the aforementioned hospitals at unreasonably a low price. Based on the facts that the 10mg Epram tablets from East Bamboo Co. did not make up much of the antidepressant market share, the significance of the proof of capacity as a medicine supplier required by medical centers in the country, the reduction of the aforesaid medicine inventory risk, and the loss from the said sales practice did not increase the company's income from the sales of the 10mg Epram tablets, the FTC decided that the offer of NT$1.3 per tablet from East Bamboo Co. in the second half of 2010 to win the medicine procurement tender held by the Chang Gung Medical Foundation was not without economically rational justification or was aimed at excluding other businesses from competing in the medicine market. Therefore, the conduct did not violate subparagraph 3, Article 19 of the Fair Trade Law.

Appendix:

East Bamboo Co., Ltd.'s Uniform Invoice Number: 22161606

Summarized by Chen, Haw-Kae; Supervised by Lin, Gin-Lan □

Hotai Motor Co., Ltd.

1064th Commissioners' Meeting (2012)

Case: Hotai Motor Co., Ltd. violated the Fair Trade Law for limiting the sales area of its distributors
Key Word(s): Car, area of responsibility, cross-district transaction
Reference: Fair Trade Commission Decision of March 28, 2012 (the 1064th Commissioners' Meeting), Disposition Kung Ch'u Tzu 101031
Industry: Wholesale of Motor Vehicles (4651)
Relevant Law(s): Article 19(vi) of the Fair Trade Law

Summary:

1. The FTC received a written complaint from the Taipei City Taxi Drivers' Association about the sales area division policy of Hotai Motor Co., Ltd. (hereinafter referred to as Hotai Motors) for its distributors Taipei Motor Co., Ltd. (hereinafter referred to as Taipei Motors) and Kuotu Motor Co., Ltd. (hereinafter referred to as Kuotu Motors). Both dealerships could only sell cars to the taxi operators within their duty areas and cross-district transaction was prohibited. The conduct restricted the freedom of transaction of the dealerships and was in violation of subparagraph 6, Article 19 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) To ensure its regional sales system of "responsibility area" divisions could be fully executed to maintain Toyota Group's maximum profits, Hotai Motors had already established before 2006 the "Big Customer Bulk Purchase Subsidization Regulations" for the dealerships. The subjects of subsidization specified in the regulations were all big customers (those buying cars regularly) that made bulk purchases (buying large quantities each time) for business purposes (taxis and vehicles used by incorporated organizations or companies). The regulations did not apply to ordinary consumers. Starting from the second half of 2007, Hotai cancelled the subsidization for cross-district purchases and imposed tighter control

on dealerships selling outside their responsibility areas. Such subsidies ranged from 2 to 3% and taxi operators were turned down when trying to make cross-district purchases.

(2) Hotai Motors had signed with each dealership the "Toyota Product Dealership Contract" in which the responsibility area of each dealership was specified. The cities and counties were separated into 8 sales responsibility areas respectively under the charge of Kuotu Motors, Taipei Motors, Tau Miau Motor Co., Ltd., Central Motor Co., Ltd., Nandu Motor Co., Ltd., Kaudu Motor Co., Ltd., Eastern Motor Co., Ltd., and Lanyang Motor Co., Ltd. Since Kuotu Motors and Taipei Motors were both responsible for the greater Taipei area where 70% of the taxis in Taiwan concentrated, car sales to taxi operators apparently meant a much more to the two companies than to the other dealerships and the competition between Kuotu Motors and Taipei Motors was particularly fierce. Taxi operators interviewed by the FTC all agreed that fuel efficiency, prices, and wear were their major considerations when making purchases and most of them preferred Toyota cars because of their lower parts replacement rates, fewer malfunctions, and better fuel efficiency. Although there was competition from other automakers in the country, the market share of even the No.2 selling brand for taxis in the greater Taipei area still trailed far behind and its sales were declining from year to year. The brand loyalty of taxi operators was impressive.

(3) The reason why the dealerships accepted the "Big Customer Bulk Purchase Subsidization Regulations" and established their discount criteria accordingly was that the subsidies were part of their income. They also recognized the classification of the subsidization into different rates for sales inside and outside the responsibility area as a measure to ensure all dealerships could abide by the responsibility area system and not to sell outside their responsibility areas and engage in price competition. The sales records showed that the cross-district sales of cars for taxis made by Taipei Motors between 2006 and 2009 respectively were 16.4%, 3.6%, 0.9%, and 0.7%, while those by Kuotu Motors were 24.4%, 4.3%, 1.5%, and 0.9%. In both cases, the ratio obviously went down steadily. The cancellation of subsidization for sales outside the responsibility area to discourage dealers from engaging in such competition apparently worked. The records also indicated that the percentage of

sales of cars for taxis in the total annual sales from 2006 to 2010 were 53.56%, 63.14%. 59.71%, 59.69%, and 61.97% for Taipei Motors and 46.44%, 36.86%, 40.29%, 40.31%, and 38.03% for Kuotu Motors. The ratio started to drop for Kuotu Motors after the cancellation of subsidization for sales made outside the responsibility area in 2007 and the sales of cars for taxis between Taipei Motors and Kuotu Motors remained at a stable 4:6 ratio. Undoubtedly, the subsidization regulations achieved the purpose of restraining the dealerships from competing outside their responsibility areas and it set a restriction on competition.

3. Grounds for disposition:

By establishing the aforesaid subsidization regulations to restrict cross-district sales, Hotai Motors suppressed the dealers' interest in making sales outside their responsibility areas and also compressed the room for price competition between dealerships. In fact, it put a restriction on the liberty of the dealerships to compete for business opportunities and deprived the dealerships of their freedom to choose their customers. This entirely closed up the auto market for taxi operators between different responsibility areas and also reduced the intra-brand competition between different sales outlets. In other words, it was a restriction on market competition. Hotai Motors used the dealership contract to limit the responsibility area of each dealership and the obedience of the dealership as the criterion for the big customer bulk purchase subsidization to restrain their business activities. The conduct reduced the performance competition between the dealerships and was likely to restrict or impede fair competition in violation of subparagraph 6, Article 19 of the Fair Trade Law. Acting according to the first section of paragraph 1, Article 41 of the same law, the FTC ordered Hotai Motors to immediately cease the unlawful act and also imposed on the company an administrative fine of NT$3,000,000.

Appendix:

Hotai Motor Co., Ltd. 's Uniform Invoice Number: 03251108

Summarized by Lin, Hui-Mei; Supervised by Wu, Lieh-Ling □

Merida Industry Co., Ltd.

1073rd Commissioners' Meeting (2012)

Case: Merida Industry Co., Ltd. violated the Fair Trade Law for restricting its distributors from conducting online sales
Key Word(s): Bicycle, online sales
Reference: Fair Trade Commission Decision of May 30, 2012 (the 1073rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101063
Industry: Bicycles Manufacturing (3131)
Relevant Law(s): Article 19(vi) of the Fair Trade Law

Summary:

1. The FTC was informed by one of the distributors for Merida Industry Co., Ltd. (hereinafter referred to as Merida Co.) that it began to advertise on the Kimo auction site after acquiring the distributorship in 2008 but received a notice from Merida Co. on March 4, 2010 demanding it not to advertise and sell online or its distributorship would be revoked. Again in May 2010, it received a legal attest letter from Merida Co. to inform that its distributorship had been cancelled. Up to this point, the said distributor had been buying from Merida Co. to sell the products. Yet, in addition to the distributorship revocation, Merida Co. also announced on its website that it had never authorized any distributors to conduct online sales and the products purchased online would not be covered by the warranty issued from the manufacturer Merida Co.. The informer thought the announcement would render the warranty for the remaining products in its inventory invalid and it was against the principle of fair trade.

2. Findings of the FTC after investigation:

On the sales outlet web page of Merida website, it was clearly listed that Merida's distribution system was divided into flagship stores, display and sales centers, exclusive stores, and shops without a contract. The "Marketing Newsletter" sent on February 8 and March 4 and the legal attest letter sent to the informer on May

10 by Merida Co. contained messages that" your selling Merida products on the Kimo auction website is a serious violation of our company regulations… If the conduct is not corrected within the specified period or if it is discovered again that you engage in online sales, Merida shall revoke your distributorship," "we notified you in writing on February 8 that your selling Merida products online was a serious violation of our company regulations… Our investigation showed that no correction had been made as of March 4 and your distributorship is therefore revoked in accordance with our company regulations," and "we sent you the notice on March 4 that your distributorship was terminated." According to these documents, the dispute between the two parties was related to online sales. Merida Co. denied that there was any dispute or there is any imposition of any restriction on online sales. The FTC interviewed randomly selected distributors for Merida Co. and 28 out of the 36 interviewed businesses confirmed that they had been told by Merida Co. not to conduct online sales and the punishments for violators included warnings, distributorship revocation, and supply cutoff. Further investigations by the FTC revealed that, besides the informer, there were two other distributors that received warnings and had their name of distributor removed from the web page after Merida Co. found out about their online sales. Therefore, there was no question about the restriction from Merida Co. on its distributors against online sales.

3. Grounds for disposition:

Merida Co. had certain market power in the domestic bicycle market. By restricting its distributors from making online sales and using distributorship revocation as a penalty to force distributors not to engage in online sales or make disclose the restriction, the company already put a restraint on the freedom of the distributors to compete for business opportunities, deprived them of their right to decide their sales approaches, and suppressed the promotion of transaction information transparency that could enhance performance competition. The conduct was deemed likely to lessen market competition and an illegitimate restriction on the business activities of its trading counterparts as a condition for further business relations. It was likely to restrict competition or impede fair competition in violation of subparagraph 6 of

Article 19 of the Fair Trade Law. Acting according to the first section of paragraph 1, Article 41 of the same law. Consequently the FTC ordered Merida Co. to immediately cease its unlawful act and also imposed on the company an administrative fine of NT$2,000,000.

Appendix:
Merida Industry Co., Ltd.'s Uniform Invoice Number: 59052361

Summarized by Lin, Hui-Mei; Supervised by Wu, Lieh-Ling □

New Century InfoComm Tech Co.

1074th Commissioners' Meeting (2012)

Case: New Century InfoComm Tech Co. violated the Fair Trade Law for adopting improper measures to attract the trading counterparts of its competitors to do business with itself
Key Word(s): Telecommunications business, Internet phone, performance competition
Reference: Fair Trade Commission Decision of June 6, 2012 (the 1074th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101066
Industry: Telecommunications (6100)
Relevant Law(s): Article 19(iii) of the Fair Trade Law

Summary:

1. The FTC was informed by Chunghwa Telecom Co., Ltd. (hereinafter referred to as Chunghwa Telecom) that when Far Eastone Telecommunications Co., Ltd. (hereinafter referred to as Far Eastone Telecom) and New Century InfoComm Tech. Co. (hereinafter referred to as New Century InfoComm) installed the Wagaly Talk

Lite device, packed by Far Eastone Telecom, in users' homes to receive their E.164 number mapping standard (also called 070 Internet phone) service, they altered the local phone connection setting of Chunghwa Telecom without authorization in order to make the profit that should belong to Chunghwa Telecom. The new setting enabled subscribers to the 070 Internet phone service to dial like using Chunghwa Telecom's original service when making local calls but they had to press the "*" button twice when they wanted to use Chunghwa Telecom's service to make local calls. As a consequence, people chose to use the 070 Internet phone service out of convenience and the local call service of Chunghwa Telecom became unpopular for the users with the Far Eastone Wagaly Talk Lite device. The conduct was in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

With the provision of the E.164 number mapping standard Internet phone service, New Century InfoComm connect the Far Eastone Wagaly Talk Lite device between the landline terminal of a subscriber's home phone and the phone splitter. In other words, the cable from the splitter of the modem was first plugged into the Wagaly Talk Lite device before it was hooked up to the landline terminal. Through such a maneuver, the company was able to alter the routing of the subscriber's fixed network by setting the functions of the Wagaly Talk Lite device in a certain way. When the subscriber pressed the buttons as usual to make a local or long distance call or call a cell phone, the machine automatically dialed the number through the company's 070 Internet telephony router. If the user chose to make a call through Chunghwa Telecom's router, he or she would have to press the "*" button twice before dialing the number. Meanwhile, to make an international call, the user would have to dial 002 first and the call would be processed through the router of New Century InfoComm. If the user wanted to make an international call through another fixed line service provider, he or she would also have to press the "*" button twice before dialing the predetermined international access code for the provider, such as 005, 006, or 007.

3. Grounds for disposition:

Due to users' habit when using telecommunications services, the length of telecommunications numbering is critically significant in the competition between providers of the same telecommunications service. By maneuvering the function settings of telecommunications equipment to change the length of numbers the user needed to dial to use the service of its competitor, New Century InfoComm. Increased the level of difficulty for its user to access the service of other telecommunications service providers and also pushed up the switching cost of the trading counterpart. The conduct could put its competitors in an unfair position in market competition. The FTC's investigation showed that the function setting maneuver made to the Wagaly Talk Lite Device by New Century InfoComm was not meant to offer better rates, quantity, quality, service, or other conditions to increase its own trading opportunities. On the contrary, it was incompliant with the spirit of performance competition and in violation of subparagraph 3, Article 19 of the Fair Trade Law. The FTC therefore acted according to paragraph 1, Article 14 of the same law and ordered New Century InfoComm to cease or correct the said unlawful act within six months. However, considering that the market share of the company in the overall fixed communications service market was still small and was left far behind Chunghwa Telecom by a large margin, as well as the company being a new business in the market, the FTC decided not to impose any administrative fine on the company.

Appendix:

New Century InfoComm Tech. Co., Ltd.'s Uniform Invoice Number: 70774626

Summarized by Chang, Hsin-Yi; Supervised by Liou, Chi-Jung □

6.2 Judicial Cases

Rui Ing Co., Ltd.

Supreme Administrative Court Decision (2012)

Case: Supreme Administrative Court overruled the appeal of administrative litigation by Rui Ing Co., Ltd. regarding its violation of the Fair Trade Law

Key Word(s): Karaoke products, MIDI, distributor, exclusive dealing restriction

Reference: Supreme Administrative Court Judgment (2012) Pan Tzu No.1070

Industry: Sound Recording and Music Publishing (5920)

Relevant Law(s): Article 19 of the Fair Trade Law

Summary:

1. The appellee (the FTC) decided that the appellant and Mds Multimedia Corp. (hereinafter referred to as Mds) had violated subparagraph 5 of Article 19 of the Fair Trade Law for restricting their distributors from being the agent, broker, or distributor for any other MIDI karaoke product makers and also for imposing a restriction on the distributors' re-renting prices for their MIDI karaoke products. Both were unjustified restrictions on the business activities of their trading counterparts as a condition for further transactions, thus constituting market competition restraints in violation of subparagraph 6, Article 19 of the Fair Trade Law. The FTC acted according to the first section of Article 41 of the same law and issued Kung-Ch'u-Tzu Disposition No.099078 to order the appellant to immediately cease its unlawful acts upon the receipt of the disposition, and also imposed on the appellant an administrative fine of 1 million New Taiwan dollars (the same currency applies hereinafter) and 700,000 on Mds. The appellant found the sanction unacceptable and filed a petition and administrative litigation according to established procedures but both were overruled. Subsequently, the appellant filed an appeal over the case to the Supreme Administrative Court.

2. The appellant, the largest agent in the MIDI karaoke product market, demanded its regional agents and distributors not to represent or distribute karaoke products from other makers. This was clearly indicted in the notification, dated August 13, 2008, from the appellant to the regional agents for the "2009 MIDI Distributor Meeting" and in paragraph 4, Point 4 of the Statement of Agreement signed with the regional agents - both documents were attached with the original disposition. The exclusive dealing restriction imposed on the distributors by the appellant would obstruct competitors from expanding or obtaining sales channels. It could lead to market closure, weaken or even eliminate "inter-brand competition." The practice was deemed capable of creating substantive damage to market competition and restrain market competition. During the first trial, the FTC had explained that the direct trading counterparts of the appellant were the regional agents or distributors, not end users. Furthermore, when signing the contract or the statement of agreement, each regional agent had issued a check as the rental guarantee calculated according to the rates agreed upon. Then the amount would be gradually retrieved from the income from renting out the MIDI karaoke products. In other words, the regional agents had to take the risk of not renting out enough karaoke products. Since the appellant had already shifted the risk in re-renting onto the regional agents, the re-renting price restriction on the regional agents in the contract was apparently stipulated to ensure that there would be no price competition between the agents. Succumbing to the market power of the appellant, the regional agents were more than likely to comply with the re-renting price restriction lest their contract be terminated. Therefore, in essence, the practice had deprived the regional agents of their freedom to determine their re-renting prices. Due to the market status of the appellant, contract termination would have a serious effect on the business of any regional agent and the regional agents were actually bound by the threat of such a sanction. Even if the appellant has never executed the right as stipulated in the contract, the competition restriction was still obvious. The appellee, the FTC, concluded that the aforesaid conduct of the appellant was in violation of subparagraph 6, Article 19 of the Fair Trade Law and imposed on the company an administrative fine of 1,000,000 in accordance with the regulation set forth in the first section of Article 41 of the same law. The original

court decided that the sanction was legally sound and to be maintained and the appeal from the appellant was overruled.

Appendix:
Zui Ing Co., Ltd.'s Uniform Invoice Number: 97123274
Mds Multimedia Corp.'s Uniform Invoice Number: 04779781

Summarized by Lai, Chia-Ching; Supervised by Lee, Wen-Show □

Chapter 7

False, Untrue and Misleading Advertisement

7.1 Decisions

DAIKIN Inc.

951st Commissioners' Meeting (2010)

Case: DAIKIN Inc. violated the Fair Trade Law by publishing an untrue advertisement of it's air conditioners
Key Word(s): Air conditioner, advertisement, number one
Reference: Fair Trade Commission Decision of January 27, 2010 (the 951st Commissioners' Meeting), Disposition Kung Ch'u Tzu No.099011
Industry: Retail Sale of Electrical Household Appliance in Specialized Stores (4741)
Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The public reported that the advertisement of DAIKIN air conditioners published in the newspapers by DAIKIN Inc. (hereinafter referred to as DAIKIN) in May 2009 claiming that "DAIKIN's and Matsushita's small air conditioners are both ranked the number one products in sales… in Japan…" was based on no objective statistical data and possibly untrue.

2. Findings of the FTC after investigation:

(1) DAIKIN published the advertisement in question in the newspapers on May 2009. In this advertisement wordings of "Small Air Conditioners Leading Groups DAIKIN Matsushita" were indicated under the "Sales Ranking of Japan Air Conditioner Market." It was also stated under the ranking chart that "Source: The Japan Refrigeration and Air Conditioning Industry Association, DAIKIN 2007 Estimated Financial Statements for Matsushita and DAIKIN." The explanation of the wordings was that "Inverter Air Conditioners - Number One in Japan," DAIKIN

stated in the advertisement that "DAIKIN's and Matsushita's small air conditioners are both ranked the number one products in sales… in Japan…" The advertisement in question brought the consumers an impression that the sales of DAIKIN's small air conditioners together with Matsushita's products were both ranked number in Japan in 2007.

(2) It was found that DAIKIN used the data obtained from Fuji-Keizai Group's "Japan Fuji Economy - Electric Power and Energy System Market in 2008" and NIKKEI's "NIKKEI – 2009 Market Share" as the support for its advertisement. However, according to the above data, in Japan, Matsushita's market share of small air conditioners based on the sales amount was 22.2% in 2007, while DAIKIN 20%. Matsushita's market share based on the sales quantity was 21.7%, while DAIKIN 19.6%. Either way, Matsushita was the number one brand in sales. Furthermore, if the market share of small air conditioners in Japan from 2004 to 2007 was considered, DAIKIN was the number one brand in sales only in 2004. Matsushita was ranked number one from 2005 to 2007.

3. Grounds for disposition:

According to the market survey results gathered by DAIKIN, DAIKIN's sales of small air conditioners in Japan was only the number one brand in sales in year 2004. DAIKIN failed to submit evidence to prove that DAIKIN was the number one brand in sales in 2007 or when the advertisement in question was published. As a result, the advertisement in question claiming that "DAIKIN's and Matsushita's small air conditioners are both ranked the number one products in sales… in Japan… " went beyond the acceptable level and was sufficient to cause wrong perception of the public with regard to making reasonable determinations and trade decisions. DAIKIN indeed violated Article 21(1) of the Fair Trade Law by making false, untrue, and misleading representations in its advertisement and was imposed with an administrative fine of NT$300,000.

Appendix:
DAIKIN Inc.'s Uniform Invoice Number: 03251000

Summarized by Huang, Li-Ming; Supervised by Chi, Hsueh-Li □

Easy Way Group

956th Commissioners' Meeting (2010)

Case: Easy Way Group violated the Fair Trade Law by conducting an untrue advertisement and failed to disclose material trading information to franchisees before contract establishment

Key Word(s): False advertisement, franchise, failing to disclose material trading information

Reference: Fair Trade Commission Decision of March 3, 2010 (the 956th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.099031

Industry: Non-alcoholic Beverage Service Activities vai Shops (5621)

Relevant Law(s): Articles 21 and 24 of the Fair Trade Law

Summary:

1. Two informers accused Easy Way Group (hereinafter referred to as Easy Way) of failing to disclose to them information in regard to the interior design and expenses for the furnishing and equipment required as well as the methods by which Easy Way would calculate or collect the costs for the ingredients and utensils 10 days before signing the contract for their franchise "Meet Fresh" operations.

2. Findings of the FTC after investigation:

(1) Easy Way stated in its "Guideline for Franchising of Meet Fresh Beverage Shops" (hereinafter referred to as the Franchising Guideline) that the expected net profit rate would be around 20~25% and the investment could be earned back in 6 to 15 months. However, the income statements of 16 directly-managed shops provided by the company covering from January 2007 to August 2009 showed that, only in January 2008, the only one month out of the thirty-two month period, the net profit rate reached 23.63%, which was above the average net profit rate of 20% indicated in the franchise guidelines. The average startup investment was about 4.7 million NT dollars. The monthly net profit rates of these 16 shops since they first opened for business showed that only the shop in Tonghua Street and the one in Breeze Department Store were able to earn back the invested capital in 11 months, meeting

the expected rate of return on investment. The net profit of 11 shops after 11 months was still negative, while the 3 remaining shops did not earn back their investments although the net profit was in positive figures.

(2) The FTC also examined the documents provided to franchisees. There was no information disclosure on the expenses required for the initial supply of commodities, utensils, foods and raw materials.

3. Grounds for disposition:

(1) The "expected profit rate" is an important indicator according to which the parties interested can judge the possible growth and the operation risk in joining the franchise system. On the other hand, the "net profit rate" probably is also the most critical index the interested parties apply when making the decision of joining the franchise system or not. In the case in question, the net business profit figure provided in advertisements apparently would be regarded by interested parties as the minimum guaranteed net profit or give the impression that the figure represented the average revenue of existing franchises. Such figures had the capacity to influence the decision of interested parties. When making such a claim, the advertiser must have the support of objective statistics and clearly describe in the advertisements the signification of the statistics provided so as to avoid any misunderstanding. The statistics Easy Way provided on the average monthly net profit rate of the 16 directly-managed shops between January 2007 and August 2009 showed that the average monthly net profit rate of the 16 shops went above the alleged 20% threshold, at 23.63%, only once in the 32-month period, in January 2008. Among all these shops under the company's direct management, the one in Tonghua Street had the best performance and achieved over 20% net profit in 7 months (but fell below 20% in the other 25 months still.) The FTC's investigation revealed that the startup investment for each of the directly managed shops was around 4.7 million NT dollars and only the shop in Tonghua Street and the one in Breeze Department Store were able to earn back the invested capital in 11 months, justifying the alleged full return on investment in 6 to 15 months. However, the total net profit of 11 shops stayed negative throughout that 32-month period. The 3 remaining shops made positive total net profit but they

have not retrieved their invested capital even until today. Even if the net profit rate advertised had its basis, the performance of the two best shops could by no means represent the average sales of the Meet Fresh chain (including directly managed shops and franchises.) Moreover, in the nearly two years from February 2007 to the end of 2008 in which the advertisements were run, the actual performance of the directly managed shops or the franchises were unable to achieve the rate of return on investment as asserted the advertisement. The company made no effort to correct the content of the advertisements as a responsible advertiser would have. On the contrary, the franchise recruitment continued under the same advertisements. The FTC found it difficult to exempt the company from the administrative responsibility of an advertiser.

(2) The costs of the initial supplies a franchise needs to begin operation (including equipment, office supplies, commodities, foods, and raw materials, etc.) are considered expenses required for "purchases of products or services" before signing the contract or throughout the contract term. The franchiser is the only one with full information about these expenses. At the same time, most of the commodities are designated items that franchisees are not able to purchase elsewhere. It is therefore imperative that the franchiser provides the information in writing to the prospective franchisee before signing the contract that does not have as much access to such information so that the latter can assess its financial capacity and the cost benefit before deciding whether to become a franchise. The FTC's investigation showed that Easy Way not only did not advise on the expenses for the initial supplies but also stipulated in the contract that the franchisee had the obligation to purchase the designated items only from the franchiser. The initial supplies cost between 300 and 400 thousand NT dollars. They were all basic commodities required to begin operation. Therefore, the failure of Easy Way to disclose before signing the contract the information about the said expenses was apparently an abuse of its advantageous position in the access to related information. The withholding from disclosing important trading information such as the costs and calculation of the initial supplies was obviously unfair to the trading counterpart and had the capacity to affect the trading order in chain franchising. It was in violation of the regulation of Article 24

of the Fair Trade Law and Easy Way was imposed a fine of 500 thousand NT dollars.

Appendix:
Easy Way Group's Uniform Invoice Number: 80617317

Summarized by Kuo,An-Chi; Supervised by Hung,Hsiu-Hsing □

Fuduxin Developer and Constructor Co., Ltd. & Sinyi Real Estate Corporation

956th Commissioners' Meeting (2010)

Case: Fuduxin Developer and Constructor Co., Ltd. and Sinyi Real Estate Corporation violated the Fair Trade Law by conducting an untrue advertisement for the "Zuigaofeng" housing project
Key Word(s): Housing project, advertising, zoning, public facilities, mezzanine
Reference: Fair Trade Commission Decision of March 3, 2010 (the 956th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.099025
Industry: Construction Businesses (4100)
Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The FTC was informed that the units of the "Zuigaofeng" housing project "Fuduxin Developer and Constructor Co., Ltd. (hereinafter referred to as Fuduxin Inc.) and Sinyi Real Estate Corporation (hereinafter referred to as Sinyi Corp.) marketed had been licensed as to be offices, yet the language and images used in the advertisements were for residential purposes and the sample unit was also furnished as a residence. In addition, the space for the balconies was indicated in the advertisements as interior space, the various public facilities displayed were illegal

construction, and the mezzanine design advertised had not been approved by the competent authority. The conduct was suspected of violation of Article 21 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) Fuduxin Inc. was responsible for constructing the units of the project and Sinyi Corp. was contracted to market the units. Sinyi Corp. was responsible for the advertising and marketing as well as the corresponding expenses. The more units and parking spaces Sinyi Corps sold, the bigger its profits.

(2) The layouts of the units as well as the floor plan of the sample unit and the arrangement were unmistakably for residential purposes. In the advertisements and fliers, the units of the project were boasted as upscale residences with 3.8-meter tall interior space that no one would build anything like this…etc. Emphasis was made on a number of living and parent-child activity facilities and safety measures. The layouts showed the space for balconies as part of the interior, while the landscape design on the ground level and the VIP design in basement level 1 included various public facilities that were displayed in photos or synthesized 3D images in the advertisements. The sample unit included mezzanine design. However, the land use zoning indicated in the construction license was Type 2 commercial zone. In other words, the 2nd floor to the 20th floor had been approved for office space. Only the 21st and 22nd floors were for residences. The ground level was for shops, statutory vacant lots, or passageways, whereas basement level 1 was for parking and the mezzanine had never been ratified. According to Taipei County Government, the change of the originally approved "office space" of the project to "residential" purposes and the public facilities on the ground level and basement level 1 were in violation of paragraph 2 of Article 73 of the Building Act. People who purchased these units would have to face penalty fines, suspension of use, restoration to meet regulations, and compulsory dismantlement. The modification of the balconies into interior space and the mezzanine construction to increase floor space would be illegal and would be dismantled by the Building Violations Removal Corps of Taipei County Government.

3. Grounds for disposition:

(1) Fuduxin Inc. was responsible for constructing the units of the project and Sinyi Corp. was contracted to market the units. Both parties were gainfully rewarded from the marketing advertisements for the units of the "Zuigaofeng" housing project. Therefore, both Fuduxin Inc. and Sinyi Corp. were deemed advertisers in this case.

(2) The change made from the 2nd floor to the 20th floor to turn them into residences was in violation of paragraph 2 of Article 73 of the Building Act and people purchasing the units would face penalty fines, suspension of use, etc. The contents of the advertisements were inconsistent with the original approved uses.

(3) The modification of the balconies into interior space to increase floor space was illegal and could be dismantled by the competent authority. The layouts were inconsistent with the original approved uses.

(4) The ground level had been approved to be for "shops, statutory vacant lots, or passageways" and basement level 1 for parking. The display of various public facilities in the advertisements failed to comply with the approved blueprints and was in violation of paragraph 2 of Article 73 of the Building Act. The contents of the advertisements were inconsistent with the original approved uses.

(5) The mezzanine design had not been approved. The mezzanine construction to increase floor space without approval was illegal. The sample unit and the contents of the advertisements were inconsistent with the original approved uses.

(6) All the abovementioned floor plans, landscape design on the ground level, VIP design on basement level 1, furnishing of the sample unit, and contents of the advertisements and fliers were inconsistent with the original approved uses. The differences were untrue and misleading and thus difficult for the general public to accept. They could lead to misconceptions or wrong decisions made by consumers. The conduct was in violation of paragraph 1 of Article 21 of the Fair Trade Law. The FTC therefore fined Fuduxin Inc. 2 million NTD and Sinyi Corp. 1 million NTD.

Appendix:

Fuduxin Developer and Constructor Co., Ltd.'s Uniform Invoice Number: 27323502

Sinyi Real Estate Corporation's Uniform Invoice Number: 22354940

Summarized by Huang, Li-Ming; Supervised by Chi, Hsueh-Li □

Chunghwa Telecom

960th Commissioners' Meeting (2010)

Case: Chunghwa Telecom violated the Fair Trade Law by conducting an untrue Internet services comparison advertisement
Key Word(s): Untrue, misleading, obviously unfair
Reference: Fair Trade Commission Decision of March 31, 2010 (the 960th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.099043
Industry: Telecommunications (6100)
Relevant Law(s): Articles 21(3) and 24 of the Fair Trade Law

Summary:

1. Cable Broadband Institute in Taiwan informed the FTC that the comparative advertising by Chunghwa Telecom Co., Ltd. (hereinafter referred to as Chunghwa Telecom) of the services of the "Optical Network" and "Cable Modem" on its "broadband access network comparison " web page to compare "connection quality," "upload and download speeds," "security," "network expandability," "network protection mechanism," "bandwidth distribution," and "extra equipment for users" was untrue.

2. Findings of the FTC after investigation:

Chunghwa Telecom claimed in its advertisement for the "Optical Network" that fiber optic networks could be divided into FTTH/Fiber to the home, FTTB/Fiber to the building, and FTTC/Fiber to the curb and the "connection quality" varied depending on the location of the fiber optic terminals. Full FTTH services were not yet available, while both FTTB and FTTC still used certain amounts of non-fiber optic connection. Therefore, the quality of services and functions were not 100% that of fiber optic cables. Chunghwa Telecom also asserted that the company provided a "router and equipment protection mechanism" to ensure network connection stability, such as use of alternative transmission lines when a network connection malfunction occurred. However, both FTTB and FTTC had to be hooked up to users through

existing cables that could not be replaced. Therefore, the advertising by Chunaghwa Telecom was inconsistent with facts and in violation of the regulation of paragraph 3, mutatis mutandis application of paragraph 1, of Article 21 of the Fair Trade Law.

3. Grounds for disposition:

Chunghhwa Telecom advertised under the title of "connection quality" in regard to "cable modem" that the company used coaxial cables. However, in reality a cable modem network consisted of fiber optic and cable lines. Next, Chunghwa telecom claimed its upload speed reached "80K~1M" and the download speed was "230K~10M," yet the data provided by Chunghwa Telecom showed that "Cable Modem" was capable of providing service with the download speed already achieving 128K~2M/1M-30M. Meanwhile, according to National Commutations Commission, by applying the DOCSI3.0 technology, the upload and download speeds of "Cable Modem" could respectively reach 30Mbps and 160Mbps. At the same time, Chunghwa Telecom's allegation that "use of the same medium would result in lower security." However, according to the Telecom Technology Center, "Cable Modem" and "Optical Network" both had their own security protection mechanism. Without actual cases and evidential data, it would be impossible to assess which one had higher or lower security. In other words, it was impossible to judge transmission through cable modems was lower in security. Finally, Chunghwa Telecom declared under the title of "network expandability" that "expandability is low when the transmission speed is determined in line with the number of subscribers." In reality, however, the network expandability when using the services of "Cable Modem" depends on the technology applied at the headend of the system instead of on the number of subscribers. With the above combined, the allegations Chunghwa Telecom made against its competitor Cable Modem in regard to connection quality, upload and download speeds, security, and network expandability constituted unfair competitive conduct and were in violation of Article 24 of the Fair Trade Law. The FTC therefore fined Chunghwa Telecom 1 million NT dollars.

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

Summarized by Lee,Wan-Chun; Supervised by Chen, Chun-Ting □

Jardine Fast Food Restaurants (Taiwan) Ltd.

967th Commissioners' Meeting (2010)

Case: Kentucky Fried Chicken of Jardine Fast Food Restaurants (Taiwan) Ltd. violated the Fair Trade Law by conducting the "One Dollar for an Extra one" promotional advertisements
Key Word(s): Promotional advertisement, reasonable expected demand
Reference: Fair Trade Commission Decision of May 19, 2010 (the 967th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.099061
Industry: Other Foods and Beverage, Tobacco Product Retailers (4729)
Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. On February 22, 2010, Jardine Fast Food Restaurants (Taiwan) Ltd. (hereinafter Jardine Restaurant Group) launched the "One Dollar for an Extra one" advertisements on TV, online, and in newspapers. However, the very next day, on February 23, 2010, some of the branches already ran out of supplies and consumers were not able to purchase the advertised Triple Crunch Zinger Sandwich meal. False advertising was suspected. The FTC took the initiative and investigated.

2. Findings of the FTC after investigation:

Beginning on February 22, 2010, Jardine Restaurant Group advertised on TV, online, in newspapers, and at its stores the "One Dollar for an Extra one" promotion.

There would be special offers on certain meal combinations on each day of the week. When customers purchased one of these combinations, they could pay one extra dollar to get an extra portion of the main item of the combination. However, by noon the next day on February 23, 62 stores already ran out of the Triple Crunch Zinger Sandwiches. By dinnertime, 113 stores were out of supplies and the shortage continued until the 24th. Jardine Restaurant Group claimed that the shortage was due to that the demand for the Triple Crunch Zinger Sandwiches that day was 10 times that of normal sales at lunchtime and they ran out of bread. The FTC's investigation discovered that, based on Jardine Restaurant Group's normal stock preparation and promotion experiences, it should have been able to predict significant increase of demand because of the special offer on February 23. However, the supply failed to meet the actual demand significantly.

3. Grounds for disposition:

(1) Since Jardine Restaurant Group did not indicate in its promotional advertisements that there would be quantity limits, consumers naturally had the impression that the special offers would continue to be provided during the promotion period. Yet, on February 23, 49.2% of the 126 KFC stores were out of supplies at lunchtime while the shortage reached as high as 89.6% at dinnertime. The shortage of special offer items continued on February 24. Jardine Restaurant Group was apparently unable to provide the special offer products as advertised, and the public or concerned customers found the number and the percentage of stores that ran out of supplies difficult to accept. The advertisements were misleading and could result in consumers' wrong decision. The conduct was in violation of paragraph 1 of Article 21 of the Fair Trade Law.

(2) With its stock preparation practice and experience, Jardine Restaurant Group should have been able to foresee the increase of demand and prevent the shortage. However, the stock of the bread needed to make the sandwiches was only slightly over one third of the expected sales, or 1.47 times of the quantity prepared when there were no special offers. The increase was insignificant and obviously incompatible with the expected 400% growth in demand for the sandwiches. As a matter of fact,

it could not even meet the 175% growth rate in demand for fish burgers when a similar promotional offer was given in 2009. The FTC therefore found it difficult to believe that Jardine Restaurant Group had prepared the reasonable quantity to meet the expectable demand. As an advertiser, Jardine Restaurant failed to fulfill its obligations and was imposed a fine of 100,000 NT dollars.

Appendix:
Jardine Fast Food Restaurants (Taiwan) Ltd.'s Uniform Invoice Number: 97161500

Summarized by Cheng, Shih-Yu; Supervised by Chi, Shueh-Li □

Business Start-up Consulting Co., Ltd.

983rd Commissioners' Meeting(2010)

Case: Business Start-up Consulting Co., Ltd. violated the Fair Trade Law by posting "Business Start-up Loan" advertisements
Key Word(s): False or misleading representations in advertising, successful example
Reference: Fair Trade Commission Decision of September 8, 2010 (the 983rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.099090
Industry: Management Consultancy Services (7020)
Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. Business Start-up Consultancy Co., Ltd. (hereinafter referred to as BSC) posted a number of false and untrue advertisements to show successful examples of loan acquisition.

2. Findings of the FTC after investigation:

BSC claimed in its business start-up loan advertisements that "we can customize according to your situation and help you acquire the 'Business Start-up Loan for Young Entrepreneurs' or the 'Micro-business Start-up Phoenix Loan'." The company also gave 11 successful examples of loan acquisition that were supposed to be cases it had helped process. However, the replies from the National Youth Commission and the Council of Labor Affairs, the competent authorities for the said two loans, to the FTC's inquiries revealed that three of the aforementioned 11 loans had not been approved. This was apparently inconsistent with the claim of BSC in the advertisements.

3. Grounds for disposition:

Enterprises sometimes use real people and cases as proof of successful examples to increase the confidence of consumers in the quality of the product or service in concern in order to gain business. Therefore, an enterprise doing so is required to ensure the contents of the examples given are true. The 11 advertisements BSC posted gave the impression that they were genuine cases in which the applicants were able to acquire loans under the assistance of the company. However, as the applicants in some of cases advertised never got the approval of the competent authority for the loan, the advertisements could generate in trading counterparts wrong recognition or confidence with regard to the quality of the service and thus affect their trading decision. The conduct was a false, untrue and misleading representation in violation of Article 21 (1) of the Fair Trade Law (FTL). The FTC therefore applied the First Section of Article 41 of the FTL and ordered BSC to immediately cease the unlawful act and imposed on the company an administrative fine of NT$80,000.

Appendix

Business Start-up Consultancy Co., Ltd.'s Uniform Invoice Number: 28468147

Summarized by Yu,Yi-Fong; Supervised by Chen,Chun-Ting □

Hung Yi Instrument Co., Ltd.

987th Commissioners' Meeting (2010)

Case: Hung Yi Instrument Co., Ltd. violated the Fair Trade Law for posting false contents on its website
Key Word(s): Time of establishment, false, misleading
Reference: Fair Trade Commission Decision of October 9, 2010 (the 987th Commissioners' Meeting; Disposition Kung Ch'u Tzu No.099099
Industry: Boiler, Metal Vat and Pressure Container Manufacturers (2531)
Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. Yung Ta Min Instrument Co., Ltd. (hereinafter referred to as Yung Ta Min Co.) informed the FTC in writing that Hung Yi Instrument Co., Ltd. (hereinafter referred to as Hung Yi Co.) posted in the "Company Profile" on its website that the company had always "taken thorough safety measures to ensure its products could achieve complete sterilization to serve medical purposes" since its establishment in 1976 and that Hung Yi had been specialized in making of sterilizer units for 30 years. In reality, the company was established on April 18, 2007. The information on the website was apparently inconsistent with the facts and, therefore, the advertising was false.

2. Findings of the FTC after investigation and grounds for disposition:

Hung Yi Co. created the impression through the advertising online that it had been established in 1976 and therefore had been in business for over 30 years. The time of establishment and the length of service of an enterprise, in addition to the history of its operation, can also suggest the amount of effort the enterprise has put in to improve product quality, upgrade services, and justify the prices. Therefore, these factors could have an effect on the trading counterparts as well as their judgment of the content and quality of the services from the enterprise in concern. The FTC's investigation showed that Hong Yi Co. was established in 2007. The personal work experience of Mr. Liu, the person in charge, could not be regarded as equivalent to

the history and experience of the company. The FTC's investigation showed that the alleged time of establishment and length of service Hung Yi Co. advertised on its website did have influence on the general public and bring certain results. Such important information could have an effect on trading. The advertising was indeed groundless and regarded false information that could be misleading. The conduct was in violation of paragraph 1 of Article 21 of the Fair Trade Law and Hung Yi Co. was fined 50,000 NT dollars.

Appendix:
Hung Yi Instrument Co., Ltd.' Uniform Invoice Number: 28646419

Summarized by Chao, Kuo-Sheng; Supervised by Hsu, Hung-Jen □

Masterhold International Co., Ltd. and Ho-Kang Tech Co., Ltd.

993rd Commission Meeting(2010)

Case: Masterhold International Co., Ltd. and Ho-Kang Tech Co., Ltd. violated the Fair Trade Law for false or misleading representations in car batteries advertisements
Key Word(s): Automotive Research and Testing Center (ARTC), safest battery, energy saving, carbon reduction, low gas consumption
Reference: Fair Trade Commission Decision of November 17, 2010 (the 993rd Commission Meeting), Dispositions Kung Ch'u Tzu No.099124 and 099125
Industry: Motor Vehicle Parts Manufacturing (3030)
Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. Masterhold International Co., Ltd. (hereinafter referred to as Masterhold Co.)

and Ho-Kang Tech Co., Ltd. (hereinafter referred to as Ho-Kang Co.), both engaging in car battery sales, were reported to have advertised their car batteries in auto magazines and fliers as "proven to be the safest batteries whose lithium iron core has gone through various vigorous puncture and impact tests without catching fire or exploding and users need not worry about their cars catching fire (Automotive Research and Testing Center (ARTC) No.B98RE077 Report). Plus, they also save energy, cut carbon emissions and reduce gas consumption up to 5~25% (ARTC report)." The said claim was inconsistent with the reports from ARTC. False and or misleading representations in advertising were suspected.

2. Findings of the FTC after investigation:

(1) Masterhold Co. claimed that it had commissioned ARTC to conduct environmental tests on the batteries, including vibration, high temperature storage, temperature shock, high-temperature and high-pressure water spray, and sand and dust tests. There were also reports from UL on impact tests and reports on puncture tests conducted by Masterhold Co. itself. The aforesaid advertising wording was based on these reports.

(2) According to Ho-Kang Co., the company had asked ARTC to run energy consumption tests on the batteries. In addition to the test results and data Masterhold Co. provided, Ho-Kang had also run gas consumption tests with their own vehicles on different road surfaces at different hours and come up with the 5~25% gas consumption reduction conclusion.

3. Grounds for disposition:

(1) Regarding the safety claim Masterhold advertised in auto magazines, ARTC expressed that the No.B98RE077 Report had been an environmental test report on the environmental temperature and pressure differences of the said car batteries. No puncture or impact safety test as described in auto magazines had been performed. Therefore, Masterhold Co. could not have established the safety conclusion on the batteries, as advertised in auto magazines, from the said report. The claim by Masterhold in auto magazines was apparently inconsistent with the content of the

ARTC report. It was a false, untrue and misleading representation in violation of Article 21 (1) of the Fair Trade Law (FTL).

(2) Regarding the gas-saving performance of the batteries claimed in the fliers from Ho-Kang, ARTC expressed that the average energy consumption difference before and after installation of the batteries was only 0.2KM/L. It was within the reasonable error range. There was no 5~25% energy consumption or carbon emission reduction as claimed in the fliers. As for Ho-Kang's conclusion that the batteries could reduce 5~25% gas consumption from its own tests with their own vehicles on different road surfaces at different hours, it lacked objectivity since the tests had not been conducted by an objective and just agency. Hence, the claim in the fliers was inconsistent with the ARTC report. It was a false, untrue and misleading representation in violation of Article 21 (1) of the FTL.

Appendix:
Masterhold International Co., Ltd. 's Uniform Invoice Number: 27961992
Ho-Kang Tech Co., Ltd.'s Uniform Invoice Number: 80437384

Summarized by Wu, Hsin-Te; Supervised by Chen, Chun-Ting □

Fast V International Co.

994th Commissioners' Meeting(2010)

Case: Fast V International Co. violated the Fair Trade Law by posting false and misleading financial management and loan advertisements
Key Word(s): Financial management and loans, no collateral needed, no guarantor needed
Reference: Fair Trade Commission Decision of November 24, 2010 (the 994th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.099130
Industry: Other Financial Intermediation Not Elsewhere Classified (6499)
Relevant Law(s): Article 21(3) of the Fair Trade Law

Summary:

1. Fast V International Co. (hereinafter referred to as Fast V Co.) posted in the financial management section on the front page of Yahoo! an advertisement claiming the company would "promptly approve loans from NT$200,000 up to NT$8,000,000." Clicking the ad would take the user to the "Home Loans" on the front page of the company's website, where the company claimed it would provide "Up to 100% home loans and financial management assistance at interest rates starting from 1.5% (the first six months.)" The FTC examined the content of the website and found, in addition to what had been reported by the informer, there were other ads, such as "Loans for business owners at interest rates starting from 1.88% (for the first six months) and no collateral or guarantor needed" and "Loans up to NT$2,000,000 to pay off your debts at annual interest rates starting from 1.88% (the first two months,)" that might be misleading. The FTC therefore combined them in the investigation to see if any illegal conduct was involved.

2. Grounds for disposition:

(1) Since the ad offering "Up to 100% home loans and financial management assistance" was placed on the home page, it gave the impression that home buyers could obtain as much as 100% of the worth of the homes they intended to purchase.

Fast V Co. contested that the 100% loan offer had been based on the loan policies of Ta Chong Bank and Standard Chartered Bank. However, the latter clarified that it had never marketed any packages offering consumers loans up to 100% of the worth of the homes. Ta Chong acknowledged that it had once offered 100% net asset value (NAV) loans to homebuyers but the NAV of a home would have been the result of the bank's internal evaluation, not entirely the same as the "transaction price," the amount indicated in the transaction contract. Furthermore, the offer had been made for home purchases completed through real estate agencies directly managed by the top five realtors, namely Sinyi Realty, Yung Ching Realty, Pacific Rehouse, Rebar Rehouse, and HBhousing; plus the homes had to be located in the P or A District as defined by Ta Chong. However, in the said advertisement only "up to 100% home loans" was indicated, without giving the definition of the loan percentage or specifying the target objects of the special package, the collateral required, or the district in which the homes had to be located. The conduct was misleading and in violation of paragraph 3 of Article 21 of the Fair Trade Law (FTL) and paragraph 1 of the same article was applicable mutatis mutandis.

(2) Furthermore, the wording of "Loans for business owners at interest rates starting from 1.88% for the first six months and no collateral or guarantor needed" and "Loans up to NT$2,000,000 to pay off your debts at annual interest rates starting from 1.88% (the first two months)" gave the impression that people with their own businesses would need no collateral or guarantor when applying for loans and the interest rate could be as low as 1.88% for the first six months and those seeking loans to clear their debts could apply for loans to the maximum of NT$2,000,000 through the approach of "individual negotiation," "preliminary negotiation," or "debt consolidation" (under 'Debt Clearance' on the web page were the options of 'Individual Negotiation', 'Preliminary Negotiation', 'Debt Consolidation', and 'Debt/Credit Diagnosis') at interest rates as low as 1.88% for the first two months. Fast V Co. contested that the offer of "Loans for Business Owners" was based on Standard Chartered Bank's "Loan Me More" and "Outstanding Customer Index Credit Loan" packages whereas the "Debt Clearance" was based on the "Loan Me More" package. Standard Chartered Bank had indeed offered the 1.88$ special interest rate but the

"Outstanding Customer Index Credit Loan" was available to natural persons only, while whether guarantors would be required for the "Loan Me More" package had to be decided on a case-by-case basis and this was rather different from the claim in the advertisement that "no collateral or guarantor needed for business owners seeking loans." The findings of the FTC's investigation also revealed that the options of "Individual Negotiation" and "Preliminary Negotiation" in the "Debt Clearance" advertisement were not at all the loaning conditions for "Loan Me More." There was no guarantee that preferential loan repayment terms could be obtained through "Individual Negotiation." The debtor had to prove able to repay the loan. As for "Preliminary Negotiation", it was a package to assist the debtor to negotiate with all the creditors to establish a scheme for consumer loan repayment. Both measures were different from "debt clearance" in nature and Fast V Co. was unable to provide successful loan acquisition examples to prove the aforesaid loaning conditions were real. Hence, the wording of "business owner loans with no need of collateral or guarantor" and "loans up to NT$2,000,000 for debt clearance" in the advertisements was false, untrue, and in violation of paragraph 3 of Article 21 of the FTL and paragraph 1 of the same article applied mutatis mutandis. The company was therefore imposed with an administrative fine of NT$100,000.

Appendix:
Fast V International Co.'s Uniform Invoice Number: 80474964

Summarized by Chen, Jing- Chuan; Supervised by Hsu, Hung-Jen □

Juhui Pharmaceutical Enterprises Co., Ltd.

998th Commissioners' Meeting (2010)

Case: Juhui Pharmaceutical Enterprises Co., Ltd. violated the Fair Trade Law for false or misleading representations in advertising its "massaging pillow"
Key Word(s): False and untrue, misleading
Reference: Fair Trade Commission Decision of December 22, 2010 (the 998th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.099146
Industry: Retail Sale of Home Furnishings in Specialized Stores (4743)
Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. In its advertisement for the "massaging pillow" on Dasi Radio, Juhui Pharmaceutical Enterprises Co., Ltd. (hereinafter referred to as Juhui Co.) claimed that "the pillow complies with the national patent certification criteria. People normally turn dozens of times in their sleep and the weight of the head stimulates the meridians in the head and the ears each time they do so, making it possible to fall asleep quickly and sleep peacefully for a long period of time and giving people the energy to perform well at work the next day. Sleeping well makes people healthier and healthier. If it's difficult for you to fall asleep and you don't sleep peacefully for a long enough period, let the massaging pillow help you. The ergonomically designed pillow allows you to breathe smoothly without snoring. People originally hard of hearing … It only takes a few days to get used to it and then you will find it too comfortable to leave your pillow." The advertisement was suspected to be false and untrue.

2. Findings of the FTC after investigation and grounds for disposition:

The content of the advertisement gave consumers the impression that the said product allowed the meridians in the back of the head, the neck and the back to be massaged and stimulated each time the user turned in his or her sleep. The blood

circulation in the head would thus become more active and the user could fall asleep faster and sleep better and longer. However, Juhui Co. was unable to provide any test results to support the claim. According to No.99032 Document from the Taiwan Society of Sleep Medicine, the said claim received no scientific evidences at all. The advertisement was therefore deemed a groundless, false, untrue and misleading representation in violation of Article 21 (1) of the Fair Trade Law. The company was imposed with an administrative fine of NT$50,000.

Appendix:
Juhui Pharmaceutical Enterprises Co., Ltd.'s Uniform Invoice Number: 70589375

Summarized by Chao, Kuo-Sheng; Supervised by Hsu, Hung-Jen □

Yumei Store

998th Commissioners' Meeting (2010)

Case: Yumei Store violated the Fair Trade Law by making false or misleading representations in advertising false eyelashes
Key Word(s): False or misleading representations in advertising, false eyelashes
Reference: Fair Trade Commission Decision of December 22, 2010 (the 998th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.099148
Industry: Electronic Shopping and Mail-Order Houses (4871)
Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The FTC received written complaints that many shops that sold false eyelashes labeled their false eyelashes as made in Taiwan while they were perfectly aware that

the products they were selling were in fact made in Mainland China, Vietnam or other parts of Southeast Asia and this was causing confusion for consumers. To understand whether the advertisements for false eyelashes involved dishonest labeling of place of origin, thus misleading consumers and jeopardizing consumers' interests and trading order, the FTC checked the advertisements on the Internet and also sent personnel to various sales outlets for inspection. The findings showed that on the website of"Yumei Store" , the place of origin of BM F-5 False Eyelashes (hereinafter referred to as the Products) was labeled as Taiwan. This label was false and untrue.

2. Findings of the FTC after investigation:

The FTC found out that the Products came from two sources – Meidi Enterprises Co., Ltd. (hereinafter referred to as Meidi Co.) either imported semi-finished products and packaging them in Taiwan or imported finished products from Korea. Meidi Co. expressed that the company had sent technicians with raw materials to Myanmar to train the local workers to make false eyelashes and then shipped the semi-finished products back to Taiwan and packed them into packages designated by Yumei Store, the buyer. According to the Jing-Shang-Zi No.09802382480 Letter dated December 29, 2009 from the Ministry of Economic Affairs, the regulation in Article 9 of the Commodity Labeling Act was interpreted as"the place of origin of products that are only packed by domestic agents without substantive transformation may not be changed." Based on this interpretation from the Ministry of Economic Affairs, Meidi Co. could not label the Products it sold to Yumei Store as"Made in Taiwan" because it was inconsistent with the fact. For the same reason, Yumei Store could not label the Products imported from overseas as"Made in Taiwan" either.

3. Grounds for disposition:

Yumei Store advertised its BM F-5 False Eyelashes online as"Made in Taiwan", which was inconsistent with the fact that they had been imported from Myanmar and other places. It was a false, untrue and misleading representation with regard to the place of origin of product in violation of Article 21 (1) of the Fair Trade Law. The FTC therefore imposed on Yumei Store an administrative fine of NT$50,000.

Appendix:
Yumei Store's Uniform Invoice Number: 67873307

Summarized by Lu, Shih-Ting; Supervised by Chi, Hsuen-Li □

LG Electronics Taiwan Taipei Co., Ltd.

1012nd Commissioners' Meeting (2011)

Case: LG Electronics Taiwan Taipei Co., Ltd. violated the Fair Trade Law for posting a false and untrue comparative advertisement about inverter washing machines
Key Word(s): Inverter washing machine, false and untrue comparative advertisement, water consumption
Reference: Fair Trade Commission Decision of March 30, 2011 (the 1012nd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100040
Industry: Retail Sales of Electrical Household Appliances in Specialized Stores (4741)
Relevant Law(s): Articles 21(1) and 24 of the Fair Trade Law

Summary:

1. LG Electronics Taiwan Taipei Co., Ltd. (hereinafter referred to as LG Co.) was reported to have posted a false and untrue comparative advertisement about inverter washing machines in sales outlets. The advertisement compared LG inverter washing machines with Panasonic inverter washing machines and indicated that the water consumption of the latter was higher that the former. It was in violation of Articles 21 and 24 of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:
(1) In the said advertisement, the water feeding mechanisms of LG and Panasonic

inverter washing machines were listed in contrast. It indicated that "Brand P: single water feeding" and "LG: water feeding in three stages" and the word "BEST" was printed in one of the LG columns. However, the investigation revealed that the water feeding mechanisms of all inverter washing machines marketed domestically were all "water feeding in two stages." The ones with "water feeding in three stages" were the washing machines of vertical types, not the inverter models. LG confessed that the indication in the said advertisement was an act of negligence by its employees who had the information printed in the advertisement without confirmation in advance.

(2) The said advertisement also listed the water consumption measurement criterion for issuance of the water-saving label – the measured value had to be 20L/Kg according to the JIS C9606 Standard. The advertisement displayed the "DD Inverter Washing Machine Water Consumption Comparison Table" in which the water consumption levels of the 14Kg and 15Kg inverter washing machines from Panasonic (without indicating the models) were shown as "18.7L/Kg" and "17.4L/Kg" respectively, whereas in the fields for the LG inverter washing machines of the same capacities were labeled "18.5L/Kg" and "16.2L/Kg" in contrast. A "crown" icon and the "BEST" sign were also placed in the said columns to show that the LG models saved more water. Nevertheless, a finding of the investigation showed that during the period the said advertisement was posted, Panasonic was also marketing other inverter washing machines of the capacities of 14Kg and 15Kg and their water consumption levels were respectively "13.78L/Kg" and "12.97L/Kg", both lower that the LG models referred to in the said advertisement.

3. Grounds for disposition:

(1) The said advertisement carried the headline "Good Cleaning Strength and Super Water-saving Capacity Make Key Considerations in Choice of Inverter Washing Machines" in blown-up and bold prints. In the contrast table, the water feeding mechanisms of LG and Panasonic inverter washing machines were compared. It indicated "Brand P: single water feeding" and "LG: water feeding in three stages" and the word "BEST" was printed in one of the LG columns. This gave consumers the impression that the water feeding in the LG inverter washing machines referred

to in the advertisement took place in three stages and these machines were better than those made by Panasonic. The truth is that the water feeding mechanisms in all the inverter washing machines LG Co. marketed in Taiwan fed water in the machines in two stages, not three stages. According to the advertisement, the water feeding mechanism was closely related to detergent solution and cleaning capacity. However, LG, as the advertiser, failed to fulfill the obligation of verifying the authenticity of the said statement and wrongfully advertised its washing machines as equipped with a mechanism that fed water in the machine in three stages, which was not true. The conduct misled trading counterparts into believing that the LG inverter washing machines actually fed water into the machine in three stages. It was therefore false, untrue and misleading, and in violation of Article 21 (1) of the FTL.

(2) Again, before making the said advertisement, LG Co. did not really investigate the consumption levels of the 14Kg and 15Kg inverter washing machines made by Panasonic and the "DD Inverter Washing Machine Water Consumption Comparison Table" in the advertisement indicated that the water consumption levels of LG inverter washing machines were lower than the Panasonic inverter washing machines of equivalent capacities, while during that period Panasonic actually had other models that consumed less water than that was referred to in the advertisement. Apparently, when making the comparison in the said advertisement, LG Co. selectively neglected the Panasonic inverter washing machines that used less water. This could mislead trading counterparts into buying LG products due to their belief that LG products were better than those from Panasonic. As a result, Panasonic, as one of the market competitors of LG, could thus lose trading opportunities. It was obviously unfair conduct detrimental to proper commercial trading order and market competition and in violation of Article 24 of the FTL.

(3) According to the above facts and considering the degree of damage caused by the unlawful act of LG Co. and the duration of the unlawful act, the company's business scale, management condition, market status, and its level of cooperation during the investigation, the FTC acted in line with the first section of Article 41 of the FTL, ordered the company to immediately cease the unlawful act, and also imposed an administrative fine of NT$150,000 for its violation of Article 21 (1) and

an administrative fine of NT$400,000 for its violation of Article 24 of the same law. The fines totaled NT$550,000.

Appendix:
LG Electronics Taiwan Taipei Co., Ltd.'s Uniform Invoice Number: 22553217

Summarized by Lai, Chien-Sheng; Supervised by Chi, Hsueh-Li □

104 Information Technology Co., Ltd.

1017th Commissioners' Meeting (2011)

Case: 104 Information Technology Co., Ltd. violated the Fair Trade Law for false and untrue advertisements
Key Word(s): Job bank, rate of use by jobseekers, job-seeking channel
Reference: Fair Trade Commission Decision of May 4, 2011 (the 1017th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100072
Industry: Activities of Employment Placement Agencies (7810)
Relevant Law(s): Article 21(3) of the Fair Trade Law

Summary:

1. 104 Information Technology Co., Ltd. (hereinafter referred to as 104 Co.) was reported to have claimed on its website "rate of use by jobseekers three times higher than our competitors; the 2009 job bank survey by the Nielsen Company (hereinafter referred to as Nielsen Co.) showed that 104 Job Bank was the most popular job search website among jobseekers," and "the survey by Nielsen Co. revealed that 65.1% of jobseekers used 104 Job Bank while 18.6% used competitor B and 11.6% used competitor C, making the rate of use of 104 Job Bank by jobseekers three times higher than our competitors…" The advertisement was found to be false and untrue.

2. Findings of the FTC after investigation:

The investigation showed that the questions in the survey conducted by Nielsen Co. on the issue of "the channel most often used by new jobseekers" were designed to ask new jobseekers about the "channels you use" and the "channel you most often use" respectively. The choices for both questions were entirely identical but the results varied. In the "channels you use" category, 104 Job Bank scored 43%, Job Bank B 31%, and Job Bank C 13%. In the "channel you most often use" category, 104 Job Bank scored 28%, Job Bank B 8%, and Job Bank C 5%. Thus, as 104 Co. claimed that the information shown in the advertisement had been quoted from the aforesaid result of survey by Nielsen Co., it must have been aware that the "channels jobseekers use" and the "channel jobseekers most often use" were two related but separate questions asked in the survey. Although related, the two questions had dissimilar nature and results. The conduct of distorting the results and putting them to use through public announcement for certain purposes shall be deemed false, untrue, and misleading.

3. Grounds for disposition:

Job search channels are always diverse and using them simultaneously do not give rise to any conflicts among them. Jobseekers can use multiple job search channels at the same time according to their interest and need. As a matter of fact, most jobseekers do employ the help of various channels for the purpose of looking for work in order to increase their chances of success. It is impossible for online job banks to expect jobseekers to use only one single job search website. Hence, the "rate of use by jobseekers" indicated in the said advertisement should have been calculated in accordance with all the job search channels jobseekers used instead of just the channel most often used. 104 Co. distorted the results of the survey conducted by Nielsen Co. and claimed 104 Job Bank had "rate of use by job seekers three times higher than that of our competitors" and "the rate of use of 104 Job Bank by jobseekers is three times higher than that of the competitors" only based on the outcome of the survey on the "channels you use." This could mislead people into believing that the "rate of use by jobseekers" of other job banks was three times

less than that of 104 Job Bank and thus have an effect on the willingness of trading counterparts to use other job banks for job search. It was thus deemed as a false, untrue and misleading advertisement in violation of paragraph 3, Article 21 of the Fair Trade Law and paragraph 1 could apply mutatis mutandis. The FTC therefore ordered 104 Co. to immediately cease the unlawful act and also imposed on the company an administrative fine of NT$500,000.

Appendix:
104 Information Technology Co. Ltd.'s Uniform Invoice Number: 84598349

Summarized by Hsu, Tzung-Yu ; Supervised by Hsu, Hung-Jen □

AVerMedia Technologies Inc.

1020th Commissioners' Meeting (2011)

Case: AVerMedia Technologies Inc. violated the Fair Trade Law by giving away gifts to sales of TV digital rods
Key Word(s): TV digital rod, aerial, remote control, gift and prize
Reference: Fair Trade Commission Decision of May 25, 2011 (the 1020th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100091
Industry: Manufacture of Audio and Video Equipment (2730)
Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. The FTC received from an informer a written complaint that AVerMedia Technologies Inc. (hereinafter referred to as AVerMedia Inc.) was marketing its remote-controlled HD digital rod MCE (Windows Media Center), model number A867R. The packaging indicated the product came with gifts (remote control and

aerial) worthy of 1,198 NT dollars (the same unit applies hereinafter). The company also posted on page 70 of the June issue of e-Life Monthly an advertisement saying "Special Offer – HD digital rod A867R for 1,299 dollars only, with a free remote control, a high-quality MCE designated remote control with the market value of 799 dollars." Another advertisement could be found on its promotion posters saying that "extra freebies of a 2-pole high-sensitivity aerial worthy of 399 dollars and a designated remote control for Windows Media Center at the market value of 799 dollar." The gift-giving wording in the said advertisements by AVerMedia Inc. was in violation of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation :

(1) TV digital rods need to be connected to an aerial and scan the channels before they can receive the radio digital TV signals. Therefore, an aerial is a required accessory that comes with a TV digital rod. A remote control allows control from a distance. Although it is not a required accessory, most consumers use one. Consequently, today most TV digital rods come with a remote control and an aerial. Remote controls can be purchased separately but only by people whose remote control has been damaged or lost. In addition, each TV digital rod manufacturer provides aerials and remote controls that are used for their own products only. There is no compatibility between different brands.

(2) The investigation showed that all TV digital rods available on the market carry on their packaging the indication that the remote control and the aerial are part of the content of the product and not gifts. AVerMedia Inc. was the only company that indicated on the packaging of its products that the remote control and the aerial were gifts.

3. Grounds for disposition:

(1) The investigation showed that AVerMedia Inc. did indicate on its product packaging and posters and in June issue of e-Life Monthly the remote control and the aerial were gifts. However, since an aerial is a required accessory for a TV digital rod to receive radio signals and a remote control is an important accessory to facilitate

consumers' control and operation from a distance, TV digital rods normally come with an aerial. Furthermore, all the businesses investigated, with the exception of AVerMedia Inc., indicated on the packaging of their products that the remote control and the aerial were part of the product content instead of indicating them as gifts. As an aerial is a required accessory and a remote control is an important accessory for the TV digital rod to have its basic functions, it is a general practice that they are included as part of the merchandise. The offender's use of the wording of "gift value" and "additional gif" was inconsistent with the normal practice of sales of this type of products. The intention was obviously to employ the misleading representation to increase the opportunity to attract potential trading counterparts.

(2) The indication of gift giving by AVerMedia Inc. was strong enough to mislead consumers into believing that there was a rather large discount on the said product and buying it. Furthermore, AVerMedia Inc. only put one set of aerial and remote control in each package for the said product to have its functions. There was not an extra aerial or remote control. Therefore, the wording of "gift", "additional gift", and "give away" was a misleading representation with regard to content and price of product in violation of Article 21 (1) of the FTL. Applying the first section of Article 41 of the same law, the FTC ordered the company to immediately cease the unlawful act and also imposed on it an administrative fine of 100,000 dollars.

Appendix:
AVerMedia Technologies Inc.'s Uniform Invoice Number: 23611974

Summarized by Liao, Wan-Ting; Supervised by Wu, Lieh-Ling □

Fong Yi Construction Co., Ltd.

1025th Commissioners' Meeting (2011)

Case: Fong Yi Construction Co., Ltd. violated the Fair Trade Law for posting false and untrue advertisements for its "Ji Guang Bo Li" housing project
Key Word(s): Housing project advertisement, swimming pool, illegal construction
Reference: Fair Trade Commission Decision of June 29, 2011 (the 1025th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100110
Industry: Real Estate Development (6700)
Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The FTC received complaints from citizens that in the advertisements, including the one on Page A7 of the Apple Daily of March 27, 2010 (Sat.) and the one on Page A11 of the same newspaper of May 15, 2010 (Sat.), (together hereinafter referred to as the advertisements), for the company's "Ji Guang Bo Li" housing project (hereinafter referred to as the housing project), Fong Yi Construction Co., Ltd. (hereinafter referred to as Fong Yi Co.) claimed there would be a 25-meter outdoor heated swimming pool. However, as the company had registered the housing project as to be including open space, there would be no room for a swimming pool. The swimming pool had to be illegal construction if it appeared as claimed and this was not indicated in the advertisements. It was false and untrue advertising.

2. Findings of the FTC after investigation:

As the financer and builder of the housing project, Fong Yi Co. admitted that although the advertisements had been contracted to Yi Yan Jiu Ding Advertising Planning Co., Ltd, and according to the contract, any information included in the advertisements needed approval by Fong Yi Co. before they could be finalized and posted because Fong Yi Co. was the person who pays for the advertising. It was also worded in the advertisements: "Fong Yi – www.fong-yi.com.tw – the entire project

planned by the integrated professional team from Fong Yi Construction." Therefore, it was unquestionable that Fong Yi Co. had financed the advertisements to market its products, taking the responsibility of the advertisement production review, the approval procedure, and the payment for the expenses. The company was thus considered the advertiser.

3. Grounds for disposition:

As the advertisements showed there would be a 25-meter outdoor heated swimming pool, consumers without thinking further would normally think that the swimming pool was a legal facility for the residents to use and make their transaction decisions accordingly. However, the reply from Hsinchu County Government to the FTC's inquiry indicated that according to the completion drawing for the housing project and the building base review report, the housing project did not include a 25-meter swimming pool. The item approved was a "lawn croquet field" and the building never applied for any change of use permit. Therefore, a swimming pool on the ground level would undoubtedly be illegal construction. Although Fong Yi Co. contended it had engineered in line with the advertisements and paid the expenses, advertising such a facility constructed in violation of building regulations to attract transactions could easily create misconceptions and wrong decisions among consumers. Moreover, the use of unlawful advertising to gain business was unfair competition practices to law-abiding competitors. Based on the above, the conduct of Fong Yi Co. was deemed a false, untrue, and misleading representation in violation of Article 21 of the Fair Trade Law. Acting in line with the first section of Article 41 of the same law, the FTC imposed an administrative fine of NT$600,000 on the company and also ordered it to immediately cease the act of false, untrue, and misleading representation.

Appendix:

Fong Yi Construction Co., Ltd.'s Uniform Invoice Number: 89369020

Summarized by Ho,Yen-Jung; Supervised by Chen, Chun-Ting □

Mei and Mei Foods Co., Ltd.

1032nd Commissioners' Meeting (2011)

Case: Mei and Mei Foods Co., Ltd. violated the Fair Trade Law for false and untrue advertising and failure to disclose important trading information before establishment of franchise relationships

Key Word(s): False and untrue advertising, franchise, failure to disclose important trading information

Reference: Fair Trade Commission Decision of August 17, 2011 (the 1032nd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100151

Industry: Restaurants (5610)

Relevant Law(s): Articles 21(3) and 24 of the Fair Trade Law

Summary:

1. The FTC received complaints from citizens that they attended a franchise presentation held by Mei and Mei Foods Co., Ltd. (hereinafter referred to as Mei and Mei Foods) on March 27, 2010 and were told the profit could be as much as 30% of the total sales. However, as they were not provided with the list of raw material costs before signing the contract with Mei & Mei Foods, they therefore made the wrong assessment. In addition, the business transfer contract they signed indicated that signature of a franchise contract was required before the transfer was made.

2. Findings of the FTC after investigation:

(1) According to a product analysis dated May 1, 2010 from Mei and Mei Foods, the (gross) profit margin of the Specialty Japanese Burgers was 45% which was inconsistent with the 55% figure that was given during the presentation. In addition, there were over 2,500 franchisees in total, but only the management and sales in three months of one single franchisee were provided as proof. There was no information about the loss and profits of the other franchisees.

(2) The written information for the franchise recruitment in question did not disclose the "number of franchisees of the chain in each county/city, their locations, and the ratios of contract cancellation and termination in the previous year."

3. Grounds for disposition:

(1) Using the Specialty Japanese Burgers as an example during the presentation, Mei and Mei Foods claimed the profit (including the franchisee's salary) was 31.6%, which was derived by deducting personnel cost (10%), utilities and miscellaneous expenses (3.4%), and rent (10%) from the 55% gross profit (31.6%=55%-10%-3.4%-10%). However, according to a product analysis dated May 1, 2010 from the company, the (gross) profit margin of the Specialty Japanese Burgers was 45%, inconsistent with the 55% figure that was given in the advertisement. If the personnel cost, utilities and miscellaneous expenses, and rent remained were kept unchanged, after deduction of these expenditures, the net profit would be 21.6% and the 31.6% claimed in the advertisement. Hence, there was no proof to support the claim made by Mei & Mei Food. As for the company's allegation that franchisees could determine their own prices and the gross profit would be different, the investigation showed the breakfast business was a highly competitive market with a large number of suppliers, as well as with the features of high homogeneity and substitutability at the same time. Consumers were extremely sensitive to price difference. When a franchisee raised the prices of its products, it would lose customers quickly to its competitors. Therefore, it was difficult for a single franchisee to ignore market competition from its neighbor competitors and increase the prices of its products. In other words, it was impossible for any franchisee to act as the company alleged and determine its own prices without any consideration about market competition. It would set the prices in accordance with the aforesaid product analysis or the rates recommended in the advertisement and, as a result, its gross or net profit could never reach the level claimed in the advertisement.

(2) Mei and Mei Foods expressed that all franchisees were financially independent and the mother company had the way of knowing their business condition. Therefore, it provided only the sales records of the franchisee on Xingfu Road in Xinzhuang from February to April 2011 as supporting proof because the shop did achieve the profit as claimed in the advertisement during that period. However, the investigation showed that the company had more than 2,500 franchisees and the recruitment had begun as early as 1988 when the company started. Consequently, it had to have accumulated a considerable amount of statistics on franchisee business incomes

and profits over the years. The profit of one single franchisee in three months was far from adequate to represent the sales and profits of over 2,500 shops. Moreover, the figures in the product analysis could not support the profit rate claimed in the advertisement. The sources of the data and the basis of calculation were not clearly indicated by Mei & Mei Foods. The claim had no solid support and the public would find it difficult to accept the difference. The conduct was deemed a false, untrue and misleading representation in violation of paragraph 3 of Article 21 of the Fair Trade Law (FTL) and paragraph 1 of the same law could apply mutatis mutandis.

(3) Mei and Mei Foods failed to disclose the important trading information regarding the "number of franchisees of the chain in each county/city, their locations, and the ratios of contract cancellation and termination in the previous year" within 10 days before establishment of franchise relationship or within a period considered reasonable for each case. According to "Taiwan Chain Store Almanac 2010", there were 27 breakfast business chains with 12,023 shops in total. Mei and Mei foods had 2,509 breakfast places. The entry barrier for the business was low. Competitors on the market were generally concentrated in certain areas, making the regional market of breakfast business a highly competitive market. Therefore, for people considering joining a breakfast business chain, the number of franchisees of the same chain and their locations in the same region would be important factors in their assessment of whether to do so and their choice of franchiser. In addition, the number of franchisees of Mei and Mei Foods decreased by 313 from 2009 (2,822) to 2010 (2,509). The withdrawal rate was 11.09%, indicating rather high percentages of contract cancellation and termination. This information was closely related to the franchiser's management ability and the stability of the franchise label. Without the franchiser's disclosure, its trading counterparts had no way of getting this knowledge. It was important information potential franchisees needed to assess the future business growth under the franchise label, the competitiveness between franchisees in the same chain, and brand stability. When the party with informational advantages exploited the information asymmetry of its trading counterparts and did not disclose the important information it possessed, it could put the trading counterparts in the position of making wrong judgment and signing contracts at risk. This was the obviously unfair conduct stated in Article 24 of the FTL.

(4) Each franchisee of Mei and Mei Foods was required to pay the company a franchise fee between NT$210,000 and NT$1,080,000. It was not a small investment and the fee could not be used for other purposes. The franchise presentations held in different places in the country had recruited over 2,500 franchisees. Mei and Mei Foods took advantage of its market dominance status and continued to establish contracts with various trading counterparts. Apparently, the company's failure to disclose important franchise information had been a repeated trading pattern. If the said conduct was not stopped, there would be further victims, its competitors would lose their opportunities to sign contracts with new franchisees, and the trading order of the chain store franchise market would be affected. It was in violation of Article 24 of the FTL and the FTC therefore imposed on the company an administrative fine of NT$500,000.

Appendix:
Mei and Mei Foods Co., Ltd.'s Uniform Invoice Number: 22752150

Summarized by Kuo, An-Chi; Supervised by Hung, Hsiu-Hsing □

Qun-Yi-Xin Co., Ltd.

1039th Commissioners' Meeting (2011)

Case: Qun-Yi-Xin Co., Ltd. violated the Fair Trade Law by posting false and untrue bank loan acquisition advertisement on its website
Key Word(s): Loan acquisition, false and untrue advertising, DBR22
Reference: Fair Trade Commission Decision of October 5, 2011 (the 1039th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100179
Industry: Wholesale of Motor Vehicles and Motorcycles and Related Parts and Accessories (4651~4653)
Relevant Law(s): Article 21(3) of the Fair Trade Law

Summary:

1. The FTC received from the Banking Bureau of the Financial Supervisory Commission (hereinafter referred to as the FSC), Executive Yuan a letter stating that the wording of"special loan acquisition packages: for people with debts more than 22 times of their average monthly income and the DBR22 regulation not to be taken into account" in the advertisement posted by Qun-Yi-Xin Co., Ltd. on its website was in violation of Article 21 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) The investigation revealed that Mr. Huang, an employee of Qun-Yi-Xin Co., Ltd. (hereinafter referred to as QYX) responsible for business development, had set up the website in the name of Qun Yi Financial Management Marketing Co., Ltd. (not officially registered) and posted the said advertisement as a result of the company's intention to extend its business operations to loan acquisition.

(2) QYX argued that according to the FSC's regulation, unsecured debt owed to banks, or the overall account balance of a credit loan, could not exceed 22 times of the applicant's average monthly income in the most recent year (hereinafter referred to as DBR22). In other words, if a loan seeker applied to a bank for a credit loan, or unsecured debt, the aforesaid regulation would make it impossible for the applicant to acquire a loan any more than DBR22. However, QYX could assist loan seekers to acquire secured loans, such as the borrower provides a car, real estate, or other property as collateral to get a loan from a pawn shop or bank and the FSC's DBR22 regulation would not be applicable. That was what"other special packages" in the said advertisement referred to.

3. Grounds for disposition:

(1) In the said advertisement, QYX claimed to be"offering various financial planning and credit loan services," "special loan acquisition packages: for people with debts more than 22 times of their average monthly income and the DBR22 regulation not to be taken into account," and, at the bottom of the page,"credit loan

interest rates range between 1.68% and 20%. Banks consider military personnel, civil servants, teachers, and employees of listed companies' top candidates…," "each bank offers various products for different clienteles…," "bank loan actuary…" The overall wording in the advertisement gave consumers the impression that there were special ways to bypass the FSC's DBR22 regulation and acquire credit loans from banks through the loan acquisition service provided by QYX. The advertisement apparently could thus induce certain recognition in the general public or interested parties and make their trading decisions accordingly.

(2) QYX argued that the wording of"special loan acquisition packages: for people with debts more than 22 times of their average monthly income and the DBR22 regulation not to be taken into account" referred to acquisition of loans from banks or legally registered pawn shops for borrowers who could provide cars, real estate or other property as collateral. However, the company admitted that the FSC's DBR22 regulation made it impossible to acquire loans more than 22 times of a borrower's average monthly income and there was no record indicating the company had ever succeeded in acquiring credit loans more than DBR22. In addition, in Yin-Ju (Piao) Document No.10000148171 dated May 16, 2011, the FSC expressed from its professional standpoint that"according to the DBR22 regulation, the advertisement in question was apparently false and untrue and could easily make consumers believe that it would be more advantageous to seek loans through the advertiser than by applying for loans on their own. In consequence, people would have the burden of paying for the service. The advertisement was obviously misleading the public." The information presented through the advertisement was incongruous with the reality. The difference could lead to wrongful understandings or decisions and was unacceptable to the general public or interested parties. It was a false, untrue and misleading representation in violation of paragraph 3, Article 21 of the Fair Trade Law and paragraph 1 of the same article could apply mutatis mutandis.

(3) Combining the above and assessing the level and duration of the impact of the illegal conduct of QYX on trading order on the market, the FTC acted according to the first section of Article 41 of the Commission ordered QYX to immediately cease the unlawful act, and imposed an administrative fine of NT$50,000 on the company

for the violation of paragraph 3, Article 21 of the Fair Trade Law where paragraph 1 of the same article applied mutatis mutandis.

Appendix:
Qun-Yi-Xin Co., Ltd.'s Uniform Invoice Number: 53376146

Summarized by Lin, Fu-Hao; Supervised by Chi, Hsueh-Li □

Hwang Cui-hwa

1041st Commissioners' Meeting (2011)

Case: Hwang Cui-hwa, who is in charge of Easter Taipei Electrical Appliance Service Station, violated the Fair Trade Law for posting a false and untrue service advertisement in the Chunghwa Telecom Yellow Pages
Key Word(s): Electric appliance repair, service provider, service advertisement
Reference: Fair Trade Commission Decision of October 19, 2011 (the 1041st Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100178
Industry: Repair of Audio and Video Electronic Products and Electric Appliances (9523)
Relevant Law(s): Article 21(3) of the Fair Trade Law

Summary:

1. A company reported that Hwang Cui-hwa, the person in charge of Eastern Taipei Electric Appliance Service station, had posted in the 2010-2011 Taipei City Business Yellow Pages (Northern Taipei – Shilin and Beitou) published by Chunghwa Yellow Pages Co., Ltd. a service advertisement containing the wording of"Hitachi air conditioner series; Main Office Service Division Tel.: 27138877 (representative) and Repair Service Hotline: 27216686 (representative)." The said service advertisement and the other thirteen small advertisements on the same page (altogether hereinafter

referred to as the advertisements" all offered repair services for"electric appliances of major brands, including Teco, Sanyo, Sampo, Panasonic, Tatung, Westinghouse, Whirlpool, GE, Toshiba, LG, Kolin Mitsubishi, Sony, Chimei, etc., with a few electric appliance items listed for example, such as refrigerators, air conditioners, and contact telephone numbers for locations in Taipei City, Taipei County before the administrative reorganization, and different areas. However, it was not clear whether each of the advertisers was really a repair service provider authorized by the major electric appliance makers or served as their agent or distributor. The advertisements were suspected of being false, untrue and misleading representations and the FTC was requested to look into the matter.

2. Grounds for disposition:

The advertisements contained the names of major electric appliance brands and listed a few electric appliance items as examples and contact telephone numbers for locations in Taipei, Taipei County before the administrative reorganization and different areas. None of them showed the name of the business providing the repair services or indicated whether the service provider was legally authorized or served an agent or distributor of the manufacturers. The fourteen advertisements on the same page were in independent boxes and carried different service numbers. It was impossible to know they had been posted by the same business. Take the wording of"Hitachi air conditioner series; Main Office Service Division Tel.: 27138877 (representative) and Repair Service Hotline: 27216686 (representative)" for example, consumers would, at first glance, normally interpret the repair services were provided by the manufacturer or the service provided had been authorized by the manufacturer or served as an agent or distributor for the manufacturer. In fact, all the fourteen small advertisements had come from Hwang Cui-hwa, the person in charge of Eastern Taipei Electrical Appliance Service Station, who admitted she was not an authorized agent or distributor for any of the major electric appliance makers. Apparently, the advertisements could easily make consumers have mistaken ideas about the identity and qualification of the service provider and thus have an effect on their trading decisions. They were considered misleading representations in violation of paragraph

3, Article 21 of the Fair Trade Law and paragraph 1 of the same Article could apply mutatis mutandis. The Commission therefore ordered Hwang to immediately cease the false, untrue and misleading representations, and also imposed on Hwang Cui-hwa an administrative fine of NT$50,000 according with the first section of Article 41 of the Fair Trade Law.

Appendix:
Hwang Cui-hwa's (Easter Taipei Electrical Appliance Service Station) Uniform Invoice Number: 78067982

Summarized by Ho, Yen-Jung; Supervised by Yang, Hsiu-Yun □

Atlaspost Tech Corp. & Zhen Long Consolidated Marketing Co., Ltd.

1047th Commissioners' Meeting (2011)

Case: Atlaspost Tech Corp. and Zhen Long Consolidated Marketing Co., Ltd. violated the Fair Trade Law by posting a false, untrue and misleading advertisement of Moon Festival gift set on the Internet
Key Word(s): Listed price, group buy website
Reference: Fair Trade Commission Decision of November 30, 2011 (the 1047th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100237
Industry: Data Processing, Website Hosting and Related Services (6312)
Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. In the advertisement posted on Groupon's group buy website for Kuo Yuan Ye moon cake gift sets, Atlaspost Tech Corp. (hereinafter referred to as Atlaspost) and

Zhen Long consolidated Marketing Co., Ltd. (hereinafter referred to as Zhen Long) claimed"NT$790 (including delivery fee) for Kuo Yuan Ye Century Autumn Festival Classic Jin Feng 3-tier 30-piece Gift Set at 50% discount from the listed price of NT$1,580."However, compared to the price of the same product on Kuo Yuan Ye's official website, what was claimed in the above advertisement was actually only a 10% discount. The listed price and discount quoted were inconsistent with reality. The advertisement was apparently untrue.

2. Grounds for disposition:

The product at issue – the Classic Jin Feng gift set – was in fact a market-testing package Kuo Yuan Ye Foods (hereinafter referred to as Kuo Yuan Ye) had put out before releasing the official product. Kuo Yuan Ye has never included the product in its official catalog or promoted it on the market. Besides Zhen Long, the gift sets had also been sold to other businesses. In other words, they had not been particularly designed for Zhen Long. The investigation also showed that the content of Classic Jin Feng seemed similar to that of another gift set named "Jin Feng Niang Yue" found in Kuo Yuan Ye's catalog, but the packaging was different and therefore the price of the latter could not be cited as the "listed price". Another finding of the investigation indicated that Kuo Yuan Ye only sold its moon cake gift sets by the box and never in separately pieces or units. Therefore, there were no unit prices for reference and Zhen Long's claim of the listed price of NT$1,580 as the total prices of the individual items was groundless. Furthermore, as Zhen Long confessed that the "listed price" was the result of the addition of prices of the individual items taken from the Internet, making it impossible to accept that the calculation of the listed price had any relation with the prices of Kuo Yuan Ye's products it was marketing, let alone the validity of the "listed price" being Kuo Yuan Ye's calculation. In addition, Kuo Yuan Ye confirmed that it had never sold the product at that price through any sales channel. Consequently, the wording of "…listed price of NT$1,580…at 50% discount" was a false, untrue and misleading representation with regard to price of product in violation of Article 21 of the Fair Trade Law. Acting according to Article 41 (1) of the Fair Trade Law, the Commission ordered Atlaspost and Zhen Long to immediately cease the unlawful act

and also imposed an administrative fine of NT$100,000 on each.

Appendix:
Atlaspost Tech Corp.'s Uniform Invoice Number: 28481887
Zhen Long Integrated Marketing Co., Ltd.'s Uniform Invoice Number: 25021191

Summarized by Chen, Jen-Ying; Supervised by Chen, Chun-Ting □

Zhan Yan Ting International Marketing Consultancy Co., Ltd.

1048th Commissioners' Meeting (2011)

Case: Zhan Yan Ting International Marketing Consultancy Co., Ltd. violated the Fair Trade Law by posting untruthful advertisements and failing to disclose important trading information during franchisee recruitment
Key Word(s): Franchise, untruthful advertisement, failure to disclose, trading information
Reference: Fair Trade Commission Decision of December 7, 2011 (the 1048th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100250
Industry: Other Amusement and Recreation Services (9329)
Relevant Law(s): Articles 21(1) and 24 of the Fair Trade Law

Summary:

1. The FTC was informed by a franchisee of Zhan Yan Ting International Marketing Consultancy Co., Ltd. (hereinafter referred to as Zhan Yan Ting) that Zhan Yan Ting had not disclosed in writing important trading information regarding the total number of its franchisees, their locations, and statistics on the ratios of contract cancellation and termination in the previous year before both sides signed the franchise contract in May 2010. Moreover, the informer had to pay a franchise

contract deposit of NT$170,000 in spite of Zhan Yan Ting's claim in its advertisement that "no franchise fee required" as posted on the website.

2. Findings of the FTC after investigation:

It revealed that the franchise contract did not provided any information regarding the total number of Zhan Yan Ting's franchisees, their locations, and statistics on the ratios of contract cancellation and termination in the previous year and neither did Zhan Yan Ting disclose such information through any electronic documents. Furthermore, Zhan Yan Ting did post the claim of "no franchise fee required" in its franchise recruitment advertisement on its "Yahoo! Kimo" blog. The advertisement still remains on the Internet and the same information is also posted on Zhan Yan Ting's own website. Hence, there is no doubt that the franchise recruitment advertisement on the blog came from Zhan Yan Ting.

3. Grounds for disposition:

(1) The investigation revealed that the wording of "no franchise fee required" in the franchise recruitment advertisement Zhan Yan Ting posted on its "Yahoo! Kimo" blog could indeed help attract potential trading counterparts who were interested in joining the franchise and starting their own businesses. Therefore, the said information was considered as meeting the description of "in any other way making known to the public" in Article 21 of the Fair Trade Law. However, it was stipulated in the first clause, first chapter of the franchise contract Zhan Yan Ting signed with the informer that the franchisee was to pay a franchise contract deposit of NT$170,000 and related records showed that 40 of the 42 franchisees of Zhan Yan Ting had paid contract deposits ranging between NT$60,000 and NT$170,000. All the above charges detailed in Zhan Yan Ting's franchise contract were inconsistent with the advertisement which was therefore considered a false, untrue and misleading representation in violation of paragraph 3, Article 21 of the Fair Trade Law and paragraph 1 of the same article could apply mutatis mutandis.

(2) An examination of the franchise contract, startup cost estimates and website information provided by Zhan Yan Ting showed that the important information regarding the total number of its franchisees, their locations, and statistics on the

ratios of contract cancellation and termination in the previous year was never disclosed. Yet the said information was what a prospective rental comic book business franchisee needed to assess the potential growth of the franchise, the competitiveness within the franchise chain, and the stability of the brand. As Zhan Yan Ting had the information advantage in the transaction, its failure to disclose the said information was obviously unfair to the trading counterpart that was in a disadvantageous position information-wise. The conduct was also likely to lead to unfair competition against competitors. As the establishment of franchise relations entailed excludability, competitors who could provide the same products or services would lose the opportunity to establish a business relationship with the franchisee once the contract was signed. Zhan Yan Ting had 42 franchisees that it recruited by advertising on its own website and 104boss.com, and participating in chain and franchise exhibitions. The company's continuous use of its relatively advantageous status in franchise negotiation process to establish contracts with different trading counterparts was repeated transactions. If the aforesaid behavior was not stopped, there could be more victims in the future. Hence, the conduct was deemed able to affect the trading order of the chain and franchise market and in violation of Article 24 of the Fair Trade Law.

(3) Zhan Yan Ting's wording of "no franchise fee required" was regarded a false, untrue and misleading representation with regard to content of service. Its failure to fully disclose important franchise information before signing the contract was obviously unfair conduct able to affect the trading order of the chain and franchise market. The said acts were respectively in violation of Article 21 (3) and Article 24 of the Fair Trade Law. Acting according to Article 41 of the same law, the FTC ordered Zhan Yan Ting International Marketing Consultancy Co., Ltd. to immediately cease the unlawful acts and also imposed on it an administrative fine of NT$100,000.

Appendix:

Zhan Yan Ting International Marketing Consultancy Co., Ltd.'s Uniform Invoice Number: 27844566

Summarized by Hsu, Hsiu-Feng; Supervised by Chiou, Shwu-Fen □

Chen Qing-mei

1053rd Commissioners' Meeting (2012)

Case: Chen Qingmei violated the Fair Trade Law by posting reflective spray paint advertisement
Key Word(s): False and untrue advertisement, reflective spray paint
Reference: Fair Trade Commission Decision of January 11, 2012 (the 1053rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100265
Industry: Electronic Shopping and Mail-Order Houses (4871)
Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. Chen Qingmei (hereinafter referred to as Chen) posted on the Internet a "reflective spray paint" advertisement containing the wording of "protecting the license plate from getting photographed," "have you ever exceeded the speed limit unknowingly? Have you ever been on unfamiliar road sections and had speeding photos taken because you were unaware of the speed limit? Do you feel that the speed limits on some road sections are unreasonable; speeding photos are taken when you are driving at 40, 50 kilometers an hour? Now you can make your license plates invisible and drive without worries." It was considered false and untrue advertising.

2. Findings of the FTC after investigation:

According to Chen, once the reflective spray paint was applied on the surface of an object, the particles of the paint could reflect light (such as coming from a flash) that was directed on the object. When taking photos of such an object at night under lighting or with a flash, any image or text on the surface of the object could not be seen clearly. However, Chen only tested the paint on poster paper and never on license plates as claimed in the advertisement. Therefore, it is fair to say that there was not enough evidence to confirm the alleged function of the product as claimed in the advertisement. Moreover, tests conducted by the Taipei City Police Department (TCPD) on the said product proved that it had no reflective effect. The TCPD also

added that the license plate number of a motor vehicle speeding or running a red light could be identified by checking the negative if the photo was taken with a conventional analog camera or by examining the video images if a digital camera was used. At the same time, when police officers stopped a vehicle that had applied the said product, they could use a camera with a regular flash to take photos for evidence and act according to the Act Governing the Punishment of Violation of Road Traffic Regulations to write the driver a ticket for speeding or running a red light and smearing or damaging the license plate to make the number unidentifiable.

3. Grounds for disposition:

Chen was unable to provide any objective test report or evidence to support his claim made in the advertisement. It could easily mislead people into believing that using the said product could really prevent their license plates from getting photographed by the police. It was a false, untrue and misleading representation in violation of Article 21 (1) of the Fair Trade Law. The Commission therefore acted according to the first section of Article 41 (1) of the Fair Trade Law and ordered Chen to immediately cease the unlawful act.

Summarized by Yu, Yi-Fong; Supervised by Yang, Hsiu-Yun □

Taiwan Secom Co., Ltd.

1063rd Commissioners' Meeting (2012)

Case: Taiwan Secom Co., Ltd. violated the Fair Trade Law by posting a false and comparative advertisement on its website, publicity fliers, and in the "Dr. ID Access Control and Attendance Record System" catalog

Key Word(s): Market share, commercial applications of AGPS, access control and attendance record system

Reference: Fair Trade Commission Decision of March 21, 2012 (the 1063rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101028

Industry: Security Services (8001)

Relevant Law(s): Articles 21(3) and 24 of the Fair Trade Law

Summary:

1. The FTC received complaints that on its website and propaganda fliers and in its "Dr. ID Access Control and Attendance Record System" catalog, Taiwan Secom Co., Ltd. (hereinafter referred to as Taiwan Secom) made the claims that the company accounted for 60% of the system security market share and it was "the first enterprise in world to use 'AGPS' in commercial applications." The wording was a false, untrue, and misleading representation with regard to the quality of service in violation of paragraph 3 of Article 21 of the Fair Trade Law and paragraph 1 of the same law was applicable mutatis mutandis. In addition, the descriptions of the access control and attendance record systems from competitors in the "Dr. ID Access Control and Attendance System" catalog was also a false, untrue, and misleading representation in violation of Article 24 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) The information that Taiwan Secom provided on its own website and other websites and in its "Dr. ID Access Control and Attendance Record System" catalog all made the same claim that the company had 60% of the market. In addition, the "Dr. ID Access Control and Attendance Record System" catalog also contained the wording that "the first enterprise in world to use 'AGPS' in commercial applications."

However, Taiwan Secom admitted that the claim of "having 60% of the market" had no real statistical basis or objective proof but a figure that its advertising division had estimated over a decade ago and had been adopted ever since. As to the claim of the company being "the first enterprise in world to use 'AGPS' in commercial applications," Taiwan Secom also confessed that it had never done any survey or research to substantiate it. A report from the Industrial Technology Research Institute indicated that before Taiwan Secom marketed its Mini Bond mobile security service that used the AGPS, some companies in the US and Korea had already applied the AGPS in commercial applications.

(2) There was a list of comparisons in the "Dr. ID Access Control and Attendance Record System" catalog between the DR. ID system and the services of competitors in "management methods," "economic benefits," "product warranty," "depreciation modes," "maintenance and problems," and "maintenance fees." The FTC's investigation showed that the comparisons were made between Taiwan Secom's access control and attendance record management for its clients on a rental basis and its conjectures of the performance of similar services of its competitors that were purchased by their clients. Taiwan Secom admitted that during the period that the catalog was used, other security companies also provide access control and attendance record services on a rental basis. The FTC's investigation confirmed that there were indeed other companies providing access control and attendance record management services during the said period and some of them were provided on a rental basis. Therefore, the information provided in the catalog apparently was untrue.

3. Grounds for disposition:

(1) Taiwan Secom was unable to provide any scientific statistics or research data to support the claims that the company's security systems accounted for 60% of the total market share and the company was "the first enterprise in world to use 'AGPS' in commercial applications." The conduct was against the obligation of advertisers to make truthful claims. It was a false, untrue, and misleading representation with regard to the quality of service in violation of paragraph 3 of Article 21 of the Fair

Trade Law and paragraph 1 of the same article was applicable mutatis mutandis.

(2) The list of comparisons in the "Dr. ID Access Control and Attendance Record System" catalog between the system and the services of competitors in "management methods," "economic benefits," "product warranty," "depreciation modes," "maintenance and problems," and "maintenance fees' were merely results of the company's subjective conjectures and were inconsistent with the facts. Therefore, the descriptions provided in the said list of comparisons about "competitors" were false, untrue, and misleading representations with regard to products of other businesses. By providing such descriptions, the company acted against the business ethics of fair competition. It was obviously unfair conduct able to affect trading order in violation of Article 24 of the Fair Trade Law.

(3) After assessing the extent and duration of the damage to trading order from the illegal conduct of Taiwan Secom, the scale, management condition and market status of the company, as well as the level of its cooperation during the investigation, the FTC acted according to the first section of paragraph 1, Article 41 of the Fair Trade Law and ordered Taiwan Secom to immediately cease its aforesaid unlawful acts and also imposed on the company an administrative fine of NT$600,000 for its violation of paragraph 3 of Article 21 of the Fair Trade Law where paragraph 1 of the same article was applicable. For the company's violation of Article 24 of the same law, the FTC imposed upon it an administrative fine of NT$300,000. The total fine came to NT$900,000 in total.

Appendix:
Taiwan Secom Co., Ltd.'s Uniform Invoice Number: 12148598

Summarized by Lai, Chien-Sheng; Supervised by Chi, Hsueh-Li □

Mercedes-Benz Taiwan Ltd.

1067th Commissioners' Meeting (2012)

Case: Mercedes-Benz Taiwan Ltd. violated the Fair Trade Law by posting false advertisement for its Smart car model
Key Word(s): Mercedes-Benz Taiwan, Smart car, Fuel Economy Guide
Reference: Fair Trade Commission Decision of April 18, 2012 (the 1067th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101040
Industry: Retail Sale of Automobiles in Specialized Stores (4841)
Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The FTC received a complaint from a citizen who had purchased a Smart car in 2010 accusing Mercedes-Benz Taiwan Ltd. (hereinafter referred to as Mercedes-Benz Taiwan) of posting false advertisements on the website, in car catalogs and through various media outlets claiming that the average fuel consumption of the Smart car, as the reported result of a test conducted by a laboratory, was 22~23km/? while the actual fuel consumption was 12~14km/?. The average fuel consumption indicated in the car specifications that came with the complaint letter was 22.22km/?, yet on the website the company posted "average fuel consumption: the number of kilometers driven on each liter – 23.26." The advertisement was false and in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

Mercedes-Benz Taiwan expressed that the average fuel consumption figure for the Smart car had been established after tests by the TUV Nord Laboratory which had been commissioned by the German Mercedes-Benz. The FTC's investigation showed that the said figure was compatible with the fuel consumption test value announced by the Bureau of Energy (hereinafter referred to as the BOE) of the Ministry of Economic Affairs in the "Fuel Economy Guide." Both figures had been obtained from tests run in laboratories and under specific conditions. The BOE explained

that the weather influence and road conditions had been excluded in such tests which were conducted in laboratories where there was temperature and humidity control. Specialists conducted driving tests on the chassis dynamometer according to regulations and in the process all the accessories such as lights, air conditioner, and stereo that could affect the fuel economy evaluation were turned off in order to acquire the objective fuel economy of cars of different models. In other words, as a result of the weather, road conditions, traffic jams, use of air conditioner, and the driver's driving habit, the actual number of kilometers per liter of gasoline or diesel of a car had to be less than the fuel economy test value listed in the Fuel Economy Guide.

3. Grounds for disposition:

(1) The average fuel consumption indicated in the car specifications was 22.22 km/? while on the website the company posted: "average fuel consumption: the number of kilometers driven on each liter – 23.26." Without any further explanation, consumers would generally have the impression that the figure was the average of driving in the city, on the highway, and in non-urban areas under normal circumstances. However, the advertisements contained no description of the environment of the laboratories where the tests had been conducted. This was important information to be disclosed for consumers to be aware of the differences between the results of such tests and in their own normal driving. Consumers had no way of knowing the results of such tests were often the maximal fuel consumption performance. The impression the advertisements gave obviously was significantly different from reality and it could easily lead consumers to have the wrong perception or make the wrong decision. It was indeed false advertising.

(2) The claim of Mercedes-Benz Taiwan in the advertisements that the Smart car had the "average fuel consumption of 22.22 km/?" and "average fuel consumption: the number of kilometers driven on each liter – 23.26" was a misleading representation with regard to quality of product in violation of paragraph 1, Article 21 of the Fair Trade Law. The FTC imposed on the company an administrative fine of NT$1,500,000 and ordered it to cease the unlawful act.

Appendix:
Mercedes-Benz Taiwan Ltd.'s Uniform Invoice Number: 12681620

Summarized by Wang, Horng-Shiuan; Supervised by Chen, Jun-Ting □

Diamond Service Center Co., Ltd.

1070th Commissioners' Meeting (2012)

Case: Diamond Service Center Co., Ltd. violated the Fair Trade Law during its recruitment of franchisee
Key Word(s): False and untrue advertising, franchise
Reference: Fair Trade Commission Decision of May 9, 2012 (the 1070th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101054
Industry: Retail Sale of Jewelry and Precious Metals Products in Specialized Stores (4745)
Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. The FTC was informed by individuals A and B as well as Nuo Hua Boutique Co., Ltd. that they had been told by the sales representatives of Diamond Service Center Co., Ltd. (hereinafter referred to as the offender) that business profits could reach 30% of the revenue and therefore and thus had signed the franchise contract with DSC. However, in reality, the said figure was impossible to reach. During investigation, the FTC discovered that the offender had posted on the "Elite Franchise Network" an advertisement claiming the total number of franchisees was 29 and the "net profit for five years" would be "5 to 7.8 million." The FTC therefore initiated an investigation to determine if false and untrue advertising was involved.

2. Grounds for disposition:

(1) The offender posted on the "Elite Franchise Network/franchise profile" claiming that "the franchisees reached 29 to date." However, the investigation showed that when the said advertisement was posted, there were only 10 franchisees (2 of them had volunteered to join the franchise and the other 8 had been accepted through special approval). Moreover, the informers had stopped operations in May 2011 already; the actual number of franchisees was only 7 when the advertisement was posted. The claim of having 29 franchisees was obviously inconsistent with the fact. It could make wrong perceptions about the total number of franchisees and the remaining quota of its franchisees to those who were interested in joining the franchise. Furthermore, the advertisement did not provide any explanation of how such numbers were calculated. The level of difference was hard for the general public to accept. It was a false, untrue and misleading representation.

(2) On the "Elite Franchise Network/Franchisee requirements" web page, the claim of "DSC net profit for five years from 5 to 7.8 million" was indeed posted. According to the offender, the said figures were calculated (A) based on the monthly sales of 1 million: that was monthly sales million; goods cost around 650,000; business tax (5%) about 50,000; rent about 70,000; utilities, insurance and miscellaneous expenses 25,000 = 205,000 (gross profit); (B) 205,000 x 80% (taking out franchiser's profit share) = 164,000; (C) 164,000 - personnel cost about 60,000 - other management expenses about 5,000 = 99,000 (average monthly net profit); (D) 99,000 x 60 months = 5,940,000 (net profit for 5five years). The calculation was actually based on the monthly sales of 1 million. The offender admitted that the five-year (60-month) net profit of 5.0 to7.8 million could not be achieved if the monthly income was under 1 million. Moreover, the aforesaid net profit calculation was conducted according to the offender's own estimation of expenses and percentages, not the actual business data of any of its franchisees or the average of all its franchisees. The offender again confessed that since September 2010, none of the franchisees, either joining voluntarily or through special approval, had been able to achieve the monthly sales of 1 million. This meant the said calculation really had no objective statistical basis and could easily create wrong perceptions in parties interested in joining the franchise.

It was a false, untrue and misleading representation. It violated Article 21 (3) of the Fair Trade Law as described above, and the FTC imposed on the company an administrative fine of NT$500,000.

Appendix:
Diamond Service Center Co., Ltd.'s Uniform Invoice Number: 28171118

Summarized by Kuo, An-Chi; Supervised by Chiou, Shwu-Fen □

Nissan Taiwan Ltd.

1072nd Commissioners' Meeting (2012)

Case: Nissan Taiwan Ltd. violated the Fair Trade Law for conducting a false advertisement on its "Rogue" SUV
Key Word(s): Car advertisement, airbag, operating condition limitation
Reference: Fair Trade Commission Decision of May 22, 2012 (the 1072nd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101059
Industry: Retail Sale of Automobiles in Specialized Stores (4841)
Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. The FTC received complaints from general citizens that the advertisement posted by Nissan Taiwan Ltd. (hereinafter referred to as Nissan Taiwan) and Yu Chang Motor Co., Ltd. for the Rogue SUV indicated the passive safety of the vehicle included 6 advanced SRS airbags to ensure maximum safety for the driver and the passengers. However, people who had purchased the SUV discovered that the function of the airbag for the front passenger seat would shut off automatically when the weight of the passenger was not heavy enough. There was no related warning in

the advertisement and most Rogue owners had not been told of the limitation before making the purchase. The fact that not all of the 6 airbags could function under all kinds of circumstances was obviously inconsistent with the content of the passive safety devices advertised. The advertisement was false.

2. The advertisement in question had been funded by Nissan Taiwan alone, produced and given to the dealerships for distribution. As the sales of the said model did bring profits, it was reasonable to consider that Nissan Taiwan was the advertiser in this case. Yu Chang Motor Co., Ltd. did distribute the said advertisement yet it had not had any say in the decision of the content of the advertisement. Therefore, it was difficult to deem Yu Chang Motor Co., Ltd. the advertiser of the said advertisement.

3. The said advertisement contained the wording of "Safety Shield concept," "With a forward-looking all-around safety shield concept, Nissan has come up with the pioneering idea that 'a car should be able to protect the safety of the drive and the passengers' and provide various effective measures to guard the driver and the passengers from any possible danger whether potential or in a collision," and "Standard equipment of 6 advanced SRS airbags – 2 front and 2 side airbags for the front seats as well as 2 curtain airbags on both side – provided as a result of Nissan's highest uncompromising safety standard for the maximum safety of the people in the vehicle; the inflation of the 2-stage airbags for the front seats is automatically adjusted according to the level of impact and whether the riders are wearing the seatbelt." This gave consumers the impression that there were 6 airbags that would function normally in a car crash and open up to protect the riders.

4. Nissan Taiwan admitted that a passenger sensor (pressure sensor) had been installed under the front passenger seat to meet the US federal car safety standard regulations. When there was no one sitting in the front seat, the posture of the passenger was incorrect, the passenger was not heavy enough, a child was sitting there, or a child safety seat was used, the airbag in front would be shut off automatically as a result of the pressure sensor's detection. Therefore, it was possible

that the airbag in question could be shut off as mentioned earlier. However, as the possibility of the airbag in question not opening up to provide protection during a collision, the equipment of the airbag was pointless and consumers would naturally find the claim in the advertisement that the vehicle came with 6 SRS airbags was obviously questionable and likely to lead to mistaken perceptions and decisions. The FTC decided that the advertisement was a misleading representation in violation of Article 21 of the Fair Trade Law and therefore acted according to the first section of paragraph 1, Article 41 of the same law, imposed an administrative fine of NT$750,000 on Nissan Taiwan, and also ordered the company to immediately cease the false, untrue, and misleading representation.

Appendix:
Nissan Taiwan Ltd.'s Uniform Invoice Number: 80032530

Summarized by Ho, Yen-Jung; Supervised by Yang, Hsiu-Yun □

Home Chain Foods Ltd.

1075th Commissioners' Meeting (2012)

Case: Home Chain Foods Ltd. violated the Fair Trade Law by posting a false, untrue, and misleading Burger King promotional advertisement of "Buy a triple-patty rodeo whopper meal and the second set or whopper series meal for free"

Key Word(s): Promotional advertising, gift

Reference: Fair Trade Commission Decision of June 13, 2012 (the 1075th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101062

Industry: Retail Sale in General Merchandise Stores with Food, Beverages or Tobacco Predominating (4711)

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

Summary:

1. According to a media story, the Burger King Chain managed by Home Chain Foods Ltd. (hereinafter referred as Home Chain Foods) started the promotional activity of"Buy a triple-patty rodeo whopper and get the second set or a whopper series meal for free" on December 1, 2011. However, the stores ran out of double-patty burger meals in less than 3 days and could only provide whopper meals. False advertising was suspected and the FTC therefore initiated an ex officio investigation.

2. Findings of the FTC after investigation:

(1) Home Chain Foods posted the Triple-patty rodeo whopper comes with a free meal "advertisement on the Burger King website between December 1 and 9, 2011 and in Upaper on December 5, 2011. The advertisement contained the wording of"starting from December 1, for 9 days, anyone buying a triple-patty rodeo whopper meal after 4PM will get a double-patty burger or whopper series meal for free "and“ the choice of whopper series meals is limited to original flavor whopper, spicy whopper, Sichuan-style spicy whopper, Taiwan-style spicy whopper, and Texas spicy whopper."

(2) The FTC's investigation showed that the Burger King stores did not offer any choice to consumers buying the triple-patty rodeo whopper meal like it was indicated in the advertisement. There was actually a restriction on the choice of the free item. In some stores, consumers could only get the original flavor whopper meal and were unable to choose the double-patty burger meal or any of the other spicy whopper meals while in some other stores, they were only given the choice between whoppers of certain flavors.

3. Grounds for disposition:

The advertisement from Home Chain Foods gave consumers the impression that anyone buying a triple-patty rodeo whopper meal during the promotion period could choose a double-patty burger meal, original flavor whopper meal, spicy whopper meal, Sichuan-style spicy whopper meal, Taiwan-style spicy whopper meal, or Texas

spicy whopper meal as the gift. However, during the promotion period, a rather large number of retail outlets of Home Chain Foods did not offer the items indicated in the advertisement for consumers to choose. In fact, a lot of retail outlets restricted the choice of the free item. The actual gift-giving approach was inconsistent with the content of the advertisement. In other words, the said advertisement had caused the public to have the wrong perception or make the wrong decision. Consequently, it was a false, untrue, and misleading representation in violation of paragraph 1, Article 21 of the Fair Trade Law. The FTC imposed an administrative fine of NT$100,000 on the company.

Appendix:
Home Chain Foods, Ltd.'s Uniform Invoice Number: 23309178

Summarized by Cheng, Shih-Yu ; Supervised by Chi, Shueh-Li □

8 Wedding Photography Businesses in Tainan Region

1083rd Commissioners' Meeting (2012)

Case: The 8 wedding photography businesses in Tainan region violated the Fair Trade Law by posting advertisements of “free tablet personal computers for those reserving wedding photography services"
Key Word(s): False advertising, wedding gown, advertiser
Reference: Fair Trade Commission Decision of August 8, 2012 (the 1083rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101085
Industry: Other Personal Services (9690)
Relevant Law(s): Article 21(3) of the Fair Trade Law

Summary:

1. The FTC received complaints saying that in the broadcasted announcements

and on the flyers handed out at the wedding gown show, Tainan Bao Mei Wedding Photography Co., Ltd. and 7 other similar businesses (hereinafter referred to as the 8 wedding photography businesses) in Tainan claimed that "the first wedding photography show at the grand opening of Durban Department Store...free tablet personal computers for those reserving wedding photography service..." and "free tablet personal computers every day for people reserving wedding photography service; 100 tablet personal computers to be given away at the show." With the above statements, false advertising was suspected.

2. Findings of the FTC after investigation:

The 8 wedding photography businesses claimed that they delegated A to organize the wedding photography show and make advertising arrangements, including making the aforesaid claim through announcements and flyers. However, after people made their reservations and paid for the deposit, they were told the wedding gowns they had reserved were not in the designated category by the organizer and they were therefore not qualified for the free tablet personal computer. Both A and the 8 wedding photography businesses were unable to prove they had given away any tablet personal computer at the show; in other words, not one single tablet computer was given away throughout the show. A provided a "record of negotiation for tablet personal computer purchases" from 100 Richman Information City Ltd. (hereinafter referred to as 100 Richman Ltd.) to prove that A had indeed contacted 100 Richman Ltd. about purchasing tablet personal computers after the show. Apparently, when designing the advertising, A was perfectly aware of the unlikelihood of giving away free tablet personal computers at the time of the sale at the show. Therefore, it was a false advertisement.

3. Grounds for disposition:

(1) The 8 wedding photography businesses contested that they had delegated A to make the advertising arrangements and were not aware of any of the advertising contents. However, as the delegators, they had the responsibility to manage and supervise the advertisements and printed matters produced by the delegatee.

Therefore, the 8 wedding photography businesses were equally responsible for the intentional misconduct of the delegatee. As a professional service provider, A falls under the definition category of "enterprise" set forth in subparagraph 4, Article 2 of the Fair Trade Law. Since A was responsible for the advertising, had the right to decide contents, financed the advertising, and participated throughout the entire activity, it could not be regarded an advertising agent which normally would only be responsible for the planning work and would not be as involved. Hence, both A and the 8 wedding photography businesses were the advertisers in this case.

(2) A and the 8 wedding photography businesses never gave away any tablet personal computer during the period of time the show was held. The plan to purchase tablet personal computers after the show made it obvious that they were aware of the impossibility of giving away any tablet personal computer when the advertisements were produced. Therefore, their conduct was a false, untrue and misleading representation with regard to content of service in violation of paragraph 3 of Article 21 of the Fair Trade Law and paragraph 1 of the same article was applicable mutatis mutandis. Acting according to the first section of paragraph 1 of Article 41 of the same Law, the FTC ordered the said parties to immediately cease their unlawful acts and also imposed an administrative fine of NT$50,000 on A and each of the 8 wedding photography businesses.

Appendix:

Tainan Bao Mei Wedding Photography Co., Ltd.'s Uniform Invoice Number: 16971451
Luo Man Fei Wedding Photography's Uniform Invoice Number: 62911577
Fa Le Qi Co., Ltd.'s Uniform Invoice Number: 25009416
Dang Dai Cheng Pin Styling and Photography's Uniform Invoice Number: 13593245
Zhe Ai Wedding Photography Enterprise Co., Ltd.'s Uniform Invoice Number: 28129323
Sheng Luo Lan Wedding Photography's Uniform Invoice Number: 21607101
Kai Yi Wedding Photography Co., Ltd.'s Uniform Invoice Number: 25167630
Yu Chen Photography Co., Ltd.'s Uniform Invoice Number: 53479754

Summarized by Su, Min-Huang; Supervised by Yang, Hsiu-Yun □

Motorcycle Rental Businesses in the Commercial District behind Train Station of Tainan City

1100th Commissioners' Meeting (2012)

Case: Motorcycle rental businesses in the commercial district behind Tainan City Train Station violated the Fair Trade Law by conducting false and untrue advertising

Key Word(s): Rental motorcycle, motorcycle renting, false and untrue advertisement

Reference: Fair Trade Commission Decision of December 5, 2012 (the 1100th Commissioners' Meeting), Dispositions Kung Ch'u Tzu No.101176, 101177, 101178, and 101179

Industry: Rental and Leasing of Other Transport Equipment (7729)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. Tainan City Government forwarded a complaint from an individual to the FTC. The informer visited Tainan during the February 28 long weekend holiday in 2012. He wanted to rent a 100cc motorcycle, but the first rental motorcycle shop he went had rented out all its motorcycles. Therefore, he tried other rental motorcycle businesses but only found out that a 50cc motorcycle and would cost NT$500 a day and a 100cc for NT$700. As the prices were inconsistent with the ones posted on the Internet, he believed that the advertising was false and untrue. Meanwhile, during the investigation, the FTC found a rental motorcycle operator's shop sign claiming that "No.1 in online Voting" which also involved in false and untrue advertising. The FTC therefore investigated both cases together.

2. Grounds for disposition:

(1) According to Article 21 (1) of the Fair Trade Law, "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." It is also set forth in paragraph 3 of the same article that "the two preceding paragraphs shall apply mutatis mutandis to enterprises providing services." The term "false and untrue" means the representation or symbol applied was inconsistent with the fact and the difference is difficult for the general public or concerned parties to accept and such a representation or symbol could lead to wrong perceptions or decisions. The term "misleading" means that, a representation or symbol, whether consistent with the fact, is likely to lead to wrong perceptions or decisions among the general public or concerned parties. Therefore, when enterprises make any false, untrue or misleading representations with regard to price or content of service through advertising or other measures, they are in violation of the abovementioned regulations. Meanwhile, if the representations or symbols made by enterprises regarding their products or services are concrete figures or superlatives, such as "the only," "the No.1," "the champion," "the biggest," "the largest quantity," and so on, used as objective statements of fact, they are required to have objective statistics or results of opinion surveys to support their representations; otherwise, such advertisements will be regarded as false, untrue or misleading representations with respect to the quality of product or service in violation of the aforesaid regulations.

(2) The price information presented on the websites, business cards or shops of rental motorcycle operators is direct or indirect conveyance of messages to the general public or concerned parties. It is exactly the "any other way making known to the public" referred to in Article 21 (1) of the Fair Trade Law. In addition, the objective of rental motorcycle businesses is to provide service to tourists and the price information presented on the websites, business cards or at the shops is important information according to which trading counterparts will make their transaction decisions. In other words, they can help attract trading counterparts. Therefore, when the price information presented is inconsistent with the actual prices, Article 21 of the Fair Trade Law is violated.

(3) The FTC reviewed the rental contracts to understand the actual charges collected by Song Xing Rental Car Co., Ltd., Qian Feng Rental Motorcycle Shop, and Huang Jia Rental Motorcycle Shop in the commercial district behind Tainan Train

Station during the February 28 long weekend holiday. The charges in many entries were inconsistent with the charging standards posted on the website of Song Xing Rental Car Co., Ltd., on the business card of Qian Feng Rental Motorcycle Shop, and on the price list at the counter of Huang Jia Rental Motorcycle Shop. Meanwhile, Zai Su Pei Home Advertising Enterprise Co. posted on the shop sign the claim that its rental motorcycle service was "No.1 in online voting" but was unable to provide any objective statistics or data to support the claim. It was therefore a false, untrue and misleading representation capable of leading to wrong perceptions or decisions among the general public. The conduct was in violation of paragraph 3 of Article 21 of the Fair Trade Law and paragraph 1 of the same article was applicable mutatis mutandis. According to the first section of paragraph 1 of Article 41 of the Fair Trade Law, the FTC ordered the said businesses to immediately cease their unlawful acts and imposed an administrative fine of NT$70,000 respectively.

Summarized by Shen, Li-Wei; Supervised by Liou, Chi-Jung □

7.2 Judicial Cases

FarGlory Land Development Co., Ltd.

Supreme Administrative Court (2011)

Case: The Supreme Administrative Court overruled FarGlory Land Development Co., Ltd.'s appeal over the FTC's decision
Key Word(s): Television advertising, false and untrue, FarGlory's 40th anniversary
Reference: Supreme Administrative Court Judgment (2011) Pan Tzu No.1978
Industry: Real Estate Agency (6812)
Relevant Law(s): Article 21(1) of the Fair Trade Law

Summary:

1. In the effort to promote a construction project, the appellant, FarGlory Land Development Co., Ltd., claimed on its website, newspaper and television advertisements: "Only FarGlory could sustain 40 years," further using such terminology as "40 years of FarGlory" in a television advertisement. Upon review, the Fair Trade Commission (FTC) found the contents of the advertisement in question to be false and misleading, in violation of Article 21 paragraph 1 of the Fair Trade Law, and pursuant to the terms section 1 of Article 41 of the Act, the appellant was ordered in Penalty Notice No.099034 of 17 March 2010 to immediately cease the unlawful conduct within a day upon receipt of the notice, and to pay a fine of NT$500,000. The appellant declined to accept the ruling, and lodged an appeal and administrative litigation. After both of which were rejected, the appellant initiated this appeal.

2. Article 21 subparagraph 1 of the Fair Trade Law states: "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." Quality of merchandise refers to subjects of transactions having economic value, and other related transaction items not directly related to a subject of transaction having promotional impact, including the identity, qualifications, and state of operation of an enterprise. Consequently, any enterprise making false or misleading representations regarding the transaction subject or other related items through advertising or other means of public statement, shall be deemed in violation of the above-mentioned regulations. The duration of the enterprise's existence has bearing upon the enterprise's past efforts toward the quality of its commodities, enhancement of services and image for reasonable prices. The duration of its existence is a factor influencing the reasonable judgment of trading counterparts regarding the quality of the merchandise it offers for sale, to the extent that it can impact decisions on whether or not to engage in transactions. Consequently, any enterprise making representations regarding the duration of its existence should be factually presented, not false and misleading. Items 5, 6, 7, 8, and 9 of the Fair Trade Commission Disposal Directions (Guidelines) on Handling Cases. Governed by Article 21 of the Fair Trade Law provide explicit principles for determining what constitutes false or misleading representations.

3. The appellant in this case, in the effort to market a FarGlory Land Development construction project, made such statements on the Internet, newspapers, and television advertisements that "only FarGlory could sustain 40 years" and "40 years of FarGlory." However, these representations were made without factual basis, thereby causing erroneous perceptions regarding the quality and duration of the enterprise's goods among trading counterparts, constituting false, untrue, and misleading representations regarding the quality of its goods. Having detailed the outcome of debate on the facts of the investigation in the original case, and detailed the findings in the verdict, it was determined that the appellant violated Article 21 subparagraph 1 of the Fair Trade Law. Review of the methodology of the case found the theoretical and empirical bases for the judgment consistent, and no such unlawful conduct as unjustified ruling or inappropriate citing of laws. The appeal, which sought the dismissal of the decision and overruling of this portion of the appellant's

original case, was found groundless and dismissed accordingly.

Appendix:
FarGlory Land Development Co., Ltd.'s Uniform Invoice Number: 23605591

Summarized by Lai, Chia-Ching; Supervised by Lee, Wen-Show □

Chapter 8

Improper Multi-level or Obviously Unfair Conducts

Sunrider International

949th Commissioners' Meeting (2010)

Case: Sunrider International violated the Fair Trade Law by engaging in multilevel sales without filing for record before its operation
Key Word(s): Multilevel sales
Reference: Fair Trade Commission Decision of January 13, 2010 (the 949th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.099005
Industry: Direct Selling Establishments (4872)
Relevant Law(s): Article 23-4 of the Fair Trade Law and Article 5(1) of the Supervisory Regulations Governing Multilevel Sales

Summary:

1. The FTC was informed that Sunrider International (hereinafter referred to as Sunrider) requested each distributor to open a shop and pay over 30,000 NT dollars (same currency applied hereinafter) as the franchise fee as well as to cover part of the cost to set up downline shops. Those who failed to open a shop before February 20, 2009, would no longer be qualified to receive cash bonus. Although Sunrider changed the operating model to selling through physical stores, multilevel sales conducts continued. Each shop could take a commission from the cash bonus of 7th to 8th downline participants' shops. The conduct was suspected of violation of paragraph 1 of Article 5 of the Supervisory Regulations Governing Multilevel Sales.

2. Findings of the FTC after investigation:

Sunrider filed its multilevel sales operations with the Fair Trade Commission on April 3, 1992. However, it filed with the FTC again on January 14, 2009, that it had

stopped the multilevel sales operations. Starting on February 1, 2009, the company changed the operating model and adopted the so-called "authorized" shop system as an intention to set up physical chain stores to replace multilevel Sales. The FTC discovered that the operations of the authorized franchise chain system were not any different from multilevel sales as defined in Article 8 of the Fair Trade Law.

3. Grounds for disposition:

(1) The FTC's investigation showed that in order to join Sunrider's franchise chain stores, besides paying a certain franchise fee, the franchisee also had to invest in other branches or do so to acquire a certain position; otherwise, the franchisee would not be qualified to receive leadership cash bonus and other benefits given out in accordance with the company's marketing and incentive criteria. This conduct complied with the description of "paying a certain consideration." Secondly, in addition to the right to promote and sell the company's products, the franchisees were required to pay a certain franchise fee and purchase a certain quantity of products from the company. In other words, a new franchisee had to establish relations with other stores in order to be promoted and qualified for receiving cash bonus. This arrangement was not any different from "the right to introduce other people to participate" and thus constituted the element of "obtaining the right to promote or sell goods or services and introduce other persons to participate only after cumulatively paying a certain amount of consideration" as described in the Fair Trade Law. As for the cash bonus rewarding system, franchisees could establish their multilevel sales networks by bringing in participants and consequently be awarded with promotions in position. Apart from the commissions and cash bonus calculated based on the sales of the shop, the profit each franchisee could make also included the "leadership cash bonus and benefits" given only to franchisees who had invested in other stores or to obtain positions or certain levels. In other words, people in managerial positions could get commissions, cash bonus, and other benefits from the sales of their downline operations or because of the ranks they were promoted to. This was clearly a characteristic of payment based on teamwork and cash reward commission acquisition in multiple levels. With the above combined, the franchise chain system Sunrider applied was exactly the

multilevel sales defined in paragraph 1 of Article 8 of the Fair Trade Law.

(2) Between February 1, and November 2009, Sunrider recruited 346 people into its franchise chain system. The company never filed with the FTC as stipulated in related regulations. The conduct was in violation of the regulation of paragraph 1 of Article 5 of the Supervisory Regulation Governing Multilevel Sales. The FTC therefore acted in line with the regulation of paragraph 3 of Article 42 and the first section of Article 41 and ordered Sunrider to file for record with the FTC as stipulated in related regulations within 10 days from reception of the Disposition and imposed the company a fine of 100 thousand NT dollars.

Appendix:
Sunrider International's Uniform Invoice Number: 86689098

Summarized by Su, Min-Huang; Supervised by Yeh, Tien-Fu □

Interush Inc.

951st Commissioners' Meeting (2010)

Case: Interush Inc. violated the Fair Trade Law by engaging in multilevel sales without filing for record before changing its operation model

Key Word(s): Multilevel sales, filing for changing operation model, written contract participation agreements

Reference: Fair Trade Commission Decision of January 27, 2010 (the 951st Commissioners' Meeting); Disposition Kung Ch'u Tzu No.099005

Industry: Direct Selling Establishments (4872)

Relevant Law(s): Articles 23-2,23-3 and 23-4 of the Fair Trade Law and Articles 7(1), 12 and 16(1) of the Supervisory Regulations Governing Multilevel Sales

Summary:

1. On July 15, 2009, the FTC visited Interush Inc. (hereinafter referred to as Interush), a multilevel sales enterprise, and performed business inspection in the company's main office. The findings showed that Interush was in violation of the Fair Trade Law and the Supervisory Regulations Governing Multilevel Sales.

2. Findings of the FTC after investigation:

When participants terminated the contract to withdraw from the multilevel sales and return the remaining products in hand, Interush would first deduct 900 NT dollars for the software setting cost and then calculated the expenses for the use in the remaining period based on 10-day cycles. Originally, Interush had only registered the main office in Taipei with the FTC and there were no other branches. According to the business schedule for July 2009 provided by the company and the information on the company's website, however, Interush held presentations in Taipei, Taichung, and Kaohsiung. At the presentations, people expressed interest in joining the program could fill out applications and the instructor from the company would bring them back to Taipei. Some of the application forms were marked as "brought back from Taichung." Interush confessed that its staff members had brought them back from the presentations held in Taichung. This clearly proved that the company did make recruitment in Taichung and the venue could be regarded Interush's branch operation outside Taipei. In addition, the FTC's investigation also showed that some of the participants did not fill out the participation agreements but only registered online and paid the fees to join the company. The company had entered into contracts with minors and in some of the cases there was no letter of agreement from the legal custodian of the minor. In other cases, Interush had not acquired the written consent from the legal custodian in advance.

3. Grounds for disposition:

(1) When a multilevel sales enterprise processes a participant's withdraw and returning of remaining products in hand, it should follow the regulations in accordance with Article 23-2 and Article 23-3 of the Fair Trade Law and deduct the

commission or bonus to paid to the participant for the transactions completed and the cost to cover the reduction of or damage to products returned. If the enterprise deducts or charges these members any fees rather than the statutory items, it is regarded an encroachment on or invalidation of the product return mechanism and considered illegal. The deduction of the 900 NT dollars for the software setting that was not among the listed deduction items already and the conduct violated paragraph 2 of Article 23-3 of the Fair Trade Law, mutatis mutandis application of the regulation of paragraph 2 of Article 23-2 of the same law.

(2) Originally, Interush had only registered the main office in Taipei with the FTC and there were no other branches. According to the business schedule for July 2009 provided by the company and the information on the company's website, however, Interush did hold presentations in Taipei, Taichung, and Kaohsiung. The marks of "brought back from Taichung" in some of the agreements that some new participant signing up proved that the company did recruit new members in Taichung and the venue in Taichung. This could be deemed a branch operation of the company outside its main office. The fact that the company failed to file with the FTC of its branch operations was in violation of paragraph 1 of Article 7 of the Supervisory Regulations Governing Multilevel Sales.

(3) Some of the participants to Interush's multilevel sales did not fill out any agreements but only registered online and paid the fees to become participants. The company had entered into contracts with minors and in some cases there was no letter of agreement from the legal custodian, whereas in some other cases, the written consent of the legal custodian had not been obtained in advance. These were respectively in violation of the regulation of Article 12 and paragraph 1 of Article 16 of the Supervisory Regulations Governing Multilevel Sales.

(4) Based on the motive and other factors of Interush's violation, the FTC acted in line with the regulation of paragraphs 2 and 3 of Article 42 as well as the first section of Article 41 and fined Interush 200 thousand NTD in accordance with paragraph 2 of Article 23-3 of the Fair Trade Law, mutatis mutandis application of paragraph 2 of Article 23-2 of the same law. In addition, Interush was also fined 500 thousand NTD for its violation of paragraph 1 of Article 7, Article 12, and paragraph 1 of Article

16 of the Supervisory Regulations Governing Multilevel Sales enacted in pursuance to Article 23-4 of the Fair Trade Law. Interush received a total fine of 700 thousand NTD and was ordered to cease the illegal conduct immediately.

Appendix:
Interush Inc.'s Uniform Invoice Number: 28489023

Summarized by Su, Min-Huang; Supervised by Yeh, Tien-Fu □

Xiong Guanming

989th Commissioners' Meeting(2010)

Case: Mr. Xiong Guanming violated the Fair Trade Law for failing to file for record with the FTC before undertaking multilevel sales
Key Word(s): Bring in multilevel sales operations from overseas, fail to file for record
Reference: Fair Trade Commission Decision of October 20, 2010 (the 989th Commission Meeting), Disposition Kung Ch'u Tzu No.099113
Industry: Direct Selling Establishments (4872)
Relevant Law(s): Article 8 of the Fair Trade Law and Article 5 (1) of the Supervisory Regulations Governing Multilevel Sales

Summary:

1. The FTC visited the headquarters of the Taiwan branch of the US-based doTERRA International (hereafter referred to as doTERRA) for business inspection. Evidence showed that the US-based doTERRA International had been conducting its multilevel sales in Taiwan long before doTERRA Taiwan was established and filed its multilevel sales operations for record with the FTC. People participating in

the multilevel sales activities of local doTERRA claimed that they had signed the participation contract when attending the presentation on the multilevel sales system of doTERRA organized by Xiong Guanming. Accordingly, Mr. Xiong had introduced the multilevel sales system of the US-based doTERRA without filing for record before his multilevel sales activities.

2. Findings of the FTC after investigation:

Mr. Xiong claimed that he had joined the multilevel sales network of the US-based doTERRA on July 8, 2009 to promote the company's essential oil products. Before local doTERRA was officially established (November 9, 2009,) he had invited a number of people to visit doTERRA International in the US and some of these people had immediately joined the sales network. Meanwhile, when introducing and offering trial use of doTERRA's essential oil products at his beauty spas and home, Mr. Xiong also suggested to those expressing interest that they could log on to the doTERRA website with his membership code to join the sales network as independent product consultant and become his downline participants.

3. Grounds for disposition:

The rewarding system posted on the doTERRA website showed that participants could receive a commission at a certain percentage of the sales achieved by their downlines. The operation had the characteristics of "team-based rewarding" and "sales commission" and met the description of multilevel sales in subparagraph 1 of Article 8 of the Fair Trade Law. paragraph 4 of the same article also regulates that one, who is a participant or a third party in a foreign enterprise, introduces multilevel sales plans or organization from overseas will be considered as multilevel sales business. According to Mr. Xiong's organization chart provided by doTERRA, the company had begun in September 2009 to recruit people to participate in the multilevel sales network of doTERRA. Up till the time when doTERRA Taiwan registered its multilevel sales operations, the company had recruited more than 200 people. As some of these people had already been given cash rewards for the sales targets achieved, it is unquestionable that Mr. Xiong had been conducting multilevel

sales activities. According to the aforesaid regulations, Mr. Xiong's was regarded as a multilevel sales business. Mr. Xiong's failure to file for record before undertaking the multilevel operations was in violation of subparagraph 1 of Article 5 of the Supervisory Regulations Governing Multilevel Sales. He was therefore imposed with an administrative fine of NT$100,000.

Summarized by Yu, Wei-Jhen; Supervised by Yeh, Tien-Fu □

Melilea International Company Ltd.

1010th Commissioners' Meeting (2011)

Case: Melilea International violated the Fair Trade Law for failing to register business changes in its multilevel sales operations
Key Word(s): Business change registration, information to be disclosed to participants as requested by law
Reference: Fair Trade Commission Decision of March 16, 2011 (the 1010th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100023
Industry: Direct Selling Establishments (4872)
Relevant Law(s): Articles 7(1), 12, 13, and 15 (1) of the Supervisory Regulations Governing Multilevel Sales

Summary:

1. The FTC sent its staff to the main business office of Melilea International Co., Ltd. (hereinafter referred to as Melilea International) for business inspection and discovered it had been relocated while the company had also failed to register business changes for the "Melilea 100% Natural Fruit Drink – Apple Garden" and 10 other newly added products. Moreover, when signing contracts with new participants, the company did not provide each of them with a copy of the "Direct

Selling Directions and Rules." It was only placed in the cabinet and on the counter in the office for people to access and read. The regulations on multilevel sales in the said document were not the updated version and were incomplete, whereas the provisions regarding contract cancellation and termination were inconsistent with the stipulations in the Fair Trade Law (FTL). Lastly, the ompany did not keep a copy of the 2009 CPA-attested financial statement in the office.

2. Findings of the FTC after investigation:

The investigation and findings: Melilea International contended that the failure to register change of office location and addition of new multilevel sales products was administrative negligence while the problems with the "Direct Selling Directions and Rules" were the result of the compiler's unfamiliarity with multilevel sales regulations and misunderstanding of the connotations of the regulations, and the company therefore did not provide it to new participants when signing contracts. Yet the regulations in the said Directions and Rules regarding contract cancellation and termination restricted participants to withdraw or return products within 30 days, whereas the provisions on contract cancellation did not include reimbursement of "other expenses paid at the time of participation" to participants and the regulation in Article 23(3) of the FTL was also missing in the provisions on contract cancellation and termination. In addition, although the 2009 financial statement had already been sent for CPA attestation, it was never retrieved and therefore the main business office did not carry a copy of the 2009 CPA-attested financial statement. Meanwhile, the company had also set up branch offices in Taichung and Kaohsiung to conduct multilevel sales operations.

3. Grounds for disposition:

The findings of the investigation confirmed that Melilea International failed to register its change of company location, its set-up of two new business offices, and addition of 11 new products within the statutory period. The contract signed with participants also did not clearly prescribe information to be disclosed to participants as requested by law, while the provisions on contract cancellation and termination

restricted participants to apply for return of products within 30 days, a restriction not prescribed in the FTL and therefore illegal. It also did not indicate the conditions on the withdrawal from the organization or any scheme or the rights and obligations pertaining to withdrawal. In addition, the main business office did not carry a copy of the 2009 CPA-attested financial statement. All the above were in violation of Articles 7 (1), 12, 13, and 15 (1) of the Supervisory Regulations Governing Multilevel Sales. The FTC ordered the company to immediately cease the unlawful act and also imposed on it an administrative fine of NT$550,000.

Appendix
Melilea International Company Ltd.'s Uniform Invoice Number: 80688494

Summarized by Yu,Wei-Jhen; Supervised by Yeh,Tien-Fu □

Guanglong Biotechnology Corporation

1019th Commissioners' Meeting (2011)

Case: Guanglong Biotechnology Corporation violated the Fair Trade Law for engaging in improper multilevel sales operations
Key Word(s): Registration, statutory period, minor participants
Reference: Fair Trade Commission Decision of May 18, 2011 (the 1019th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100075
Industry: Direct Selling Establishments (4872)
Relevant Law(s): Articles 5(1), 7(1), 12(1), 13, 15(1) and 16(1) of the Supervisory Regulations Governing Multilevel Sales

Summary:

1. Guanglong Biotechnology Corporation (hereinafter referred to as Guanglong

Corp.) was long overdue for registration and the FTC sent a written request to the company to provide related business information. Examination of the information presented by Guanglong Corp. showed there were no letters of consent from the legal representatives of minor participants while Guanglong Corp. had also failed to register its change of company location. The FTC therefore sent staff to the main business office of Guanglong Corp. for business inspection.

2. Findings of the FTC after investigation:

During the business inspection, the FTC staff discovered the company had not registered with the FTC until about one year after the beginning of its multilevel sales operations as well as other unlawful acts.

3. Grounds for disposition:

(1) The multilevel sales operations of Guanglong Corp. met the description set forth in Article 8 of the Fair Trade Law and the "Distributor Application and Contract" Guanglong Corp. provided to some of the participants also indicated that the participation had taken place before the company registered with the FTC. By failing to register with the FTC before its operations began, Guanglong Corp. had violated Article 5 (1) of the Supervisory Regulations Governing Multilevel Sales.

(2) Another finding showed that Guanglong Corp. had failed to register certain business changes (including company location, reward system, and marketed items) with the FTC within the statutory period and the conduct was also in violation of Article 7 (1) of the Supervisory Regulations Governing Multilevel Sales.

(3) Again, when recruiting and establishing contracts with participants, Guanglong Corp. only signed with them the "Distributor Application and Contract" and never provided a complete written participation contract that includes description of the company's multilevel sales system, participants' obligations and responsibilities, etc. This conduct had violated the regulation set forth in Article 12 (1) of the Supervisory Regulations Governing Multilevel Sales requiring multilevel sales businesses to establish with participants written contracts carrying information to which the participants were statutorily entitled.

(4) In addition, although Guanglong Corp. did signed the "Distributor Application and Contract" with the participants. The said document failed to indicate, as required by law, the conditions on the withdrawal from the organization or any schemes or the rights and obligations thereof incurred. This was in violation of Article 13 of the Supervisory Regulations Governing Multilevel Sales.

(5) Furthermore, Guanglong Corp. did not keep a copy of the previous year's CPA-attested financial statement in its main business office nor did it obtain the written agreement of the legal representatives of minor participants. The acts had respectively violated Article 15 (1) and Article 16 (1) of the Supervisory Regulations Governing Multilevel Sales.

(6) Considering the motive of the violations of Guanglong Corp., the seriousness of the damage created, the circumstances of the illegal acts, the scale of the company, and its attitude after the violations, the FTC acted in line with the first section of Article 41 of the Fair Trade Law, ordered Guanglong Corp. to immediately cease its unlawful acts stated in the preceding paragraph, and demanded the company to establish with the participants contracts carrying the statutorily required information and present the proof to the FTC for record within 30 days after receiving the disposition, and also imposed on it an administrative fine of NT$800,000.

Appendix:
Guanglong Biotechnology Corporation's Uniform Invoice Number: 28887710

Summarized by Lin,Yu-Ching; Supervised by Yeh,Tien-Fu □

Ching-Yun Enterprise Co., Ltd.

1053rd Commissioners' Meeting (2012)

Case: Ching-Yun Enterprise Co., Ltd. violated the Fair Trade Law by engaging in multilevel sales

Key Word(s): Multilevel sales, misleading, information to be disclosed to participants

Reference: Fair Trade Commission Decision of January 11, 2012 (the 1053rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101005

Industry: Direct Selling Establishments (4872)

Relevant Law(s): Article11(1) of the Supervisory Regulations Governing Multilevel Sales

Summary:

1. The FTC received complaints forwarded by another agency as well as directly from private citizens about Ching-Yun Enterprise Co., Ltd. (hereinafter referred to as Ching-Yun) and participants of its multilevel sales schemes using improper marketing practices to recruit people to purchase prearranged funeral contracts.

2. Findings of the FTC after investigation:

In addition to selling ash urns through its multilevel sales operation, Ching-Yun marketed prearranged funeral contracts through non-multilevel sales approaches. After receiving a written request from the FTC for related information and explanation at the FTC, Ching-Yun provided the text for the "speech of professional instructor trainees" used at presentations held by the company and participants. Most of the text was about the company's prearranged funeral contracts. Ching-Yun expressed the chief purpose of the presentations was to promote the concept of prearranged funeral contract establishment with the attendees while selling ash urns. The aforesaid text for the "speech of professional instructor trainees" did contain explanations about the incentive system for ash urn sales, but the same page also carried the wording that "prearranged funeral contracts are not just purchases; they can also help you build up connections and make a profit." Moreover, the description

of prearranged funeral contracts also provided the information that "7. We are here today to be part of a channel business. What is channel? …Every who gets a spot now will be able to become successful and rich because of the channel Ching-Yun provides. Most certainly, many of you would like to purchase a prearranged funeral contract, right? (Right.) You really want to do it, right? (Right.) In fact, it is very easy to get in the business. Join us and you will become successful. Making purchases will put you at the top of the pyramid as a manager and make money for the rest of your life. There are only four things you need to know: 1) Put 75% in a trust: NT$75 of every NT$100 earned from the funeral service is placed in a trust under the supervision of the Ministry of Finance. Therefore, this is not a pyramid scheme. …4) There are two friends who would like to make some money." The above speech gave potential participants the impression that purchasing prearranged funeral contracts was a profitable undertaking.

3. Grounds for disposition:

The investigation showed ash urns were the only multilevel sales products Ching-Yun marketed. However, the speech content gave listeners the impression that anyone joining Ching-Yun and bringing two customers (the incentive system being a dual track setup) could purchase prearranged funeral contracts and make a profit. Ching-Yun also confirmed that the ratio of people participating in the scheme and simultaneously sign the "Prearranged Funeral Contract Application" between January 1, 2011 and September 30, 2011 was 100%. There were 23,588 applications in total and partial payment was already made in 3,768 of these cases. No one did not sign the prearranged funeral contract at the time they joined the scheme and, as a matter of fact, those who signed a prearranged funeral contract were all participants. In other words, Ching-Yun also handed out the "Prearranged Funeral Contract Application Form" when recruiting participants. This all the more proved that Ching-Yun's marketing practice actually made people mistake the prearranged funeral contract as a multilevel sales product. Existing evidence confirmed that Ching-Yun had made a misleading representation with regard to quality of multilevel sales product or service when recruiting participants into its multilevel sales organization or scheme. The

above conduct had been in violation of Article 11 (1) of the Supervisory Regulations Governing Multilevel Sales.

4. After assessing the motive and circumstances of Ching-Yun's violation, the company's business scale, as well as the number and patterns of past violations, the Commission acted according to the first section of Article 41(1) of the Fair Trade Law, ordered Ching-Yun to immediately cease the unlawful act on the day after receiving the disposition and at the same time imposed on the company an administrative fine of NT$5,000,000.

Appendix:
Ching-Yun Enterprise Co., Ltd.'s Uniform Invoice Number: 28384055

Summarized by Lin, Yu-Ching; Supervised by Lai, Mei-Hua □

Dream Bank Enterprise Co., Ltd.

1060th Commissioners' Meeting (2012)

Case: Dream Bank Enterprise Co., Ltd. violated the Fair Trade Law by engaging in multilevel sales
Key Word(s): Multilevel sales, depreciated value, signing participant contract, business inspection
Reference: Fair Trade Commission Decision of February 29, 2012 (the 1060th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101018
Industry: Direct Selling Establishments (4872)
Relevant Law(s): Article 23-2(2) of the Fair Trade Law; Articles 7(1), 12(1) and 22(1) of the Supervisory Regulations Governing Multilevel Sales

Summary:

1. When conducting business inspections on multilevel sales operations, the FTC suspected that the measure adopted by Dream Bank Enterprise Co., Ltd. (hereinafter referred to as Dream Bank Enterprise) in handling of products returned by participants was in violation of Article 23-2 of the Fair Trade Law and therefore initiated an ex officio investigation.

2. Findings of the FTC after investigation:

The FTC sent its staff members to the main office of Dream Bank Enterprise to conduct a business inspection. They found out that the company had started to sell the D15 and D 30 vending machines in February 2011 but had not filed the operation with the FTC until July 22 of the same year. Meanwhile, Dream Bank Enterprise did not keep in the main office documents regarding the participants' information, the company's organization, the types and quantities of products sold, and the commissions and rewards paid to the participants. The company had also failed to sign the"participant contract" with the participants and its calculation of product depreciation had been conducted according to the date filled in on the"member registration and product order," regarded as the enrollment date, and a 50% value depreciation was imposed on all products returned by anyone who had been a participant for more than 3 months.

3. Grounds for disposition:

(1) When handling products returned by participants, Dream Bank Enterprise calculated product value depreciation by using the enrollment date, the date indicated on the "member registration and product order," as the record date. However, the company did not order the products from companies in Japan until participants turned in the"member registration and product order" and completed the payment. On average, it took about 3 months between the time the products were shipped out and the time participants could begin their rental operations. Therefore, participants were not able to rent out the products for a profit until the fourth month after they

signed up. In other words, between the 15th day after their enrollment and the end of the third month, participants had no access to the products, yet when they returned the products, the company imposed a value depreciation between 5% and 50% (3 months after enrollment) starting from 15 days after enrollment. The value deduction imposed by Dream Bank Enterprise on returned massage chairs and vending machines was in violation of paragraph 2, Article 23-2 of the Fair Trade Law.

(2) In addition, Dream Bank Enterprise failed to file with the FTC before starting the vending machine sales, did not sign with participants the participant contract and the rental contract but used the"member registration" and"product order" filled out by participants as the proof of enrollment, and also did not keep the information regarding its business operations and development in the main office. The said acts were respectively in violation of paragraph 1, Article 7, paragraph 1, Article 12, and paragraph 1, Article 22 of the Supervisory Regulations Governing Multilevel Sales enacted in accordance with Article 23-4 of the Fair Trade Law.

4. After assessing the motive and content of the illegal conduct of Dream Bank Enterprise, the company's business scale, and the number of times and types of the company's violations in the past, the FTC acted according to the first section of paragraph 1, Article 41 of the Fair Trade Law, and ordered Dream Bank Enterprise to immediately cease the aforesaid unlawful acts, sign with each participant a contract carrying statutorily required information and submit the proof to the FTC within 30 days after receiving the disposition. In addition, the FTC also imposed on the company an administrative fine of NT$2,500,000.

Appendix:
Dream Bank Enterprise Co., Ltd.'s Uniform Invoice Number: 25125858

Summarized by Lin, Yu-Ching; Supervised by Lai, Mei-Hua □

Dai Dai Money-earning Team

1076th Commissioners' Meeting (2012)

Case: "Dai Dai Money-earning Team" violated the Fair Trade Law for providing false, untrue and misleading information to the participants concerning the functioning of its multilevel sales system

Key Word(s): Multilevel sales, prearranged funeral contract

Reference: Fair Trade Commission Decision of June 20, 2012 (the 1076th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101005

Industry: Direct Selling Establishments (4872)

Relevant Law(s): Article 23-4 of the Fair Trade Law; Article 11(2) of the Supervisory Regulations governing Multilevel Sales

Summary:

1. The FTC received complaints from participants who joined the multilevel sales organization of "Dai Dai Money-earning Team"and discovered the success stories, testimonies, and the domain name business involved were exaggerated or false and in violation of the Fair Trade Law.

2. The FTC's investigation revealed that the URL of GDI was www.website.ws. "ws" is the domain name for the western Samoa Islands. The front page indicated the company name as Global Domain International Inc. and a Californian address was listed. The company never applied for recognition or permission to set up a branch office in Taiwan but the business plan and organization of the company showed that it was without doubt a multilevel sales operation as described in Article 8 of the Fair Trade Law. Further findings disclosed that participant enrollment and all transactions and payments were all carried out online. The products of GDI were supposed to be cyber services. There was no regulation that members had to give their real names and the company never checked the authenticity of the personal information members provided. In other words, the upline of Taiwanese members could a foreigner while the upline of this foreigner could be a Taiwanese. It was difficult to establish a full picture of the upline and downline structure of GDI. If Mr. A, the manager of "Dai

Dai Money-earning Team", was a participant, his upline Yao Hsi Tung had at least four uplines above him. The existing evidence could not prove Mr. A was the first Taiwan national to introduce GDI's multilevel sales scheme or organization into the country and start the business defined as a multilevel sales operation in Article 8 of the Fair Trade Law. However, since Mr. A was a participant of GDI and the two websites (http://www.gdi-daidai.ws and http://www.stock168.ws) he had set up to recruit downline participants to join "Dai Dai Money-earning Team", both he and the operation had to abide by the related regulations in the Fair Trade Law.

3. Mr. A set up the two "Dai Dai Money-earning Team" websites where he posted an advertisement to promote and market GDI's. "ws" domain name business and cyberspace and recruit downline participants. To become a GDI member, people had to click on the advertisement on the web page to sign up and the server would automatically register the advertiser as their upline. In other words, when people clicked on the advertisement on the web page, they would be automatically connected to the GDI website to complete the signup procedure and become Mr. A's downline participants. Hence, the information provided on the two websites was the information regarding GDI's multilevel sales system Mr. A's provided for his potential downlines.

4. Under the heading of "Success Stories" on the "Dai Dai Money-earning Team" websites were testimonies such as "I'm fortunate to have found out about GDI…and I was able to achieve the goal of becoming a 'president' so quickly," "After working with GDI for three months, I became a" leader," "Wow, Xiao-zhen (transliteration) has been promoted to be a "leader" in GDI,"etc. The overall impression these testimonies gave was there were positions of various levels like "president," "leader," "assistance general manager," and "business representative." However, The FTC's investigation showed that there were no such positions in GDI. Mr. A admitted that he had made up all these titles. Therefore, the information Mr. A had provided on the "Dai Dai Money-earning Team" websites to recruit his downlines was apparently a false, untrue, and misleading representation with regard to the multilevel sales system

of GDI.

5. After assessing the motive of Mr. A.s illegal conduct, the FTC acted according to the first section of paragraph 1 of Article 41 and paragraph 2 of Article 42 and imposed on Mr. A an administrative fine of NT$50,000 for his violation of paragraph 2, Article 11 of the Supervisory Regulations Governing Multilevel Sales enacted in accordance with Article 23-4 of the Fair Trade Law. The FTC also ordered him to cease the unlawful act.

Summarized by Huang, Li-Ming; Supervised by Lai, Mei-Hua □

Pure Affluent LOHAS International Corporation

1102nd Commissioners' Meeting (2012)

Case: Pure Affluent LOHAS International Corporation violated the Fair Trade Law while engaging in multilevel sales operations
Key Word(s): Multilevel sales, change of product items, business inspection
Reference: Fair Trade Commission Decision of December 19, 2012 (the 1102nd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101182
Industry: Direct Selling Establishments (4872)
Relevant Law(s): Articles 7(1), 16(1) and 22(1) of the Supervisory Regulations Governing Multilevel Sales

Summary:

1. The FTC received complaints from private individuals claiming that Pure Affluent LOHAS International Corporation (hereinafter referred to as Pure Affluent) has conducted multilevel sales without registering with the competent authority, the

FTC, and recruiting mostly university students, who were minors, without obtaining the consent from their parents. The informers thought that such conduct was in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

The FTC visited the main office of Pure Affluence for business inspection and found out that not only the company did not keep statutorily required documents in the office, the shower gel product indicated in the returned goods record and orders from participants was also an unregistered item since the company had only registered the fruit essence, collagen protein, active enzyme compound and active vegetal fiber enzyme compound products with the FTC. Apparently, the company had failed to file with the FTC the addition of the product. Moreover, the contracts signed with a number of minors did not have the written consent of their legal representatives.

3. Grounds for disposition:

The findings of the business inspection showed that, except for the 4 products registered with the FTC, Pure Affluence also sold shower gel. Obviously, the company had failed to file its change of product items with the FTC in advance. This constituted the violation of Article 7 (1) of the Supervisory Regulations Governing Multilevel Sales. In addition, the failure to obtain the written consent of the legal representatives of minor participants was in violation of Article 16 (1) of the same law. Finally, the failure to keep statutorily required documents at its main office was in violation of Article 22 (1) of the same law. For the above violations, the FTC imposed an administrative fine of NT$500,000 on the company.

Appendix:

Pure Affluent LOHAS International Corporation's Uniform Invoice number: 53743993

Summarized by Hsu, Chen; Supervised by Lai, Mei-Hua □

Chapter 9

Other Deceptive or Obviously Unfair Conducts

9.1 Decisions

Le-Huo-Da-Ren Co., Ltd.

948th Commissioners' Meeting (2010)

Case: Le-Huo-Da-Ren Co., Ltd. violated the Fair Trade Law for failing to disclose important trade information in its franchise recruitment process which was obviously an unfair act sufficient to affect the trading order
Key Word(s): Franchise, fail to fully disclose, trade information
Reference: Fair Trade Commission Decision of January 6, 2010 (the 948th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.099003
Industry: Wholesale of Fruit and Vegetables (4541)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The complainant was one of the franchisees of Le-Huo-Da-Ren Co., Ltd. (hereinafter referred to as Le-Huo-Da-Ren) and entered into a franchise agreement with Le-Huo-Da-Ren in March 2009. However, prior to the commencement of the franchise relationship, Le-Huo-Da-Ren failed to disclose in writing the important trade information on "the relevant qualifications of the responsible person and major business manager of the franchiser in the relevant businesses."

2. Findings of the FTC after investigation:

It showed that the franchise agreement entered into by Le-Huo-Da-Ren and the complainant failed to contain three sets of important information, namely the information on "the start date of the franchiser's engagement in the franchise business," the information on "contents and methods of the franchiser's assistance

and training provided to the franchisees," and the information including "names and addresses of all of the franchiser's franchisees in the municipal city or county(city) where the franchisee's place of business is located, and the statistical information, for the previous fiscal year, on the numbers of all of the franchiser's franchisees and numbers of all terminated franchisees nationwide and in the municipal city or county(city) where the franchisee's place of business is located." Le-Huo-Da-Ren also failed to disclose such information via any electronic document. Additionally, though Le-Huo-Da-Ren claimed that it had disclosed these three sets of information to the trading partner 10 days prior to the franchise relationship was contracted, it could not submit any written information to support its statements.

3. Grounds for disposition:

To ensure the fair competition in the franchise business and prevent franchisers from affecting the trading order by concealing important trade information in the franchise recruitment process, the FTC enacted the "Fair Trade Commission Guidelines on the Disclosure of Information by Franchisers." This Guideline requires that any important trade information related to the franchise shall be provided to the trading counterpart in writing for reference. In the event that a franchiser conceals important trade information or impedes the trading partners from reviewing the agreement, which is obviously an unfair act sufficient to affect the trading order, the franchiser will be considered to have violated Article 24 of the Fair Trade Law. Le-Huo-Da-Ren was therefore imposed with an administrative fine of NT$50,000.

Appendix:

Le-Huo-Da-Ren Co., Ltd.'s Uniform Invoice Number: 80086583

Summarized by Li, Shih-Che; Supervised by Liao, Hsien-Chou □

Chen Jingchan

954th Commissioners' Meeting (2010)

Case: Chen Jingchan violated the Fair Trade Law for its inappropriate issuance of patent infringement warning letter
Key Word(s): Patent infringement warning letter, Taipei City Government Department of Rapid Transit Systems
Reference: Fair Trade Commission Decision of February 10, 2010 (the 954th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.099023
Industry: Other Glass and Glass Product Manufacturers (2319)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. Chen Jingchan (hereinafter referred to as the offender) issued a letter of warning against the use of glazed glass supplied by Tsy Fong Glass Co., Ltd. (hereinafter referred to as the informer) for the platform doors on the Luzhou Line of the Taipei Mass Rapid Transit System constructed by the Department of Rapid Transit Systems (hereinafter referred to as DORTS) of Taipei City Government without confirming the alleged infringement before the issuance of the letter. The conduct was confirmed as a violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) The offender owned the No.139889 invention patent for the method of manufacturing color painted glass as well as the patent on the paint applied. Married to the owner of Jiunnwei Co., Ltd. and also an employee of the company, she had licensed Jiunnwei to use the said patents. The informer was a supplier for the contractor CTCI Corporation (hereinafter referred to as CTCI) who built the Luzhou line of the Taipei Mass Rapid System. The products that the informer supplied to CTCI are partially self-manufactured and partially purchased from Jiunnwei.

(2) As a patent is an exclusive intellectual property right, exercising or licensing the patent will have an effect on the production and marketing of related products. Even if a patent holder does not yet apply the patent to produce and market the

products, there's a possibility that the holder may decide to enter the market at any time as he or she is entitled to produce or market the products as an object of transaction to other enterprises for economic benefits. Moreover, the definition of unfair competition as prescribed in the Fair Trade Law refers to the concept of potential competitor and thus the patent holders are regarded potential competitors and are subject to the Fair Trade Law.

3. Grounds for disposition:

On March 18, 2009, the offender, without disclosing the exact content and scope of the patent right she held or any concrete evidences of infringement on her patents and without any verification of the alleged infringement, asked a lawyer to issue a legal attest letter to the informer, as well as a copy to DORTS, accusing the informer of infringing upon her patents. There is a possibility that the DORTS might terminate its contract with CTCI because of the letter. In addition, CTCI's business relations with the informer might also encounter the danger of termination. The informer therefore was held liable for violation of business ethics. The conduct apparently was unfair and had an impact on trading order. It was in violation of Article 24 of the Fair Trade Law and FTC ordered the offender to stop the said illegal conduct immediately.

Summarized by Hung, Chin-An; Supervised by Sun, Ya-Chuan □

Easy Way Group

956th Commissioners' Meeting (2010)

Case: Easy Way Group violated the Fair Trade Law by conducting an untrue advertisement and failed to disclose material trading information to franchisees before contract establishment

Key Word(s): False advertisement, franchise, failing to disclose material trading information

Reference: Fair Trade Commission Decision of March 3, 2010 (the 956th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.099031

Industry: Non-alcoholic Beverage Service Activities via Shops (5621)

Relevant Law(s): Articles 21(3) and 24 of the Fair Trade Law

Summary:

1. Two informers accused Easy Way Group (hereinafter referred to as Easy Way) of failing to disclose to them information in regard to the interior design and expenses for the furnishing and equipment required as well as the methods by which Easy Way would calculate or collect the costs for the ingredients and utensils 10 days before signing the contract for their franchise "Meet Fresh" operations.

2. Findings of the FTC after investigation:

(1) Easy Way stated in its "Guideline for Franchising of Meet Fresh Beverage Shops" (hereinafter referred to as the Franchising Guideline) that the expected net profit rate would be around 20~25% and the investment could be earned back in 6 to 15 months. However, the income statements of 16 directly-managed shops provided by the company covering from January 2007 to August 2009 showed that, only in January 2008, the only one month out of the thirty-two month period, the net profit rate reached 23.63%, which was above the average net profit rate of 20% indicated in the franchise guidelines. The average startup investment was about 4.7 million NT dollars. The monthly net profit rates of these 16 shops since they first opened for business showed that only the shop in Tonghua Street and the one in Breeze Department Store were able to earn back the invested capital in 11 months, meeting

the expected rate of return on investment. The net profit of 11 shops after 11 months was still negative, while the 3 remaining shops did not earn back their investments although the net profit was in positive figures.

(2) The FTC also examined the documents provided to franchisees. There was no information disclosure on the expenses required for the initial supply of commodities, utensils, foods and raw materials.

3. Grounds for disposition:

(1) The "expected profit rate" is an important indicator according to which the parties interested can judge the possible growth and the operation risk in joining the franchise system. On the other hand, the "net profit rate" probably is also the most critical index the interested parties apply when making the decision of joining the franchise system or not. In the case in question, the net business profit figure provided in advertisements apparently would be regarded by interested parties as the minimum guaranteed net profit or give the impression that the figure represented the average revenue of existing franchises. Such figures had the capacity to influence the decision of interested parties. When making such a claim, the advertiser must have the support of objective statistics and clearly describe in the advertisements the signification of the statistics provided so as to avoid any misunderstanding. The statistics Easy Way provided on the average monthly net profit rate of the 16 directly-managed shops between January 2007 and August 2009 showed that the average monthly net profit rate of the 16 shops went above the alleged 20% threshold, at 23.63%, only once in the 32-month period, in January 2008. Among all these shops under the company's direct management, the one in Tonghua Street had the best performance and achieved over 20% net profit in 7 months (but fell below 20% in the other 25 months still.) The FTC's investigation revealed that the startup investment for each of the directly managed shops was around 4.7 million NT dollars and only the shop in Tonghua Street and the one in Breeze Department Store were able to earn back the invested capital in 11 months, justifying the alleged full return on investment in 6 to 15 months. However, the total net profit of 11 shops stayed negative throughout that 32-month period. The 3 remaining shops made positive total net profit but they

have not retrieved their invested capital even until today. Even if the net profit rate advertised had its basis, the performance of the two best shops could by no means represent the average sales of the Meet Fresh chain (including directly managed shops and franchises.) Moreover, in the nearly two years from February 2007 to the end of 2008 in which the advertisements were run, the actual performance of the directly managed shops or the franchises were unable to achieve the rate of return on investment as asserted the advertisement. The company made no effort to correct the content of the advertisements as a responsible advertiser would have. On the contrary, the franchise recruitment continued under the same advertisements. The FTC found it difficult to exempt the company from the administrative responsibility of an advertiser.

(2) The costs of the initial supplies a franchise needs to begin operation (including equipment, office supplies, commodities, foods, and raw materials, etc.) are considered expenses required for "purchases of products or services" before signing the contract or throughout the contract term. The franchiser is the only one with full information about these expenses. At the same time, most of the commodities are designated items that franchisees are not able to purchase elsewhere. It is therefore imperative that the franchiser provides the information in writing to the prospective franchisee before signing the contract that does not have as much access to such information so that the latter can assess its financial capacity and the cost benefit before deciding whether to become a franchise. The FTC's investigation showed that Easy Way not only did not advise on the expenses for the initial supplies but also stipulated in the contract that the franchisee had the obligation to purchase the designated items only from the franchiser. The initial supplies cost between 300 and 400 thousand NT dollars. They were all basic commodities required to begin operation. Therefore, the failure of Easy Way to disclose before signing the contract the information about the said expenses was apparently an abuse of its advantageous position in the access to related information. The withholding from disclosing important trading information such as the costs and calculation of the initial supplies was obviously unfair to the trading counterpart and had the capacity to affect the trading order in chain franchising. It was in violation of the regulation of Article 24

of the Fair Trade Law and Easy Way was imposed a fine of 500 thousand NT dollars.

Appendix:
Easy Way Group's Uniform Invoice Number: 80617317

Summarized by Kuo, An-Chi; Supervised by Hung, Hsiu-Hsing □

Chunghwa Telecom

960th Commissioners' Meeting (2010)

Case: Chunghwa Telecom violated the Fair Trade Law by conducting an untrue Internet services comparison advertisement
Key Word(s): Untrue, misleading, obviously unfair
Reference: Fair Trade Commission Decision of March 31, 2010 (the 960th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.099043
Industry: Telecommunications (6100)
Relevant Law(s): Articles 21(3) and 24 of the Fair Trade Law

Summary:

1. Cable Broadband Institute in Taiwan informed the FTC that the comparative advertising by Chunghwa Telecom Co., Ltd. (hereinafter referred to as Chunghwa Telecom) of the services of the "Optical Network" and "Cable Modem" on its "broadband access network comparison" web page to compare "connection quality," "upload and download speeds," "security," "network expandability," "network protection mechanism," "bandwidth distribution," and "extra equipment for users" was untrue.

2. Findings of the FTC after investigation:

Chunghwa Telecom claimed in its advertisement for the "Optical Network" that fiber optic networks could be divided into FTTH/Fiber to the home, FTTB/Fiber to the building, and FTTC/Fiber to the curb and the "connection quality" varied depending on the location of the fiber optic terminals. Full FTTH services were not yet available, while both FTTB and FTTC still used certain amounts of non-fiber optic connection. Therefore, the quality of services and functions were not 100% that of fiber optic cables. Chunghwa Telecom also asserted that the company provided a "router and equipment protection mechanism" to ensure network connection stability, such as use of alternative transmission lines when a network connection malfunction occurred. However, both FTTB and FTTC had to be hooked up to users through existing cables that could not be replaced. Therefore, the advertising by Chunaghwa Telecom was inconsistent with facts and in violation of the regulation of paragraph 3, mutatis mutandis application of paragraph 1, of Article 21 of the Fair Trade Law.

3. Grounds for disposition:

Chunghhwa Telecom advertised under the title of "connection quality" in regard to "cable modem" that the company used coaxial cables. However, in reality a cable modem network consisted of fiber optic and cable lines. Next, Chunghwa telecom claimed its upload speed reached "80K~1M" and the download speed was "230K~10M," yet the data provided by Chunghwa Telecom showed that "Cable Modem" was capable of providing service with the download speed already achieving 128K~2M/1M-30M. Meanwhile, according to National Commutations Commission, by applying the DOCSI3.0 technology, the upload and download speeds of "Cable Modem" could respectively reach 30Mbps and 160Mbps. At the same time, Chunghwa Telecom's allegation that "use of the same medium would result in lower security." However, according to the Telecom Technology Center, "Cable Modem" and "Optical Network" both had their own security protection mechanism. Without actual cases and evidential data, it would be impossible to assess which one had higher or lower security. In other words, it was impossible to judge transmission through cable modems was lower in security. Finally, Chunghwa Telecom declared under the title of "network expandability" that "expandability is low when the

transmission speed is determined in line with the number of subscribers." In reality, however, the network expandability when using the services of "Cable Modem" depends on the technology applied at the headend of the system instead of on the number of subscribers. With the above combined, the allegations Chunghwa Telecom made against its competitor Cable Modem in regard to connection quality, upload and download speeds, security, and network expandability constituted unfair competitive conduct and were in violation of Article 24 of the Fair Trade Law. The FTC therefore fined Chunghwa Telecom 1 million NT dollars.

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

Summarized by Lee,Wan-Chun; Supervised by Chen,Chun-Ting □

Lintian International Communications Co., Ltd.

965th Commissioners' Meeting (2010)

Case: Lintian International Communications Co., Ltd. violated the Fair Trade Law for its approaches of telephone marketing to sell cell phones in combination with service subscription
Key Word(s): Telephone marketing, monthly rate, restriction on contract termination, material transaction information
Reference: Fair Trade Commission Decision of May 5, 2010 (the 965th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.099055
Industry: Telecommunications (6100)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. Officers of the Consumer Protection Commission in several counties received

complaints that Lintian International Communications Co. Ltd. (hereinafter referred to as Lintian Co.) used telephone marketing to promote sales of cell phones in combination with service subscription by claiming no contract was needed and there would be no monthly rates if the phone was not used. When consumers received their phone bills, they realized the allegation of Lintian Co. was false. The Consumer Protection Commission therefore held a meeting on October 2, 2009 to discuss the disputes. The National Communications Commission, FTC, Lintian Co., and Fareastone Telecommunications (hereinafter referred to as FET) were also invited to attend. Acting on the conclusion of the said meeting, the FTC initiated ex officio instigation into telephone marketing used by Lintian Co. to see if the conduct was in violation of Article 24 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) In order to make transactions to improve sales performance and gain bonuses, the telephone marketing personnel of Lintian Co. alleged the cell phones and numbers were free. They purposely deceived the public that there would be no charges if the phones were not used or withheld important transaction information such as the need to pay the monthly rate or the restriction on contract termination. Consumers were coaxed into accepting the cell phones and SIM cards delivered to their doors, and then the administrative personnel of Lintian Co. would confirm the subscription over the telephone but still withholding from giving the consumers the details in relation to the special offers and the monthly rates. They did quickly give the names of the special offers such as "FET 3G Economy 598 Value-added I-mode 190", "FET 3G 365 Value-added I-mode 190", and so on. When consumers asked again about important transaction information such as the monthly rate, the salesperson would simply respond, "That's correct. The things you have received are free of charge," or would just repeat the names of the special offers once more without giving any further details. In addition, in order to get consumers' IDs, the marketing personnel claimed that the company needed to copy the IDs as evidence to prove they had given the cell phone and the number or to confirm that the salesperson did not engage in embezzlement. Yet, in fact, the IDs were required to process the

subscription procedure and serve as the proof for the company to get commissions. The conduct was to reduce the suspicion of consumers so that the company could successfully complete the subscription procedure by deception and withholding important transaction information and thus obtain rewards. Consumers did not find out about the need to pay the monthly rate and the restriction on contract termination until they were notified the number was activated or received the phone bill.

(2) Lintian Co. admitted that some of its sales personnel did fail to give sufficient information about the special offers and even told the users over the telephone that there was no monthly rate and the phone and the number were absolutely free of charge. The administrative personnel also did not follow the confirmation procedure with the customers. The FTC's investigation showed that during the period of more than one year that Lintian Co. conducted cell phone sales through telephone marketing. At least 70 disputes had taken place. The FTC found it impossible that the conduct had been the personal behaviors of some of the employees and that Lintian Co. was not responsible for the impact on trading order.

3. Grounds for disposition:

Lintian Co. applied deception or withholding material transaction information such as the prices of telecommunications services, the restrictions on the use of the services, and etc. through telephone marketing to create transaction opportunities. At least 70 disputes had taken place and complaints had been filed with the competent authority in several counties and cities. This was not a single or non-recurring transaction dispute. There was the potential that the interests of more consumers could be jeopardized in the future. It was deception that could affect the trading order of the market of telecommunications services through telephone marketing. The FTC considered the conduct in violation of Article 24 of the Fair Trade Law and fined Lintian Co. 400 thousand NT dollars.

Appendix:

Lintian International Communications Co., Ltd.'s Uniform Invoice Number: 27748607

Summarized by Chang, Hsin-Yi; Supervised by Liou, Chi-Jung □

Jiashun Realtor

983rd Commissioners' Meeting (2010)

Case: Jiashun Realtor violated the Fair Trade Law by failing to advise house buyers the distinction and choice between paying mediation deposit and offer statement of the Ministry of the Interior
Key Word(s): Broker, offer statement, mediation deposit
Reference: Fair Trade Commission Decision of September 8, 2010 (the 983rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.099097
Industry: Real Estate Agents (6812)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The informer of this case paid mediation deposit to Jiashun Realtor (hereinafter referred to as Jiashun) to negotiate the price of a house, but Jiashun never advised the informer the distinction and choice between paying mediation deposit and signing an offer statement. When the negotiation fell through, the owner of the house confiscated the negotiation fee. Finding the loss unacceptable, the informer reported the illegal conduct to the FTC.

2. Findings of the FTC after investigation:

The informer signed a "Temporary Receipt for Price Offer Deposit" with Jiashun and paid the mediation deposit. However, Jiashun never advised the informer the distinction and choice between paying the mediation deposit and signing an offer statement. Jiashun contended that, during the brokerage process, it did present to the informer a document published by the Taichung County Real Estate Agent Association (hereinafter referred to the Real Estate Agent Association) containing both the "Letter of Authorization for Transaction Negotiation" and the "Letter of House-Purchase Offer." Both were negotiation fee agreements, but the former was more complicated in content and signing it would also require stipulation of payment conditions. Therefore, most house buyers would choose to sign the "Temporary Receipt for Price Offer Deposit."

3. Grounds for disposition:

(1) Article 24 of the Fair Trade Law "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." Since real estate transactions normally involve large amounts of capital, whereas each consumer makes only a few numbers of house purchases in his or her life; therefore, it is extremely important that related information is fully disclosed and transparent. As the rights and obligations of the potential purchaser and the real estate agent stipulated in paying mediation deposit and the signing an offer statement carry different contents and legal effects, the potential purchaser should be given the option to decide the approach to be adopted. Compared with the real estate agent, the potential purchaser is apparently less likely to have access to related information. Therefore, sometime during the brokerage process, the agent has the obligation to disclose the aforesaid information, preferably in writing, to the potential purchaser to ensure that the potential purchaser is fully aware of the distinction as well as the choice between the two options. Thus, the number of disputes can be reduced and order in real estate brokerage can be ensured.

(2) The FTC's investigation showed that the "Temporary Receipt for Price Offer Deposit" and the "Letter of Authorization for Transaction Negotiation" published by the Real Estate Agent Association were both negotiation fee agreements. The latter one was by no means harder to understand than the former one. Furthermore, the payment conditions were up to the decision of the real estate agent and the buyer, or they could be left blank or deleted. Hence, there was no reason for Jiashun to show the informer two negotiation agreements that were similar in nature. The stipulation on the service charge in the "Letter of Authorization for Transaction Negotiation" was in fact more advantageous to the potential purchaser since the buyer did not have to pay any service charge until the real estate purchase contract was signed; whereas according to the "Temporary Receipt for Price Offer Deposit", the buyer would have to pay the service charge as soon as the price negotiation was successfully concluded. Hence, if Jiashun did indeed show the informer both documents, the informer would have chosen the "Letter of Authorization for Transaction Negotiation." Jiashun

was unable to present any concrete evidence that the buyer had signed the "Letter of Authorization for Transaction Negotiation"; therefore, it was unlikely that the buyer had been shown the document. The Real Estate Agent Association had printed both the "Letter of Authorization for Transaction Negotiation" and the "Letter of House-Purchase Offer" together. Since Jiashun did not show the buyer the "Letter of Authorization for Transaction Negotiation", obviously the buyer never read the "Letter of House-Purchase Offer" either. In addition, Jiashun was also unable to provide any concrete evidence of the potential purchaser signing the "Letter of House-Purchase Offer."

4. It is common for real estate agents to collect mediation deposit before negotiating on behalf of the potential buyer. However, the chief responsibility of a real estate agent is to provide needed information and bring the seller and the buyer to close the transaction. When a real estate agent collects mediation deposit from the potential buyer before completing the service, it will create constraint and inappropriate pressure, and force the potential buyer to make the transaction. If the object of transaction is defective or the related information is not fully disclosed, the interests of the buyer will be jeopardized and house-purchasing disputes will take place. Therefore, Jiashun's failure to advise the potential purchaser the aforementioned rights in relation to the transaction was passive withholding of important trading information from the potential buyer. The conduct infringed the liberty of the house buyer to determine whether he or she would make the transaction or the method of transaction. It was not only deceiving the house-buyer but also unfair competition to Jiashun's competitors who as a result lost the opportunity to broker the transaction. Therefore, Jiashun's failure to advise the potential purchaser during the brokerage process, the distinction and choice between paying mediation deposit and signing the offer statement of the Ministry of the Interior was regarded concealment of important trading information. It was deception that had the capacity to affect trading order and violated the regulation of Article 24 of the Fair Trade Law. The FTC therefore fined Jiashun 200,000 NT dollars.

Appendix:
Jiashun Realtor's Uniform Invoice Number: 99648894

Summarized by Yang, Chung-Lin; Supervised by Hung, Shui-Hsing □

Hsin-Hsin Gas Pipeline Enterprises

984th Commissioners' Meeting (2010)

Case: Hsin-Hsin Gas Pipeline Enterprises violated the Fair Trade Law by selling gas safety equipment under the pretext of providing safety check
Key Word(s): Gas pipe, safety equipment, pushing sales under the pretext of providing safety check
Reference: Fair Trade Commission Decision of September 15, 2010 (the 984th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.099101
Industry: Other Basic Metal Manufacturing Not Elsewhere Classified (2499)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC aimed "regulating the trading order of the gas safety equipment market" a key target in year 2010 and acquired from domestic natural gas providers information on businesses that pushed gas safety equipment on end users on the pretext of offering free safety checks under the names of natural gas providers. Efforts were made to investigate over ten cases suspected of such illegal conducts and administrative dispositions were made against nine of them. This case, one of the nine, was investigated based on the complaints from some customers of Shin Shin Natural Gas Co., Ltd. (hereinafter referred to as Shin Shin Gas).

2. Findings of the FTC after investigation:
That the accused was a gas valve company that had the same name as Shin Shin

Natural Gas and operated in the same area. Moreover, the "Hsin Hisn Gas Piping Service Notice" carried an obscure company stamp and the statements such as "Thank you for using our gas valve," "Your esteemed customer," "enhanced soft gas pipe maintenance," "regular gas equipment inspection service," and so on, were to make believe that the notice had come from the local natural gas provider. The intension to mislead customers was obvious. According to descriptions from the customers of Shin Shin Natural Gas, the employees of the accused wore a Hsin Hsin Gas uniform and a pass with Hsin Hsin Gas printed on it. They carried a gas detector and expressed they were there to perform gas pipe safety inspections. When called in for clarification, the person in charge of the accused company said that " our salespeople carried a detector and claimed to be there to perform safety inspections when visiting potential customers was an imitation of what the people sent from natural gas providers normally do." The excuse was ridiculous but it clearly indicated that the employees of the accused intentionally hid the fact that they were not from the natural gas provider and they were there to push certain products. On the contrary, they acted like they were from the natural gas provider and used the pretext of performing safety inspections to make it difficult for the natural gas end users to know that they in fact were not from the natural gas provider.

3. Grounds for disposition:

(1) Shin Shin Natural Gas is the sole legally licensed natural gas provider for the specific area. It has the responsibility to inspect gas piping on a regular basis. The accused would put the service notice in the end users' mailboxes in the operating area of Shin Shin Gas just several days before its employees would make house calls to push products. It was using the trust of people in the natural gas provider to do this promotion. When people received the notice in their mailboxes, they mistook it as coming from the natural gas provider. Then when the employees showed up at their doors allegedly to perform safety inspections, people generally would not think otherwise but just let them in. What followed was the employees from the accused would say there was a gas leak and push people to have a gas shutter installed. The accused, in order to promote sales, hid the fact that it was not the natural gas

provider in order to mislead and cheat people. Its sales strategy of performing safety inspections as a pretext to sell its products was deceptive conduct sufficient to affect trading order and in violation of Article 24 of the Fair Trade Law.

(2) Despite that the business capital of the accused was merely NT$50,000 and its scale was small, the FTC, besides ordering the accused to immediately cease the unlawful act, imposed an administrative fine of NT$200,000 on the accused because the impact of its conduct of pretending to be the natural gas provider and using the pretext of performing safety inspections on the psychology of consumers was far greater that common deceptive actions.

Appendix:
Hsin-Hisn Gas Pipeline Enterprise's Uniform Invoice Number: 30142408

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

Well Long Information Co., Ltd.

987th Commissioners' Meeting (2010)

Case: Well Long Information Co., Ltd. violated the Fair Trade Law by sending an attorney letter alleging trademark infringement
Key Word(s): Attorney letter, trademark right, trading order
Reference: Fair Trade Commission Decision of October 6, 2010 (the 987th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.099111
Industry: Other Computer Peripheral Equipment Manufacturing (2719)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC received a letter from an informer accusing Well Long Information

Co., Ltd. (hereinafter referred to as Well Long Co.) of sending through Universal Master Law Office on April 2, 2010 to the informer's trading counterparts and distributors an attorney letter claiming that the informer had copied the "FUTEK" trademark of the accused on its ink ribbons and had thus been raided by the police. The recipients of the letter were advised to stop purchasing or selling the ink ribbons from the informer. Although the accused had indeed applied to register the "FUTEK" trademark, the trademark was not yet approved and issued when the said attorney letter was sent out. In other words, the accused was not the owner of the "FUTEK" trademark. Hence, the informer considered the distribution of the attorney letter by Well Long Co. to accuse the informer of infringement on its rights of "FUTEK" trademark was an act sufficient to affect trading order and in violation of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

(1) Well Long Co. did send the said l attorney letter to more than one hundred distributors and customers of the informer on April 2, 2010. Enclosed was only a newspaper clipping entitled "Li Guang Technology International Corp. Raided for Producing Counterfeit Ink Ribbons" from the United Daily dated March 13, 2010.

(2) According to the (99) Zhi-Shang 0305 Zi No.09980272830 Letter from the Intellectual Property Office (IPO) of the Ministry of Economic Affairs (MOEA) dated June 14, 2010, Well Long Co. had filed the No.01019278 Application to IPO and the Intellectual Property Court to register the "FUTEK" trademark but the application was still being evaluated. Meanwhile, before the said trademark registration application was filed on September 12, 2001, the informer had already been using "FUTEK" as the trademark on its printers and ink ribbons. Therefore, Well Long Co. did not have the right to cite the Trademark Act to request for elimination or prevention of infringement on the "FUTEK" trademark since it had not yet obtained the right of trademark.

3. Grounds for disposition:

The actions of Well Long Co. to distribute the aforesaid attorney letter, cite the

regulation of the Trademark Act to accuse the informer of infringement on the rights of its "FUTEK" trademark, and request for elimination or prevention of infringement before its application of trademark registration was approved were no legitimate exertion at all of the trademark right in line with the Trademark Act. They were culpable conduct in terms of business ethics. Moreover, after the attorney letter was sent to over one hundred businesses, some of the recipients did terminate their purchase contracts for the products in question with the trading counterparts of the informer and some others canceled their orders too. Hence, the distribution of the attorney letter did indeed result in misconception among the informer's trading counterparts and have an effect on trading order. The conduct of Well Long Co. was unfair and in violation of Article 24 of the FTL. The FTC therefore imposed on the company an administrative fine of NT$50,000.

Appendix:
Well Long Information Co., Ltd.'s Uniform Invoice Number: 84285629

Summarized by Peng, Wei-Cheng; Supervised byWu, Lieh-Ling □

Nan-I Book Enterprises Co., Ltd. & Kang-Hsuan Education Publishing Group

988th Commissioners' Meeting (2010)

Case: Nan-I Book Enterprises Co., Ltd. and Kang-Hsuan Education Publishing Group violated the Fair Trade Law by providing inappropriate gifts during the period of textbook selection for junior high schools in Taipei City, Taipei County and Keelung City in 2010

Key Word(s): Textbook, providing inappropriate gifts, trading order

Reference: Fair Trade Commission Decision of October 13, 2010 (the 988th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.099116

Industry: Book Publishing (5813)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC was informed that, during the period of textbook selection for the junior high schools in Taipei City, Taipei County and Keelung City between April and May in 2010, Nan-I Book Enterprises Co., Ltd. (hereinafter referred to as Nan-I Books.) provided junior high school teachers with book sets with an eye to exercise influence upon the result of the textbook selection. In the same period, Kang-Hsuan Educational Publishing Group (hereinafter referred to as Kang-Hsuan Publishing) also provided teachers with trial packages of Anlene Milk Powder, human stomach models, eco-friendly staplers and book sets of basic grammar. Violation of Article 24 of the Fair Trade Law (FTL) was suspected in both cases.

2. Findings of the FTC after investigation :

(1) A.Nan-I Books: During the textbook selection for the junior high schools in Taipei City, Taipei County and Keelung City, Nan-I Books was chosen to provide textbooks for two subjects – textbook for Chinese subject and textbook for Science and Technology subject. The book sets were samples from the company. Nan-I Books did not provide the above items or insinuate that they would be provided during the

textbook selection period. The normal practice in the textbook publishing business is that anyone providing teachers with any objects will attach a sticker with his or her name, the company title and contact number for the recipient to know where the gifts have come from and to remember the favor. However, the said book sets did not carry any stickers. The only indication that the above items had come from Nan-I books was only a stamp on the side of the books saying "Gift from Nan-I Books." Therefore, it was impossible to prove the books had been provided during the textbook selection period.

(2) Kang-Hsuan Publishing: The company was not chosen to provide textbooks for any subject during the selection period. The human stomach models were supplementary teaching materials to enhance the effect of teachers' instruction. The eco-friendly staplers were presents given to teachers when the company conducted a questionnaire survey on teachers; they had nothing to do with the textbook selection. As for the book sets of grammar, they were only samples, not gifts. However, the timing chosen to distribute the above gifts was indeed inappropriate as it may imply that the purpose of offering the gifts was to win the selection to become a textbook supplier as described in the FTC's Guidelines for Textbook Sales.

3. Grounds for disposition:

(1) During the selection of textbooks for the junior high schools in Taipei City, Taipei County and Keelung City in 2010, Kang-Hsuan Publishing provided teachers with Anlene Milk Powder trial packages, which had no relation to textbook teaching, to win the selection to be a textbook supplier. The conduct was apparently unfair competition sufficient to affect trading order and in violation of Article 24 of the FTL. The company was imposed with an administrative fine of NT$1,000,000.

(2) According to available evidences, it was difficult to rule Nan-I Books as having violated the FTL. However, to avoid violation or any effect on trading order in the future, the company was given a warning.

Appendix:

Kang Hsuan Educational Publishing Group's Uniform Invoice Number: 23142092

Nan-I Book Enterprises Co., Ltd.'s Uniform Invoice Number: 68461979

Summarized by Chien, Hao-Yu; Supervised by Yang, Chia-Hui □

Jaysanlyn Construct Co.

997th Commissioners' Meeting (2010)

Case: Jaysanlyn Construct Co. violated the Fair Trade Law by requesting pre-purchased home buyers to pay a deposit in order to see the contract as well as failing to disclose the general list of property shares or list out the percentage of each unit's share of the common property
Key Word(s): Deposit, general list of shares, common property
Reference: Fair Trade Commission Decision of December 15, 2010 (the 997th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.099152
Industry: Real Estate Development (6700)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC's staff members visited the site of the "Jaysanlyn Castle above the City" pre-purchased home project of Jaysanlyn Construct Co. (hereinafter referred to as Jaysanlyn) and found out that the company not only did not provide a sample contract but also requested the FTC's staff members to pay a deposit in order to see the contract. At the same time, the company did not provide the general list of property shares. As the said conducts were in violation of Article 24 of the Fair Trade Law (FTL), the FTC therefore initiated an ex officio investigation.

2. Findings of the FTC after investigation:

To find out whether the aforesaid incident was only a single event and did not happen regularly, the FTC randomly selected a number of homebuyers from the list

of people who had already signed the pre-purchased home contract for units in the "Jaysanlyn Castle above the City" project and conducted a questionnaire survey on them. 31% of the 51 people who filled out the questionnaire confirmed that Jaysanlyn had requested them to pay a deposit, between NT$10,000 and NT$600,000, in order to see the contract, while 92% of them confirmed that Jaysanlyn had not provided the general list of property shares.

3. Grounds for disposition:

(1) According 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." Since pre-purchased homes are not yet completed, homebuyers have limited information about the homes when they sign the contract. This apparently puts the developer (builder) in an advantageous position. Therefore, when a developer requests homebuyers to pay a deposit in order to see the contract or fails to provide potential buyers with the general list of property shares that will clearly show how the shares of the common property is shared by all the units, it is in violation of the FTL.

(2) The result of questionnaire survey revealed that some of the buyers had read the contract before paying a deposit but some other did confirm that Jaysanlyn had requested them to pay a deposit in order to see the contract. This indicates that what happened when the FTC's staff members visited the site of the "Jaysanlyn Castle above the City" project was by no means an independent incident but something that took place regularly. Since the objects in pre-purchased home transactions are not yet completed, the contract becomes the most concrete description of the content of the object of transaction as well as the rights and obligations of both parties. Hence, during the transaction process, the developer is required to provide sufficient and complete information to potential buyers so that they can fully evaluate whether they want to make the purchase. Only by doing so will the positions of both parties on the market be fair and balanced. However, the FTC's investigation indicated that Jaysanlyn not only had not openly shown the contract or made it available to potential buyers but also requested people to pay a deposit in order to see the contract, putting

potential buyers in a disadvantageous position of risking having their deposits confiscated or being forced to fulfill the contract because of their relatively weak position with regard to information about the object of transaction. In addition, the clauses in the contract were standardized terms that Jaysanlyn had single-handedly formulated in advance. By the time homebuyers read the clauses, after paying a deposit, they were already in a disadvantageous position because of their lack of access to the information up to this point. Their interests were jeopardized, including obstruction to viewing of contract, weakened contract negotiation capacity, the worry about getting the deposit confiscated if not signing the contract, lack of knowledge about the property they were purchasing or the related rights and obligations, and so on. Jaysanlyn took advantage of information asymmetry in its business operations. It was an illegitimate approach in violation of the principles of business ethics and performance competition. Even if Jaysanlyn agreed to return the deposits, it was still not enough to rectify or compensate for the disadvantage derived from homebuyers' decisions to make the purchases under information asymmetry. Therefore, by failing to provide the contract and requesting the homebuyers to pay a deposit in order to see the contract, Jaysanlyn had put the homebuyers in an inferior position with regard to access to necessary information and the disadvantageous circumstance of risking having their deposits confiscated or being forced to fulfill the contract. It had affected the homebuyers' transaction decisions.

(3) Regarding the general list of property shares, the FTC's investigation showed that Jaysanlyn did not provide it to the homebuyers neither. Over 90% of the homebuyers who filled out the questionnaire confirmed the company had not provided the said list. It is therefore true that, when marketing the "Jaysanlyn Castle above the City", Jaysanlyn never offered the list for people to look at, distributed it or made it publicly accessible. Subsequently, most of the homebuyers were unaware of how the common property was calculated or the percentage their share accounted for in the total common property. In addition, as the ownership of a pre-purchased home is not yet registered, the buyer is unable to acquire any information from the land administration office. Meanwhile, the division of the common property has something to do with the calculation of the total area being transacted and the

value of the property, while the general list of property shares can help homebuyers understand how the entire compound is allocated and evaluate the fairness in such allocation. This is important information that can affect homebuyers' purchase decisions. It is thus regarded significant information in pre-purchased-home transactions. Therefore, by failing to disclose such information, the developer is apparently deceiving the homebuyers to influence their transaction decisions. Hence, when, during the transaction process, Jaysanlyn failed to disclose the general list of property shares that could show how the shares of the public facilities in the entire compound were calculated or list out the percentage of the common property each unit was allocated, the homebuyers had no other way to access such information and their transaction decisions was affected.

(4) In this case, Jaysanlyn, when marketing its "Jaysanlyn Castle above the City", did not exhibit the contract at the site but requested potential buyers to pay a deposit in order to see the contract. Neither did the company provide the general list of property shares that could show how the shares of the common property were calculated or list out the percentage of each unit's share of the common property or provide it for public access or distribute it. The conduct caused homebuyers to make their purchase decisions without enough information necessary for potential buyers. It put the interests of homebuyers in jeopardy. It was not only deceptive and unfair to the buyers but also depriving the company's competitors the opportunity for fair competition. It was deceptive and unfair conduct sufficient to affect trading order in violation of Article 24 of the FTL. After deliberating on the disposition and amount of fine in accordance with Article 36 the Enforcement Rules to the FTL, the FTC took action in line with the first section of Article 41 the FTL and ordered Jaysanlyn to immediately cease the unlawful act and imposed on the company an administrative fine of NT$3,000,000.

Appendix:
Jaysanlyn Construct Co.'s Uniform Invoice Number: 24300338

Summarized by Yang, Chung-Lin; Supervised by Hung, Shui-Hsing □

Yangming International Co., Ltd.

the 1000th Commissioners' Meeting (2011)

Case: Yangming International Co., Ltd. violated the Fair Trade Law by adopting inappropriate measures to entice customers to purchase additional packages of the Leidi Diamond Holiday Tour
Key Word(s): Leidi Diamond, travel card, resale profit
Reference: Fair Trade Commission Decision of January 5, 2011 (the 1000th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100004
Industry: Other Accommodation Services (5590)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC was informed that Yangming International Co., Ltd. (hereinafter referred to as Yangming Co.) had told purchasers of the Leidi Diamond Holiday Tour Package (hereinafter referred to as the Leidi Package) they could buy extra packages at a lower price and resell them to others for profits. The informer thought the sales strategy of Yangming Co. by enticing customers with the resale profit in purchasing extra Leidi packages was inappropriate and was in violation of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

The informer was invited to the FTC to give the details and the customers of Yangming Co. were requested to fill out a questionnaire about their interactions with Yangming Co. 27 people replied and 85% of them admitted that they had never heard of or had any knowledge about the Leidi Package. 96% of them confirmed that Yangming Co. had shown them photocopies of bankbooks of other customers as proof of successful resale cases to increase their confidence in making extra purchases. 70% of them confirmed that Yangming Co. had promised to help them resell the extra packages. To find out the reasons of the ones who purchased extra packages and the number of successful resale cases, the customers were requested to fill out a second questionnaire. 20 people complied and the information given

showed 79 extra packages in total had been purchased. 72, or 91%, of them had been purchased with the intention of reselling and only five packages had been resold, making the actual resale rate at merely 6.94%. The results of the questionnaire surveys and the details given by the trading counterpart invited to the FTC were consistent.

3. Grounds for disposition:

(1) Article 24 of the FTL regulates: In addition to what is provided for in this Law, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is sufficient to affect trading order. Hence, when an enterprise promotes its products by showing a limited number of successful resale examples and promising help with resale, it can mislead the trading counterparts into believing there is indeed profit in resale and thus making the transaction decision. Such inappropriate sales approach is apparently a type of deceptive conduct aforementioned. If a large number of trading counterparts fall victim to such deceptive conduct or there is potential that it could affect a large number of people in the future, it is then "sufficient to affect trading order" and is considered in violation of Article 24 of the FTL.

(2) The second questionnaire survey revealed that 91% of the 20 trading counterparts who purchased extra packages did so with the intention to profit from resale. Hence, the possibility of reselling the additionally purchased packages was deemed a major factor in the trading counterparts' transaction decisions. At the same time, as 85% of the trading counterparts had never heard of the Leidi Package or had any knowledge about the market of such products, they could only establish a rough understanding of the characteristics of the product based on the description given by Yangming Co. Meanwhile, Yangming Co. had also verbally promised to help with the resale and showed photocopies of bankbooks as proof of successful resale examples. Such strategies were powerful enough to convince trading counterparts who had never heard or had much knowledge about such products to believe that purchasing extra packages and reselling them could be rather profitable. However, the actual successful resale rate was merely 6.94%. Obviously, Yangming Co. had pushed the trading counterparts to make their transaction decisions by promising to help with

the resale and showing insubstantial data as proof but hid the fact that the successful resale rate had been low.

(3) The number of trading counterparts misled by the inappropriate sales strategies of Yangming Co. into believing they could profit from purchasing and reselling extra packages was not small at all and Yangming Co. continued to promote the Leidi Package. Hence, the likelihood that such inappropriate sales strategies could have an effect on a large number of potential trading counterparts existed. The said deceptive conduct could lead to negative impact on social ethics and trading order that free and fair competition depended on. Hence, the conduct was deemed "sufficient to affect trading order" and in violation of Article 24 of the FTL. The FTC therefore applied the First Section of Article 41 of the FTL and ordered the company to immediately cease the unlawful act and imposed on the company an administrative fine of NT$500,000.

Appendix:
Yangming International Co., Ltd.'s Uniform Invoice Number: 80705711

Summarized by Yung, Hsiang-Yu; Supervised by Chen,Yuhn-Shan □

China Airlines Co., Ltd. & EVA Airways Corp.

1009th Commissioners' Meeting (2011)

Case: The airlines violated the Fair Trade Law while conducting pricing practice of cross-strait passenger flights

Key Word(s): Cross-strait direct flight, airfare, airline company, China Airlines, EVA Air

Reference: Fair Trade Commission Decision of March 9, 2011 (the 1009th Commissioners' Meeting), Dispositions Kung Ch'u Tzu No.100032 and 100033

Industry: Air Transport (5100)

Relevant Law(s): Articles 19(vi) and 24 of the Fair Trade Law

Summary:

1. On April 7, 2010, the media reported that the cross-strait airfares were overpriced and the prices did not come down in spite of the increased numbers of flights and shortened flight distances. The FTC therefore initiated an ex officio investigation to find out whether the pricing practice of the airlines involved violation of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

(1) According to the plane ticket marketing mechanism of China Airlines Co., Ltd. (hereinafter referred to as China Airlines) and Eva Airways Corporation (hereinafter referred to as EVA Air), the rebate per ticket for ticketing centers (hereinafter referred to as the T/C) for cross-strait direct or transfer flights was merely NT$150, considerably lower than the rates for other routes, normally between NT$600 and NT$700. This rebate is the maximum room allowed for price competition among travel agencies when selling plane tickets. The two airline companies would call up the T/C to understand the ticket sales conditions, especially whether travel agents were selling tickets at prices beyond the rebate would allow. Eva Airways even signed with the T/C the "Memorandum of Understanding of Sales of Eva Airways Tickets by T/C in Taiwan" in which it was stipulated that the T/C were required to sell

tickets according to the busy and slow season rates of each air route defined by the company and any violations could lead to termination or suspension of the ticketing agent status, depending on the gravity. The said practice not only greatly impair the possibility for price competition among travel agencies when selling cross-strait air tickets but also facilitated the airline companies in the upstream to perform price supervision on one another and thus allowed them to avoid price war and indirectly helped maintain the price rigidity of the agents (the T/C) in the downstream. Judging from the intention of the said conduct of China Airlines and Eva Air – the two companies, China Airlines 29.2% and Eva Airways 20.6%, together accounting for almost 50% of the cross-strait direct flight market – as well as the highly limited supply-demand adjustment function of the cross-strait air transportation market, the FTC considered the two companies' use of their dominant status on the market to set the said ticketing rebate per ticket for travel agencies for both direct and transfer cross-strait flights at a rate considerably lower than that for any other route an unjustifiable restriction on the business activities of travel agencies and an act of restriction on market competition in violation of subparagraph 6 of Article 19 of the FTL.

(2) Airfares vary greatly with the ticket type, ticket class, and its valid period, with the Y Class being the most expensive among economy seats. The findings of the FTC's investigation showed that after China Airlines and Eva Air lowered the airfares in April 2010, the number of Y Class seats apparently increased compared to cheaper economy class seats. As a result, the average total prices of tickets issued by the T/C were either equivalent to or only slightly lower than in March and April 2010 before the airfare decreases took place. Since travel agents and consumers could only make reservations through online booking systems, information asymmetry obviously existed between airline companies and consumers. Despite their airfare decrease announcements, China Airlines and Eva Air readjusted the ratio of economy class seats in their planes as a response to the price decrease. Meanwhile, consumers thought the prices had really come down and thus planned their trips. However, due to the said seat ratio adjustment, they found it difficult to obtain tickets for lower-price classes after the price decrease. On the contrary, they had no choice

but to make reservations for seats of more expensive classes because the market supply and demand was highly limited. What the two airlines did was deceptive and obviously their conducts are sufficient to affect the trading order of the cross-strait air transportation market in violation of Article 24 of the FTL.

3. Grounds for disposition:

(1) China Airlines and EVA Air stipulated in their T/C ticketing rebate regulations the rebate rate for T/C for cross-strait direct and transfer air tickets considerably lower than that for any other international route. It was an unjustifiable restriction on the business activities of their trading counterparts and an act of competition restriction in violation of subparagraph 6 of Article 19. They announced price decreases starting in April 2010 but changed the ratio of seats of different economy classes in their planes and therefore the price decreases did not achieve the desired goal. It was deceptive and obviously unfair conduct able to affect trading order in violation of Article 24 of the FTL.

(2) In addition to applying the first section of Article 41 of the FTL and ordering the two companies to immediately cease the unlawful act, the FTC also imposed on China Airlines an administrative fine of NT$10,000,000 and on EVA Air NT$7,000,000 for their violation of subparagraph 6 of Article 19 of the FTL as well as an administrative fine of NT$10,000,000 on China Airlines and NT$5,000,000 on EVA Air for their violation of Article 24 of the FTL. In total, China Airlines was fined NT$20,000,000 and EVA Air NT$12,000,000. The aggregate of the fines was NT$32,000,000.

Appendix:
China Airlines Co., Ltd.'s Uniform Invoice Number: 11145904
EVA Airways Corp.'s Uniform Invoice Number: 23225229

Summarized by Shen, Li-Wei; Supervised by Liou, Chi-Jung □

LG Electronics Taiwan Taipei Co., Ltd.

1012nd Commissioners' Meeting (2011)

Case: LG Electronics Taiwan Taipei Co., Ltd. violated the Fair Trade Law for posting a false and untrue comparative advertisement about inverter washing machines

Key Word(s): Inverter washing machine, false and untrue comparative advertisement, water consumption

Reference: Fair Trade Commission Decision of March 30, 2011 (the 1012nd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100040

Industry: Retail Sales of Electrical Household Appliances in Specialized Stores (4741)

Relevant Law(s): Articles 21(1) and 24 of the Fair Trade Law

Summary:

1. LG Electronics Taiwan Taipei Co., Ltd. (hereinafter referred to as LG Co.) was reported to have posted a false and untrue comparative advertisement about inverter washing machines in sales outlets. The advertisement compared LG inverter washing machines with Panasonic inverter washing machines and indicated that the water consumption of the latter was higher that the former. It was in violation of Articles 21 and 24 of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

(1) In the said advertisement, the water feeding mechanisms of LG and Panasonic inverter washing machines were listed in contrast. It indicated that "Brand P: single water feeding" and "LG: water feeding in three stages" and the word "BEST" was printed in one of the LG columns. However, the investigation revealed that the water feeding mechanisms of all inverter washing machines marketed domestically were all "water feeding in two stages." The ones with "water feeding in three stages" were the washing machines of vertical types, not the inverter models. LG confessed that the indication in the said advertisement was an act of negligence by its employees who had the information printed in the advertisement without confirmation in advance.

(2) The said advertisement also listed the water consumption measurement criterion for issuance of the water-saving label – the measured value had to be 20L/Kg according to the JIS C9606 Standard. The advertisement displayed the "DD Inverter Washing Machine Water Consumption Comparison Table" in which the water consumption levels of the 14Kg and 15Kg inverter washing machines from Panasonic (without indicating the models) were shown as "18.7L/Kg" and "17.4L/Kg" respectively, whereas in the fields for the LG inverter washing machines of the same capacities were labeled "18.5L/Kg" and "16.2L/Kg" in contrast. A "crown" icon and the "BEST" sign were also placed in the said columns to show that the LG models saved more water. Nevertheless, a finding of the investigation showed that during the period the said advertisement was posted, Panasonic was also marketing other inverter washing machines of the capacities of 14Kg and 15Kg and their water consumption levels were respectively "13.78L/Kg" and "12.97L/Kg", both lower that the LG models referred to in the said advertisement.

3. Grounds for disposition:

(1) The said advertisement carried the headline "Good Cleaning Strength and Super Water-saving Capacity Make Key Considerations in Choice of Inverter Washing Machines" in blown-up and bold prints. In the contrast table, the water feeding mechanisms of LG and Panasonic inverter washing machines were compared. It indicated "Brand P: single water feeding" and "LG: water feeding in three stages" and the word "BEST" was printed in one of the LG columns. This gave consumers the impression that the water feeding in the LG inverter washing machines referred to in the advertisement took place in three stages and these machines were better than those made by Panasonic. The truth is that the water feeding mechanisms in all the inverter washing machines LG Co. marketed in Taiwan fed water in the machines in two stages, not three stages. According to the advertisement, the water feeding mechanism was closely related to detergent solution and cleaning capacity. However, LG, as the advertiser, failed to fulfill the obligation of verifying the authenticity of the said statement and wrongfully advertised its washing machines as equipped with a mechanism that fed water in the machine in three stages, which was not true. The

conduct misled trading counterparts into believing that the LG inverter washing machines actually fed water into the machine in three stages. It was therefore false, untrue and misleading, and in violation of Article 21 (1) of the FTL.

(2) Again, before making the said advertisement, LG Co. did not really investigate the consumption levels of the 14Kg and 15Kg inverter washing machines made by Panasonic and the "DD Inverter Washing Machine Water Consumption Comparison Table" in the advertisement indicated that the water consumption levels of LG inverter washing machines were lower than the Panasonic inverter washing machines of equivalent capacities, while during that period Panasonic actually had other models that consumed less water than that was referred to in the advertisement. Apparently, when making the comparison in the said advertisement, LG Co. selectively neglected the Panasonic inverter washing machines that used less water. This could mislead trading counterparts into buying LG products due to their belief that LG products were better than those from Panasonic. As a result, Panasonic, as one of the market competitors of LG, could thus lose trading opportunities. It was obviously unfair conduct detrimental to proper commercial trading order and market competition and in violation of Article 24 of the FTL.

(3) According to the above facts and considering the degree of damage caused by the unlawful act of LG Co. and the duration of the unlawful act, the company's business scale, management condition, market status, and its level of cooperation during the investigation, the FTC acted in line with the first section of Article 41 of the FTL, ordered the company to immediately cease the unlawful act, and also imposed an administrative fine of NT$150,000 for its violation of Article 21 (1) and an administrative fine of NT$400,000 for its violation of Article 24 of the same law. The fines totaled NT$550,000.

Appendix:

LG Electronics Taiwan Taipei Co., Ltd.'s Uniform Invoice Number: 22553217

Summarized by Lai, Chien-Sheng; Supervised by Chi, Hsueh-Li □

Cheng An Technology Co., Ltd.

1014th Commissioners' Meeting (2011)

Case: Cheng An Technology Co., Ltd. violated the Fair Trade Law for selling LPG valve
Key Word(s): Shock absorption, safety equipment
Reference: Fair Trade Commission Decision of April 12, 2011 (the 1014th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100050
Industry: Other Basic Metal Manufacturing Not Elsewhere Classified (2499)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. Yilan County Government forwarded consumer disputes filed with various county/city governments against Cheng An Technology Co., Ltd. (hereinafter referred to as Cheng An Co.) and requested the FTC to investigate. The company had held fire hazard prevention presentations, allegedly being commissioned by the government, and used them as opportunities to push its LPG bottle shock absorbers.

2. Findings of the FTC after investigation:

(1) The sales approach of Cheng An Co. was divided into three stages:

(i) The company gained access to some venues and its salespeople began to distribute advertising flyers and raffle tickets to attract people to the fire hazard prevention presentation.

(ii) In addition to introducing the functions of the shock absorbers, Cheng An Co. also mentioned the special offer packages during the presentation.

(iii) As soon as someone filled out the special offer card or when the presentation was over, with or without the attendees expressing their interest in having shock absorbers installed, salespeople would follow them home and pushed them into buying the shock absorbers.

(2) Results of the FTC's questionnaire survey:

(i) 57.89% of the people confirmed that Cheng An Co. had held gas safety

presentations; 36.84% of the people confirmed that Cheng An Co. had indeed claimed that presentations had been organized by government agencies or public welfare organizations.

(ii) 63.16% of the people confirmed that raffles had been conducted; 57.89% of the people confirmed that Cheng An Co. had made the offer of buying one and getting one free; 52.63% of the people confirmed that Chang An Co. had announced free installation would be offered to a limited number of buyers.

(iii) 52.63% of the people confirmed that they had made the purchase decision because the unrelenting bombardment, coaxing, threat and forced installation and refusal to uninstall by the salespeople from Chang An Co. made them think compulsory installation was a government policy.

(3) The FTC uncovered at a business office of Cheng An Co. what appeared to be instructions for the company's salespeople in which there were detailed descriptions of sales approaches such as intentional withholding of prices.

3. Grounds for disposition:

(1) When inviting people to a presentation, Cheng An Co. deliberately concealed its true identity and its purpose of the presentation: People received flyers and raffle tickets with no showing of the identity of Cheng An Co. When they arrived at the presentation, they still had no idea about the company's identity and the purpose of the presentation was to sell products.

(2) At the presentation, Cheng An Co. lied about the prices of the products. The shock absorber was NT$4,000 a piece but the company claimed it was NT$7,900 a piece and the company would give the special offer of buying one and getting one free to a limited number of people. Sometimes the company even never mentioned that the products had to be purchased.

(3) The salespeople of Cheng An Co. followed people home to push sales and people eventually decided to buy as their free will was under strong pressure.

(4) Within two years, various county and city governments received a total of 105 petitions filed over consumer disputes with the said company. Cheng An Co. admitted it had started in 2007 to sell through the said approach all around Taiwan.

On average, it had held four presentations a day and each session had about 10 people attending. Each month, it was able to sell 150 to 360 LPG bottle shock absorbers, with the sales totaling about NT$1,200,000. Apparently, the said inappropriate sales approach was strong enough to affect trading order.

(5) To sell its LPG bottle shock absorbers, Cheng An Co. deliberately concealed its identity and enticed people, who were psychologically unprepared, with raffles to attend the company's presentations during which it lied about the prices of the products. Then the company's salespeople followed people home to push sales and forced them into making purchasing decisions as their free will was under strong pressure. The entire sales approach was deceptive and obviously unfair conduct that was able to affect trading order and in violation of Article 24 of the Fair Trade Law. The FTC imposed on the company an administrative fine of NT$4,000,000.

Appendix:
Cheng An Technology Co., Ltd.'s Uniform Invoice Number: 28302441

Summarized by Tsai, Tsung-Yung; Supervised by Sun, Ya-Chuan □

You Lin Enterprise Co., Ltd.

1014th Commissioners' Meeting (2011)

Case: You Lin Enterprise Co., Ltd. violated the Fair Trade Law for distribution of patent infringement warning letters without justification
Key Word(s): Lawyer's letter, patent, trading order
Reference: Fair Trade Commission Decision of April 12, 2011 (the 1014th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100049
Industry: Other Computer Peripheral Equipment Manufacturing (2719)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC was informed that You Lin Enterprise Co., Ltd. (hereinafter referred to as You Lin Co.) sent faxes and statements extensively to businesses of the same industry on January 29, 2009 and May 18, 2010, claiming that the informer had been selling products that had infringed the patent of the company and action would be taken to hold the informer legally responsible. Without sending any allegedly patent-infringing sample for appraisal by professional organizations, the company distributed the said documents that carried no appraisal report to the downstream clients of the informer and accused the informer of infringement on it patent. The intention was to make the informer's clients panic so that its goal of unfair competition can be achieved. It was in violation of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

(1) On January 29, 2010 and May 18, 2010, You Lin Co. sent to the informer's as well as its own trading counterparts faxes and statements in which it claimed: "…We have found products made by the informer that have infringed the patent of You Lin Co. (ROC Patent Number M263601) and decided to take action to hold the informer legally responsible!"

(2) The informer and You Lin Co. provided the letters (or faxes) sent to 13 businesses to the FTC so that the FTC can examine them for the purpose of assessing their impact. The investigation showed most of the said businesses did not return goods, cancel orders, or change their trading counterparts for the products in question after receiving the warning letter. They also expressed that the faxes or statements had no effect on their transaction decisions. However, the informer sent a written statement to the FTC to clarify that, to protect business reputation, it had provided an affidavit to its trading counterparts who had received the said faxes or statements and, therefore, no return of goods or cancellation of orders had happened.

3. Grounds for disposition:

You Lin Co. sent faxes and statements to the informer's and its own trading

counterparts to accuse the informer (its competitor) of infringing its patent. The conduct met the description of sending of warning letters by enterprises in Point 2 of the "Fair Trade Commission Directions (Guidelines) for Disposal of Cases Involving Warning Letters." Before sending the faxes and statements, no court had reached any decision with regard to the alleged infringement and neither had You Lin Co. taken any sample of the alleged infringement to any appraisal organization for assessment of the infringement. Therefore, no appraisal report was attached to the said faxes or statements and these documents did not contain any description of the content and range of the patent or the concrete fact of the infringement to convince the recipients that the products of the informer had indeed infringed the patent of You Lin Co. Hence, the sending of the faxes and statements by You Lin Co. could not be justified as appropriate behavior of exercising its patent right. As to the lawyer's letter sent to the informer's trading counterparts, despite that none of the recipients took the products in question off the shelves or return them to the informer as a result, the informer did have to resort to the means of establishing an affidavit as guarantee to relieve the doubt of its trading counterparts. However, when interviewed, some of them confessed they had indeed thought about switching to You Lin Co. to avoid controversy in the future. Apparently, the action taken by You Lin Co. was strong enough to generate misconceptions in the said trading counterparts and have an effect on trading order. Therefore, the act of You Lin Co. was deemed obviously unfair conduct able to affect trading order in violation of Article 24 of the FTL. The FTC imposed on the company an administrative fine of NT$50,000.

Appendix:
You Lin Enterprise Co., Ltd.'s Uniform Invoice Number: 52416177

Summarized by Liu, Yuchuan; Supervised by Wu, Lieh-Ling □

Manufacturers of Blood Sugar Monitoring Devices and Test Paper

1026th Commissioners' Meeting (2011)

Case: An ex officio investigation initiated by the FTC on the manufacturers of the blood sugar monitoring devices and test paper
Key Word(s): Blood glucose monitors, test paper manufacturers
Reference: Fair Trade Commission Decision of July 6, 2011 (the 1026th Commissioners' Meeting)
Industry: Other medical device and product manufacturer (3329)
Relevant Law(s): Articles 19(iii) and Article 24 of the Fair Trade Law

Summary:

1. A report was presented during an FTC affairs meeting of August 26, 2010 on the issue of whether medical sales staff for blood glucose monitoring devices and blood glucose test paper manufacturers in the sale and promotion of blood glucose monitors and blood glucose test paper caused the trading counterparts of competitors to do business with themselves by coercion, inducement, or other improper means, or otherwise violated regulations of the Fair Trade Law. Upon receipt of the report the FTC initiated an ex officio investigation.

2. Findings of the FTC after investigation:

(1) At present there are approximately 13 providers of blood glucose monitors and test paper products on the domestic market, offering 24 device models. Sales channels include medical device chain stores and large chain pharmacies and drug stores.

(2) At present the three main products sold domestically consist of blood glucose monitoring sets, blood glucose test paper, and trade-ins of new units for old units.

(i) Blood glucose monitoring sets: As blood sugar measuring requires the simultaneous use of a blood sugar monitor and test paper, most blood glucose testers on the market are sold together with free blood glucose test paper. The top three

major brands sold in Taiwan are Accu-Chek by Roche Diagnostics, One Touch by Johnson & Johnson, and Optium by Abbot, sold for NT$3,000-4,000 per set, whilst local brands sell for under NT$3,000. In addition, sales prices for a given brand's product differ from pharmacy to pharmacy, varying by several hundred NT dollars.

(ii) Blood glucose test paper: As blood glucose test paper cannot be reused, and the test paper cannot be universally used with different brands and models, consumers ordinarily continue to use the test paper from a given brand. Market competition is fairly intense in Taiwan, where the sales price for blood glucose test paper ranges from NT$650-1200, varying in price by up to NT$200 from one pharmacy to another. Compared to prices in other countries and regions, blood glucose test paper is relatively inexpensive in Taiwan.

(iii) Trade-ins: At present most proprietors offering old for new unit exchanges do not specify the brand of the old unit traded in exchange for a new one in the effort to win over the business of patients from other brands' old units. Trade-in specials range in price from NT$850 to $2,450, and most firms offer related products enabling patients to exchange old units for new blood glucose monitors free of change or for a very low price, lowering the cost of switching brands.

3. Grounds for non-disposition:

(1) At present the free gifting of monitoring units is generally limited to charity donations for Type 1 diabetes patients or a small number of disadvantaged patients, in which cases patients are not required to purchase blood glucose test paper or exclude free offers from other brands. Accordingly, donation recipients can receive free units from multiple brands and select blood glucose test paper from various brands at regular retail outlets. In addition, the Bureau of National Health Insurance began reimbursing Type 1 diabetes patients for blood glucose test paper from June 1, 2010, enabling patients to autonomously select National Health Plan participating medical institutions or present a prescription to participating pharmacies to receive blood glucose test paper. Consequently, the free gifting of blood glucose monitors to this type of patient does not constitute restriction of competition or damaging fair market competition.

(2) The free gifting of blood glucose monitors serves merely to reduce the consumption cost of first-time blood glucose monitor purchase or switching to another brand for diabetes patients, permitting patients to freely decide which brand monitor and test paper to use. Further, given the insignificant differences between the blood glucose monitors offered by the major brands, consumers can take advantage of free giveaways or trade-in offers to switch to another brand for a low cost, thus businesses must ultimately differentiate themselves from others through such factors as the accuracy and functionality of blood glucose monitors, and the price of blood glucose test paper in order to compete. In light of the available facts, it is difficult to deem such conduct to violate the terms of Article 19(iii) and Article 24 of the Fair Trade Law.

Summarized by Tseng, Huei-Yi; Supervised by Lin, Gin-Lan □

Huang Hsiang Construction Corporation

1027th Commissioners' Meeting (2011)

Case: Huang Hsiang Construction Corporation's demand for presale homebuyers to pay a deposit to view the contract and fail to disclose the general list of unit shares or each unit's share of common property considered obviously unfair conduct able to affect trading order

Key Word(s): Deposit, general list of unit shares, common property

Reference: Fair Trade Commission Decision of July 13, 2011 (the 1027th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100124

Industry: Real Estate Development (6700)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC's staff visited the site of the "Huang Hsiang Yu Ding" housing project

of Huang Hsiang Construction Corporation (hereinafter referred to as Huang Hsiang Corp.) on December 9 and 14, 2010 and discovered there were no contract copies and the general list of unit property shares available. The salespeople claimed that the contract had not been printed yet and requested the FTC staff to pay a deposit of NT$30,000-50,000 as the proof of their purchase intention. As the conduct was in violation of Article 24 of the Fair Trade Law (FTL), the FTC therefore initiated an ex officio investigation.

2. The investigation revealed that there had been homebuyers visiting the presale project site of "Huang Hsiang Yu Ding"before the end of September, 2010 and paid deposits for units despite that the contract and the general list of unit property shares had been unavailable.

3. Grounds for disposition:

(1) According 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."Since presale homes are not yet completed, the relevant information accessible to homebuyers is limited when they sign the transaction contract. Undoubtedly, the developer (builder) has the advantage with regard to related information. Therefore, if the developer demands homebuyers to pay a deposit in order to view the contract for presale homes or fails to disclose the general list that shows the property share of each unit and makes it available to the public by distribution or free access, there is the possibility of violation of Article 24 of the FTL.

(2) When selling the presale homes of the "Huang Hsiang Yu Ding"housing project, Huang Hsiang Corp. did not make copies of the contract publicly available to homebuyers. On the contrary, it demanded homebuyers to pay a deposit in order to view the contract, putting an uncertain number of homebuyers in a disadvantageous position with restricted access to contract-related information and the risk of having their deposits confiscated unless they continued with the transaction. Moreover, the provisions stipulated in the real estate contract for the "Huang Hsiang Yu

Ding"project had been standard contract terms formulated singlesidedly by Huang Hsiang Corp. Homebuyers had to pay a deposit before reading them, while they were already in a disadvantageous position and their interests were in jeopardy (such as their leverage in negotiating the contract terms, their worry about having the deposit confiscated if not signing the contract, and their lack of information about the real estate they were purchasing or the related rights and obligations in the contract, and so on."The exploitation of information asymmetry by Huang Hsiang Corp. to conduct transactions was an inappropriate means of market competition that had violated business ethics and market competition. Although Huang Hsiang Corp. agreed to return the deposits afterwards, it was still not enough to fully rectify the misconduct or compensate the homebuyers for the disadvantage they suffered when making transaction decisions under information asymmetry.

(3) As for the general list of unit property shares, Huang Hsiang Corp. claimed that it had been placed on the counter of the sales location and in the folder of each salesperson for homebuyers' viewing, yet the salespeople had never showed the said list to the staff of the FTC when they visited the location. In fact, the FTC staff had never seen the list at the location and neither had some homebuyers ever seen it in their work. Therefore, when selling the presale units of the "Huang Hsiang Yu Ding"project, Huang Hsiang Corp. could not have provided the general list of unit property shares for homebuyers' viewing and, as a consequence, homebuyers had been unable to know the result of common property allocation calculation or the percentage of the common property each unit held.

(4) When selling the presale homes of the "Huang Hsiang Yu Ding"project, Huang Hsiang Corp. failed to display the contract at the sales location and instead demanded homebuyers to pay a deposit in order to view the contract, disclose the general list of unit property shares after deducting the common property, or list out the percentage of the total common property each unit will have and make the information available to the public by distribution or free access. Under the circumstances, homebuyers had to make their transaction decisions with insufficient and incomplete information and their interests were jeopardized. This was not only obviously unfair to homebuyers but also unfair competition to other developers that were market competitors as they

could lose the opportunity to have fair trade. The said act was therefore deemed obviously unfair conduct able to affect trading order in violation of Article 24 of the FTL. After reviewing the considerations in determining the amount of administrative fine set forth in Article 36 of the Enforcement Rules to the Fair Trade Law, the FTC acted in line with the first section of Article 41 of the FTL, ordered Huang Hsiang Corp. to immediately cease the unlawful act, and also imposed on the company an administrative fine of NT$1,500,000.

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

Summarized by Yang, Chung-Lin; Supervised by Hung, Shui-Hsing □

Hawley & Hazel Chemical (Taiwan) Co., Ltd.

1030th Commissioners' Meeting (2011)

Case: Hawley & Hazel Chemical (Taiwan) Co., Ltd. violated the Fair Trade Law for conducting false and untrue comparative advertising for its Colgate Sensitive Pro-relief toothpaste
Key Word(s): Toothpaste, comparative advertising, sensitivity relief
Reference: Fair Trade Commission Decision of August 3, 2011 (the 1030th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100138
Industry: Manufacture of Cleaning Preparations (1930)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC was informed that in a comparative commercial for its Colgate Sensitive Pro-relief toothpaste (hereinafter referred to as the product), Hawley &

Hazel Chemical (Taiwan) Co., Ltd. (hereinafter referred to as Hawley & Hazel) claimed that its product was "instantly effective, providing long-lasting relief" and "truly effective." The same commercial also had a narration saying "I will not use XXX (the brand name Sensodyne was muted) again" and "because I am switching to Colgate – the toothpaste that really works." The product was placed side by side with Sensodyne which was rendered mosaic. Hawley & Hazel's intention to compare its product with Sensodyne was obvious. However, different technologies have been applied to produce the two toothpastes and both can achieve the same effect of relief of sensitivity and pain. The said commercial made consumers have wrong impressions and was in violation of Article 24 of the Fair Trade Law (FTL).

2. Findings of the FTC after investigation:

(1) Hawley & Hazel had the said commercial made and played on various TV channels. It was also placed online to advertise the product.

(2) Hawley & Hazel presented a number of clinical test reports to prove that its product had the capacity to relieve sensitivity whether it was applied directly on teeth or by brushing. The FTC asked the Department of Health (hereinafter referred to as the DOH) for professional opinions on the said reports. The reply from the DOH was that the reports did support the unique Pro-Argin? technology used to make the product indeed had the effect of "relieving dental sensitivity and pain."

3. Grounds for disposition:

(1) The said commercial began with "we have invited users of other sensitivity-relief toothpastes to compare and tell how the Colgate Sensitive Pro-relief toothpaste is different." The following image showed the product side by side with mosaic-rendered toothpaste, with the narration that "I will not use XXX again because I am switching to Colgate – the toothpaste that really works," the commercial was obviously comparing the effectiveness of the product with that of other sensitivity-relief toothpastes on the market. The mosaic was divided into two sections. On the right were green squares and on the left white. In the bottom right corner was a line of words in white, while under the white mosaic on the left was a large area of

lettering in blue. Matching with sensitivity-relief toothpastes available on the market showed these features were similar to those on the packaging of Sensodyne. After further observation, it is not difficult to identify the mosaic-rendered toothpaste as the Sensodyne toothpaste. Despite that the commercial did not indicate straightforward the brand or name of the object being compared, the content was obvious enough for consumers to have the associated impression. Hawley & Hazel also admitted that the muted sound was "Sensodyne." Hence, the toothpaste rendered mosaic was indeed the Sensodyne toothpaste.

(2) As mentioned above, in the said commercial the product was placed side by side with the rendered-mosaic toothpaste and there was the narration that "I will not use XXX again" and "because I am switching to Colgate – the toothpaste that really works." It gave consumers the impression that the product was the sensitivity-relief toothpaste that really worked, especially in comparison with the rendered-mosaic toothpaste (Sensodyne). The investigation revealed that the principal ingredient in Sensodyne was 5% potassium nitrate. According to the "Words and Phrases Allowed on Labels of Regular Toothpastes" established by the DOH, the wording of "Help relieve the discomfort of sensitive teeth" and "Reduce the pain of sensitive teeth" indicates "true effectiveness." In the said commercial, the advertiser only subjectively claimed that the new pro-Argin? technology used to make the product was more superior in relief of pain from sensitive teeth. This can be inferred from the firm statement that "I will never use XXX again because I am switching to Colgate – the toothpaste that really works" while the product was placed next to Sensodyne, the competing product, which was rendered mosaic. This was enough to create the impression in consumers that the product was the truly effective sensitivity-relief toothpaste on the market and other toothpastes or Sensodyne was not really effective. It could cause consumers to have misconceptions or make wrong decisions. It was in violation of market competition principle and the business ethics of fair competition.

(3) Based on the above findings, the comparison Hawley & Hazel made in the said commercial with the quality of competitors' products was deemed obviously unfair conduct able to affect trading order in violation of Article 24 of the FTL. The FTC applied the first section of Article 41 of the same law, ordered the company to

immediately cease its unlawful act, and also imposed on it an administrative fine of NT$400,000.

Appendix:
Hawley & Hazel Chemical (Taiwan) Co., Ltd.'s Uniform Invoice Number: 01515651

Summarized by Huang, Li-Ming; Supervised by Chi, Hsueh-Li □

Mei and Mei Foods Co., Ltd.

1032nd Commissioners' Meeting (2011)

Case: Mei and Mei Foods Co., Ltd. violated the Fair Trade Law for false and untrue advertising and failure to disclose important trading information before establishment of franchise relationships
Key Word(s): False and untrue advertising, franchise, failure to disclose important trading information
Reference: Fair Trade Commission Decision of August 17, 2011 (the 1032nd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100151
Industry: Restaurants (5610)
Relevant Law(s): Articles 21(3) and 24 of the Fair Trade Law

Summary:

1. The FTC received complaints from citizens that they attended a franchise presentation held by Mei and Mei Foods Co., Ltd. (hereinafter referred to as Mei and Mei Foods) on March 27, 2010 and were told the profit could be as much as 30% of the total sales. However, as they were not provided with the list of raw material costs before signing the contract with Mei & Mei Foods, they therefore made the wrong assessment. In addition, the business transfer contract they signed indicated that signature of a franchise contract was required before the transfer was made.

2. Findings of the FTC after investigation:

(1) According to a product analysis dated May 1, 2010 from Mei and Mei Foods, the (gross) profit margin of the Specialty Japanese Burgers was 45% which was inconsistent with the 55% figure that was given during the presentation. In addition, there were over 2,500 franchisees in total, but only the management and sales in three months of one single franchisee were provided as proof. There was no information about the loss and profits of the other franchisees.

(2) The written information for the franchise recruitment in question did not disclose the "number of franchisees of the chain in each county/city, their locations, and the ratios of contract cancellation and termination in the previous year."

3. Grounds for disposition:

(1) Using the Specialty Japanese Burgers as an example during the presentation, Mei and Mei Foods claimed the profit (including the franchisee's salary) was 31.6%, which was derived by deducting personnel cost (10%), utilities and miscellaneous expenses (3.4%), and rent (10%) from the 55% gross profit (31.6%=55%-10%-3.4%-10%). However, according to a product analysis dated May 1, 2010 from the company, the (gross) profit margin of the Specialty Japanese Burgers was 45%, inconsistent with the 55% figure that was given in the advertisement. If the personnel cost, utilities and miscellaneous expenses, and rent remained were kept unchanged, after deduction of these expenditures, the net profit would be 21.6% and the 31.6% claimed in the advertisement. Hence, there was no proof to support the claim made by Mei & Mei Food. As for the company's allegation that franchisees could determine their own prices and the gross profit would be different, the investigation showed the breakfast business was a highly competitive market with a large number of suppliers, as well as with the features of high homogeneity and substitutability at the same time. Consumers were extremely sensitive to price difference. When a franchisee raised the prices of its products, it would lose customers quickly to its competitors. Therefore, it was difficult for a single franchisee to ignore market competition from its neighbor competitors and increase the prices of its products. In other words, it was impossible for any franchisee to act as the company alleged and determine its own prices without

any consideration about market competition. It would set the prices in accordance with the aforesaid product analysis or the rates recommended in the advertisement and, as a result, its gross or net profit could never reach the level claimed in the advertisement.

(2) Mei and Mei Foods expressed that all franchisees were financially independent and the mother company had the way of knowing their business condition. Therefore, it provided only the sales records of the franchisee on Xingfu Road in Xinzhuang from February to April 2011 as supporting proof because the shop did achieve the profit as claimed in the advertisement during that period. However, the investigation showed that the company had more than 2,500 franchisees and the recruitment had begun as early as 1988 when the company started. Consequently, it had to have accumulated a considerable amount of statistics on franchisee business incomes and profits over the years. The profit of one single franchisee in three months was far from adequate to represent the sales and profits of over 2,500 shops. Moreover, the figures in the product analysis could not support the profit rate claimed in the advertisement. The sources of the data and the basis of calculation were not clearly indicated by Mei & Mei Foods. The claim had no solid support and the public would find it difficult to accept the difference. The conduct was deemed a false, untrue and misleading representation in violation of paragraph 3 of Article 21 of the Fair Trade Law (FTL) and paragraph 1 of the same law could apply mutatis mutandis.

(3) Mei and Mei Foods failed to disclose the important trading information regarding the "number of franchisees of the chain in each county/city, their locations, and the ratios of contract cancellation and termination in the previous year" within 10 days before establishment of franchise relationship or within a period considered reasonable for each case. According to "Taiwan Chain Store Almanac 2010", there were 27 breakfast business chains with 12,023 shops in total. Mei and Mei foods had 2,509 breakfast places. The entry barrier for the business was low. Competitors on the market were generally concentrated in certain areas, making the regional market of breakfast business a highly competitive market. Therefore, for people considering joining a breakfast business chain, the number of franchisees of the same chain and their locations in the same region would be important factors in

their assessment of whether to do so and their choice of franchiser. In addition, the number of franchisees of Mei and Mei Foods decreased by 313 from 2009 (2,822) to 2010 (2,509). The withdrawal rate was 11.09%, indicating rather high percentages of contract cancellation and termination. This information was closely related to the franchiser's management ability and the stability of the franchise label. Without the franchiser's disclosure, its trading counterparts had no way of getting this knowledge. It was important information potential franchisees needed to assess the future business growth under the franchise label, the competitiveness between franchisees in the same chain, and brand stability. When the party with informational advantages exploited the information asymmetry of its trading counterparts and did not disclose the important information it possessed, it could put the trading counterparts in the position of making wrong judgment and signing contracts at risk. This was the obviously unfair conduct stated in Article 24 of the F TL.

(4) Each franchisee of Mei and Mei Foods was required to pay the company a franchise fee between NT$210,000 and NT$1,080,000. It was not a small investment and the fee could not be used for other purposes. The franchise presentations held in different places in the country had recruited over 2,500 franchisees. Mei and Mei Foods took advantage of its market dominance status and continued to establish contracts with various trading counterparts. Apparently, the company's failure to disclose important franchise information had been a repeated trading pattern. If the said conduct was not stopped, there would be further victims, its competitors would lose their opportunities to sign contracts with new franchisees, and the trading order of the chain store franchise market would be affected. It was in violation of Article 24 of the FTL and the FTC therefore imposed on the company an administrative fine of NT$500,000.

Appendix:
Mei and Mei Foods Co., Ltd.'s Uniform Invoice Number: 22752150

Summarized by Kuo, An-Chi; Supervised by Hung, Hsiu-Hsing □

Asia Pacific Telecom Co., Ltd.

1036th Commissioners' Meeting (2011)

Case: Asia Pacific Telecom Co., Ltd. violated Article 24 of the Fair Trade Law by making untruthful comparison TV commercials of cell phone call charges

Key Word(s): Cell phone call charge, comparative advertising

Reference: Fair Trade Commission Decision of September 14, 2011 (the 1036th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100168

Industry: Telecommunications (6100)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC received complaints that Asia-Pacific Telecom Co., Ltd. (hereinafter referred to as APT) claimed in a TV commercial "In Taiwan…cell phone call charges are more than NT$5 per minute but APT's over 2.85 million subscribers enjoy free calls within APT's network, NT$2.88/min calling outside the network, NT$2.88/min calling landlines, and NT$2.88/min for international calls." There was suspect of violation of the Fair Trade Law in this advertisement.

2. Grounds for disposition:

The issue in question was the commercial gave its receiver the overall impression that all domestic telecom service providers other than APT charged more than NT$5/min for cell phone calls. APT expressed that the mobile communications business statistics posted on the official website of the National Communications Commission (hereinafter referred to as the NCC) was based on the rough calculation of the outgoing call minutes (including both inside and outside the network of various providers) and the total telecom business income indicated the average 2G and 3G call charge was NT$5.32/min. However, according to the opinion offered by the NCC to the FTC, as different operators offered different packages of various rates in response to market demands and user behaviors, it was impossible to calculate the

average call charge per minute based on the said statistics. The FTC's investigation also revealed that the comparison made in the said commercial was referring to the difference between APT's "Happy Call 888 Package" which offered subscribers free calls inside the APT network and only NT$2.88/min for calls outside the network or to landlines or foreign countries and "in Taiwan, cell phone call charges are more than NT$5 per minute." However, the users of the said package only constituted 2.6% of all of APT's subscribers. Regardless of the truthfulness of APT's claim about its phone call rate, it was not true that every charge per minute of other mobile telecommunications service operators for calls inside or outside their networks or to landlines was higher than NT$5 when similar packages (around NT$888 per month) were considered. Apparently, APT had selectively pointed out in the commercial items that were to its advantage and intentionally overlooked the fact that other telecom service providers also offered packages that offered per-minute call charges lower than NT$5. Consequently, the comparison was unfair and could result in loss of trading opportunities for other telecom service providers. As it was inconsistent with legitimate trading order and market performance competition, the conduct was obviously unfair and able to affect trading order in violation of Article 24 of the Fair Trade Law. Acting according to the first section of Article 41 of the same law, the Commission therefore ordered APT to immediately cease the unlawful act and at the same time imposed on the company an administrative fine of NT$500,000.

Appendix:
Asia Pacific Telecom Co., Ltd.'s Uniform Invoice Number: 70771579

Summarized by Chen, Chien-Yu; Supervised by Chen, Chun-Ting □

Kawa Food Technology Inc.

1036th Commissioners' Meeting (2011)

Case: Kawa Food Technology Inc. violated the Fair Trade Law by sending a trademark infringement warning letter without justification
Key Word(s): Trademark right, warning letter
Reference: Fair Trade Commission Decision of September 14, 2011 (the 1036th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100170
Industry: Wholesale of Meat and Meat Products (4542)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. Bioking Technology Co. (hereinafter referred to as Bioking), the informer of this case, complained that Kawa Food Technology Inc. (hereinafter referred to as Kawa Food) sent to Bioking as well as its downstream retail businesses Wellcome Supermarket, Matsusei Supermarket, Breeze Center Co., Ltd., Banqiao City Farmers' Association, Le Huo Cun Co., Ltd. and RT-Mart a warning letter on July 28, 2010. It was stated in the warning letter that Bioking has used Kawa Food's registered trademark "Black Diamond" for its "Black Diamond Pork" on billboards at various retail outlets and this constituted a trademark infringement in violation of subparagraph 2, Article 81 of the Trademark Act, the use of the trademark had to be stopped, and the downstream retail businesses could not sell any Black Diamond Pork products before the trademark right dispute was settled.

2. Findings of the FTC after investigation:

Bioking and Kawa Food were both meat businesses marketing their products through hypermarkets and supermarkets respectively under the trademarks of "Herbal Pork" and "Black Diamond Chicken." They were competitors on the horizontal level of the market. The investigation also indicated that before sending the said trademark infringement warning letter through its lawyer on July 28, 2010, Kawa Food had

not filed any lawsuit against Bioking over the said trademark infringement. The trademark Kawa Food had registered included the name of Black Diamond Chicken and the corresponding image. In the letter accusing Bioking of infringement of its "Black Diamond" trademark, Kawa Food did not attach any trademark registration number and corresponding trademark image to support its accusation.

3. Grounds for disposition:

(1) Bioking and Kawa Food were both meat businesses marketing their products through hypermarkets and supermarkets respectively under the trademarks of "Herbal Pork" and "Black Diamond Chicken." They were competitors on the horizontal level of the market. In the warning letter sent to Bioking and its trading counterparts or potential trading counterparts, Kawa Food accused Bioking of infringing its trademark right and demanded the letter recipients "not to sell any "Black Diamond" herbal pork products before the trademark right dispute was settled or Kawa Food would file a compensation claim according to law." Judging from the recipients the letter was sent to and the content of the letter, the conduct met the description of the "act of issuing a warning letter by an enterprise" stated in the Fair Trade Commission Disposal Directions (Guidelines) on the Reviewing of Cases Involving Enterprises Issuing Warning Letters for Infringement of Copyright, Trademark, and Patent Rights.

(2) It requires professional capacity to judge whether an act has infringed another's copyright, trademark right or patent right. Besides the downstream trading counterparts of the same industry, other businesses will find it difficult to assess if the products they sell have infringed another's right. Kawa Food should have taken the civil and criminal procedures to resolve the dispute regarding whether Bioking had infringed the "Black Diamond Chicken" trademark by selling meat products under the name of "Black Diamond Herbal Pork." To send the warning letter, Kawa Food also could have followed the steps set forth in the aforesaid disposal directions on issuance of warning letters. In this way, the violation of the Fair Trade Law as described earlier would not have happened.

When Kawa Food sent the warning letter, the court of first instance had not

determined whether the alleged infringement had indeed taken place. This was indicated in the company's letter that "Kawa Food is not engaged in any lawsuit with Bioking." Furthermore, the said letter also stated that "'as Black Diamond' is the trademark that Kawa Food has registered with the Intellectual Property Office of the Ministry of Economic Affairs for meat products, Bioking's application of the term 'Black Diamond' herbal pork in large prints on signs at the meat sections of various retail outlets is a serious infringement of Kawa Food's trademark right in violation of subparagraph 2, Article 81 of the Trademark Act… To protect the company's trademark right, Kawa Food hereby requests you to be our lawyer and send a letter to Bioking and all businesses that sell "Black Diamond" herbal pork products to stop selling any meat product under the name of 'Black Diamond' herbal pork before Kawa Food and Bioking settle the trademark right dispute…" Kawa Food did not provide any details of the alleged trademark right in the letter or enclose any information with regard to the trademark registration number and the trademark image to convince the recipients that the trademark infringement did exist. This could be confirmed from the reply of Banqiao City Farmers' Association to Kawa Food that "the Bioking products we sell are herbal pork and do not carry the term of "Black Diamond." Please provide the image of the trademark you have registered with the Intellectual Property Office for us to conduct further investigation."

(3) The recipients of the warning letter were retail businesses, not trading counterparts with the capacity to conduct any investigation. They were unable to judge whether their business conduct had constituted trademark infringement. Consequently, it was natural that they were intimidated by the warning letter and had to request Bioking to resolve the dispute so they would not have to go through the trouble of investigation and litigation. Under these circumstances, Bioking had no choice but to change the advertising signs and product labeling from "Black Diamond Herbal Pork" to "Top Quality Herbal Pork" and aborted its plan to market products under the labels of "black pig" and "white pig." Although the warning letter Kawa Food sent out did not cause the retail businesses to take Bioking's products off their shelves, it was likely to bring harm to effective market competition with a focus on the competition of performance and therefore culpable in terms of the ethics of

market competition. The conduct could not be regarded justifiable exercise of rights according to the Trademark Act and was considered obviously unfair conduct able to affect trading order.

(4) After assessing the motive, extent of damage and circumstances of the illegal conduct as well as Kawa Food's business scale and attitude after the illegal conduct, the Commission ordered Kawa Food to immediately cease the unlawful act and at the same time imposed on the company an administrative fine of NT$50,000 according to the first section of Article 41 of the Fair Trade Law.

Appendix:
Kawa Food Technology Inc.'s Uniform Invoice Number: 28632077

Summarized by Hsu, Cho-Yuan; Supervised by Chiou, Shwu-Fen □

Zhan Yan Ting International Marketing Consultancy Co., Ltd.

1048th Commissioners' Meeting (2011)

Case: Zhan Yan Ting International Marketing Consultancy Co., Ltd. violated the Fair Trade Law by posting untruthful advertisements and failing to disclose important trading information during franchisee recruitment
Key Word(s): Franchise, untruthful advertisement, failure to disclose, trading information
Reference: Fair Trade Commission Decision of December 7, 2011 (the 1048th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100250
Industry: Other Amusement and Recreation Services (9329)
Relevant Law(s): Articles 21(1) and 24 of the Fair Trade Law

Summary:

1. The FTC was informed by a franchisee of Zhan Yan Ting International

Marketing Consultancy Co., Ltd. (hereinafter referred to as Zhan Yan Ting) that Zhan Yan Ting had not disclosed in writing important trading information regarding the total number of its franchisees, their locations, and statistics on the ratios of contract cancellation and termination in the previous year before both sides signed the franchise contract in May 2010. Moreover, the informer had to pay a franchise contract deposit of NT$170,000 in spite of Zhan Yan Ting's claim in its advertisement that "no franchise fee required" as posted on the website.

2. Findings of the FTC after investigation:

It revealed that the franchise contract did not provided any information regarding the total number of Zhan Yan Ting's franchisees, their locations, and statistics on the ratios of contract cancellation and termination in the previous year and neither did Zhan Yan Ting disclose such information through any electronic documents. Furthermore, Zhan Yan Ting did post the claim of "no franchise fee required" in its franchise recruitment advertisement on its "Yahoo! Kimo" blog. The advertisement still remains on the Internet and the same information is also posted on Zhan Yan Ting's own website. Hence, there is no doubt that the franchise recruitment advertisement on the blog came from Zhan Yan Ting.

3. Grounds for disposition:

(1) The investigation revealed that the wording of "no franchise fee required" in the franchise recruitment advertisement Zhan Yan Ting posted on its "Yahoo! Kimo" blog could indeed help attract potential trading counterparts who were interested in joining the franchise and starting their own businesses. Therefore, the said information was considered as meeting the description of "in any other way making known to the public" in Article 21 of the Fair Trade Law. However, it was stipulated in the first clause, first chapter of the franchise contract Zhan Yan Ting signed with the informer that the franchisee was to pay a franchise contract deposit of NT$170,000 and related records showed that 40 of the 42 franchisees of Zhan Yan Ting had paid contract deposits ranging between NT$60,000 and NT$170,000. All the above charges detailed in Zhan Yan Ting's franchise contract were inconsistent

with the advertisement which was therefore considered a false, untrue and misleading representation in violation of paragraph 3, Article 21 of the Fair Trade Law and paragraph 1 of the same article could apply mutatis mutandis.

(2) An examination of the franchise contract, startup cost estimates and website information provided by Zhan Yan Ting showed that the important information regarding the total number of its franchisees, their locations, and statistics on the ratios of contract cancellation and termination in the previous year was never disclosed. Yet the said information was what a prospective rental comic book business franchisee needed to assess the potential growth of the franchise, the competitiveness within the franchise chain, and the stability of the brand. As Zhan Yan Ting had the information advantage in the transaction, its failure to disclose the said information was obviously unfair to the trading counterpart that was in a disadvantageous position information-wise. The conduct was also likely to lead to unfair competition against competitors. As the establishment of franchise relations entailed excludability, competitors who could provide the same products or services would lose the opportunity to establish a business relationship with the franchisee once the contract was signed. Zhan Yan Ting had 42 franchisees that it recruited by advertising on its own website and 104boss.com, and participating in chain and franchise exhibitions. The company's continuous use of its relatively advantageous status in franchise negotiation process to establish contracts with different trading counterparts was repeated transactions. If the aforesaid behavior was not stopped, there could be more victims in the future. Hence, the conduct was deemed able to affect the trading order of the chain and franchise market and in violation of Article 24 of the Fair Trade Law.

(3) Zhan Yan Ting's wording of "no franchise fee required" was regarded a false, untrue and misleading representation with regard to content of service. Its failure to fully disclose important franchise information before signing the contract was obviously unfair conduct able to affect the trading order of the chain and franchise market. The said acts were respectively in violation of Article 21 (3) and Article 24 of the Fair Trade Law. Acting according to Article 41 of the same law, the FTC ordered Zhan Yan Ting International Marketing Consultancy Co., Ltd. to immediately cease

the unlawful acts and also imposed on it an administrative fine of NT$$100,000.

Appendix:
Zhan Yan Ting International Marketing Consultancy Co., Ltd.'s Uniform Invoice Number: 27844566

Summarized by Hsu, Hsiu-Feng; Supervised by Chiou, Shwu-Fen □

Rayee Tech. Ltd.

1048th Commissioners' Meeting (2011)

Case: Rayee Tech. Ltd. violated the Fair Trade Law by posting a patent infringement warning on its website and sending out a lawyer's letter without justification
Key Word(s): Lawyer's letter, patent, trading order
Reference: Fair Trade Commission Decision of December 7, 2011 (the 1048th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100242
Industry: Other Electronic Parts and Components Manufacturing Not Elsewhere Classified (2699)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC received a letter complaining that Rayee Tech. Ltd. (hereinafter referred to as the Accused) posted on its website on July 23, 2010 a statement claiming that Guan Show Technology Co., Ltd. (hereinafter referred to as the informer) had infringed its patent while between January and March of the same year it had also sent to auto supply dealers a document requesting them to "eradicate piracy" and also carrying the warning that "investigation is under way to collect

evidences." The accused had not taken the alleged proof of patent infringement to any professional institution for appraisal before sending out the said document to the downstream clients of the informer. By making the said clients panic, the accused achieved the purpose of unfair competition and was in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) On August 10, 2010, Com-Shine Technology Inc. received from the accused a lawyer's letter claiming that the design of Southstar GPS680 and GPS818 speed radar detectors that Com-Shine was selling had infringed its patent and should be taken off its shelf to avoid patent disputes.

(2) Six businesses that had received the lawyer's letter (or fax sheets of the letter) were requested to describe the document and its impact. Some of them admitted that they, after receiving the said warning letter, made the decision to return the products, cancel their orders, and switch to new trading counterparts for similar products.

3. Grounds for disposition:

The use of its website and sending of the lawyer's letter by the accused to condemn the informer (a competitor) as infringing its patent met the definition of the "act of issuing a warning letter by an enterprise" in Point 2 of the Fair Trade Commission Disposal Directions (Guidelines) on the Reviewing of Cases Involving Enterprises Issuing Warning Letters for Infringement on Copyright, Trademark, and Patent Rights. Although Rayee Tech. Ltd. had filed a civil compensation claim and won the case in the first trial at Kaohsiung District Court before sending the warning letter, the only product referred to in the Zhi-Tzu Verdict No.27 from the said court in 2006 was a Dragon split system radar detector (Dragon Best 9090) which was not the same as the GPS 1688, MDB 2000, or GPS 555 of the Guan-X series or the GPS 680 or GPS 818 of the Southstar series. As the products of the aforesaid series had not been confirmed by any court as involving patent infringement before the warning letter was sent out and neither had the accused taken the alleged proof of patent infringement to any professional institution for appraisal and attached the appraisal report to the letter, the conduct could not be regarded as proper exercise of

patent right. At the same time, the lawyer's letter the accused sent out did cause the trading counterparts of the informer to take the products at issue off their shelves or return them to the informer and some of the said trading counterparts also admitted having made the decision to switch to Rayee Tech. Ltd. for supply. The conduct had indeed misled the said trading counterparts and affected the trading order of the corresponding market. Therefore, it was deemed obviously unfair conduct able to affect trading order in violation of Article 24 of the Fair Trade Law. Acting according to Article 41 of the same law, the Commission ordered Rayee Tech. Ltd. to immediately cease the unlawful act and at the same time imposed on the company an administrative fine of NT$300,000.

Appendix:
Rayee Tech. Co., Ltd.'s Uniform Invoice Number: 27777406

Summarized by Liu, Yu-chuan; Supervised by Wu, Lieh-Ling □

Chung-Hwa Broadband Best Network Co., Ltd., Chung-Hwa United Telecom Co., Ltd., and Chung-Hwa United Co., Ltd.

1049th Commissioners' Meeting (2011)

Case: Chung-Hwa Broadband Best Network Co., Ltd., Chung-Hwa United Telecom Co., Ltd. and Chung-Hwa United Co., Ltd. violated the Fair Trade Law by failing to disclose important trading information before establishing franchise relations
Key Word(s): Multimedia services, franchise
Reference: Fair Trade Commission Decision of December 14, 2011 (the 1049th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.100251
Industry: Telecommunications (6100)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC received a letter forwarded by the Ministry of Economic Affairs from a private citizen to request concerned agencies to look into the legality of the recruitment made by Chung-Hwa Broadband Best Network (hereinafter referred to as CHWBN) of shareholders and franchisees for "Yes 5TV." As franchise recruitment fell under the regulation of the "Fair Trade Commission Disposal Directions (Guidelines) on Handling of Cases Involving Franchisers' Disclosure of Information", the FTC therefore initiated an ex officio investigation.

2. Findings of the FTC after investigation:

According to the operating model of the "Yes 5TV" franchise system, new franchisees would receive assistance to set up shops to display products and recruit subscribers for online multimedia services provided by "Yes 5TV." From January to December 4, 2010, CHWBN was responsible for providing the services and Chung-Hwa United Telecom Co., Ltd. was in charge of sales although all the contracts with subscribers were signed by CHWBN. Starting from December 5, 2010, Chung-Hwa United Telecom Co., Ltd. continued to manage both business promotion and sales until March 1, 2011 when the work was taken over by Chung-Hwa United Co., Ltd. During this last period, all the three companies signed contracts with new franchisees separately. According to the Fair Trade Commission Directions (Policy Statements) on the Business Practices of Franchisers, since CHWBN and the two other enterprises had offered their authorization for the use of trademark and technology as well as conducted franchisee training and collected franchise fees, they had to be considered the franchisers of "Yes 5TV" at different stages. The charges they collected before the franchisees were set up and in operation, the content and approaches of management assistance and training provided, the restrictions entailed in the franchise relations, and the terms and handling of franchise contract changes, termination and cancellation as indicated in the contracts they signed with franchisees and related franchise information fell under the regulations in subparagraphs 1, 2, 4, 7 and 8, paragraph 2, Point 3 of the Fair Trade Commission Directions (Policy Statements)

on the Business Practices of Franchisers. However, except for the authorized range of use of trademark and related limitations, the content or length of validity was not disclosed. Meanwhile, no written or electronic documents regarding the "current or planned number of franchisees of the same franchise system in the operation area of the new franchisee" and the total number of franchisees of the same franchise system and their locations in all counties and cities" were provided.

3. Grounds for disposition:

(1) Usually the information asymmetry between a franchiser and its trading counterparts is quite high. Before signing the contract, a franchisee does not have full access to important trading information and the franchiser is in a relatively more advantageous position. Therefore, before establishing the franchise relationship, franchisers ought to disclose to their trading counterparts the important trading information in writing to ensure information balance between both sides and thus prevent prospective franchisees from making wrong decisions as a result of lack of information or incomplete information. The investigation indicated that the franchisees of "Yes 5TV" provided integrated IP services. Subscribers could use the set-top box through USB drives to enjoy various value-added telecom services such as movie and program channels on their computers or cell phones. The services provided were somewhat similar to those from connected TV and thus new types of services resulted from digital convergence. The related products and services were still in the introduction stage and not yet mature. Franchisees were actually in high risk when promoting the services. Therefore, the content and duration of the trademark right could reveal the process and legality of the franchiser's acquisition of the intellectual property right. At the same time, the information regarding the "current or planned number of franchisees of the same franchise system in the operation area of the new franchisee" and the "total number of franchisees of the same franchise system and their locations in all counties and cities" could serve as important indicators of the potential growth, internal competition and stability of the franchise brand and help prospective franchisees to assess and choose specific regional markets and business districts to set up their operations. In other words, it

was important for the trading counterparts to understand the spread of the franchisees of the same brand, the competition, and the management performance of the franchiser and potential growth before deciding on the franchiser and establishing the franchise contract. Furthermore, in addition to the franchise authorization fee between NT$150,000 and NT$800,000 to be paid to the franchiser when signing the contract, the trading counterparts would have to pay for other necessary expenses. The overall investment was not small and it could not be applied for other purposes. Therefore, the act of a franchiser using its information advantage and the information asymmetry of its trading counterpart by not disclosing the important information in its possession when signing with the trading counterpart a franchise contract was obviously unfair conduct as stated in Article 24 of the Fair Trade Law.

(2) CHWBN and the two other enterprises recruited unspecific targets to join their franchise. The continuous use of their relatively advantageous status to establish contracts with different trading counterparts was considered repeated transactions. If the said action was not stopped, there could be more victims in the future. The failure of the three enterprises to disclose the aforesaid trading information in writing completely could make it impossible for the trading counterparts to make their right trading judgments and thus leave their interests in jeopardy. The conduct was obviously unfair to the trading counterparts or unspecific potential counterparts and able to affect trading order in violation of Article 24 of the Fair Trade Law. Acting in accordance with Article 41 (1) of the same law, the Commission ordered the three enterprises to cease the unlawful act and at the same time imposed on CHWBN and Chung-Hwa United Co., Ltd. an administrative fine of NT$200,000 each and NT$100,000 on Chung-Hwa United Telecom Co., Ltd.

Appendix:
Chung-Hwa Wideband Best Network Co., Ltd.'s Uniform Invoice Number: 80093830
Chung-Hwa United Telecom Co., Ltd.'s Uniform Invoice Number: 12724254
Chung-Hwa United Co., Ltd.'s Uniform Invoice Number: 53307248

Summarized by Tsai, Hui-Chi; Supervised by Liu, Chi-Jung □

Taiwan Secom Co., Ltd.

1063rd Commissioners' Meeting (2012)

Case: Taiwan Secom Co., Ltd. violated the Fair Trade Law by posting a false claims and comparative advertisement on its website, publicity fliers, and in the "Dr. ID Access Control and Attendance Record System" catalog

Key Word(s): Market share, commercial applications of AGPS, access control and attendance record system

Reference: Fair Trade Commission Decision of March 21, 2012 (the 1063rd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101028

Industry: Security Services (8001)

Relevant Law(s): Articles 21(3) and 24 of the Fair Trade Law

Summary:

1. The FTC received complaints that on its website and propaganda fliers and in its "Dr. ID Access Control and Attendance Record System" catalog, Taiwan Secom Co., Ltd. (hereinafter referred to as Taiwan Secom) made the claims that the company accounted for 60% of the system security market share and it was "the first enterprise in world to use 'AGPS' in commercial applications." The wording was a false, untrue, and misleading representation with regard to the quality of service in violation of paragraph 3 of Article 21 of the Fair Trade Law and paragraph 1 of the same law was applicable mutatis mutandis. In addition, the descriptions of the access control and attendance record systems from competitors in the "Dr. ID Access Control and Attendance System" catalog was also a false, untrue, and misleading representation in violation of Article 24 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) The information that Taiwan Secom provided on its own website and other websites and in its "Dr. ID Access Control and Attendance Record System" catalog all made the same claim that the company had 60% of the market. In addition, the "Dr. ID Access Control and Attendance Record System" catalog also contained the

wording that "the first enterprise in world to use 'AGPS' in commercial applications." However, Taiwan Secom admitted that the claim of "having 60% of the market" had no real statistical basis or objective proof but a figure that its advertising division had estimated over a decade ago and had been adopted ever since. As to the claim of the company being "the first enterprise in world to use 'AGPS' in commercial applications," Taiwan Secom also confessed that it had never done any survey or research to substantiate it. A report from the Industrial Technology Research Institute indicated that before Taiwan Secom marketed its Mini Bond mobile security service that used the AGPS, some companies in the US and Korea had already applied the AGPS in commercial applications.

(2) There was a list of comparisons in the "Dr. ID Access Control and Attendance Record System" catalog between the DR. ID system and the services of competitors in "management methods," "economic benefits," "product warranty," "depreciation modes," "maintenance and problems," and "maintenance fees." The FTC's investigation showed that the comparisons were made between Taiwan Secom's access control and attendance record management for its clients on a rental basis and its conjectures of the performance of similar services of its competitors that were purchased by their clients. Taiwan Secom admitted that during the period that the catalog was used, other security companies also provide access control and attendance record services on a rental basis. The FTC's investigation confirmed that there were indeed other companies providing access control and attendance record management services during the said period and some of them were provided on a rental basis. Therefore, the information provided in the catalog apparently was untrue.

3. Grounds for disposition:

(1) Taiwan Secom was unable to provide any scientific statistics or research data to support the claims that the company's security systems accounted for 60% of the total market share and the company was "the first enterprise in world to use 'AGPS' in commercial applications." The conduct was against the obligation of advertisers to make truthful claims. It was a false, untrue, and misleading representation with

regard to the quality of service in violation of paragraph 3 of Article 21 of the Fair Trade Law and paragraph 1 of the same article was applicable mutatis mutandis.

(2) The list of comparisons in the "Dr. ID Access Control and Attendance Record System" catalog between the system and the services of competitors in "management methods," "economic benefits," "product warranty," "depreciation modes," "maintenance and problems," and "maintenance fees' were merely results of the company's subjective conjectures and were inconsistent with the facts. Therefore, the descriptions provided in the said list of comparisons about "competitors" were false, untrue, and misleading representations with regard to products of other businesses. By providing such descriptions, the company acted against the business ethics of fair competition. It was obviously unfair conduct able to affect trading order in violation of Article 24 of the Fair Trade Law.

(3) After assessing the extent and duration of the damage to trading order from the illegal conduct of Taiwan Secom, the scale, management condition and market status of the company, as well as the level of its cooperation during the investigation, the FTC acted according to the first section of paragraph 1, Article 41 of the Fair Trade Law and ordered Taiwan Secom to immediately cease its aforesaid unlawful acts and also imposed on the company an administrative fine of NT$600,000 for its violation of paragraph 3 of Article 21 of the Fair Trade Law where paragraph 1 of the same article was applicable. For the company's violation of Article 24 of the same law, the FTC imposed upon it an administrative fine of NT$300,000. The total fine came to NT$900,000 in total.

Appendix:
Taiwan Secom Co., Ltd.'s Uniform Invoice Number: 12148598

Summarized by Lai, Chien-Sheng; Supervised by Chi, Hsueh-Li □

2 Patentees

1080th Commissioners' meeting (2012)

Case: Two patentees violated the Fair Trade Law by sending patent infringement warning letters without justification
Key Word(s): Warning letter, calcium sulfate, bone void filler
Reference: Fair Trade Commission Decision of July 18, 2012 (1080th Commissioners' meeting), Disposition Kung Ch'u Tzu No.101087
Industry: Manufacturers of Other Medicinal Chemical Products (2009)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. AG Digital Technology Corp. (hereinafter referred to as AG Digital Technology) and others informed the FTC that Central Medical Technologies Inc. (hereinafter referred to as Central Medical Technologies) had sent a legal attest letter in the name of patentees A and B on March 2, 2011 and a lawyer's letter on March 21, 2011 to every large medical institution claiming that the way the medical institutions applied calcium sulfate bone void fillers could constitute an infringement of their patent and demanded the medical institutions to request a letter of guarantee from their suppliers. The informers thought that the letters were beyond friendly warnings. In fact, they were an accusation of misconduct in business competition and ethics. The conduct was obviously unfair and in violation of Article 24 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) AG Digital Technology thought that Central Medical Technologies had to be the party issuing the said letters since the patentees had licensed Central Medical Technologies to use and manage the patent in question. However, the investigation showed that three letters had been issued between March and April of 2011. During that period, Central Medical Technologies was not yet the licensee of the patent in question. Further findings indicated that the letters had been sent by patentees A and B, and they also admitted it when they were invited to present their statements at

the FTC. Therefore, the letters had been sent by the patentees and Central Medical Technologies had nothing to do with it.

(2) The legal attest letter sent by the patentees between March 1 and 18, 2011 merely pointed out that medical institutions and physicians would be infringing their patent if they used their patented method to apply bone void fillers during bone surgeries, and it did not accuse the informer and medical institutions of infringement of their patent when applying injectable bone void fillers. However, as the objective of the lawyer's letter issued between March 25 and 31, 2011 was "hereby requesting your hospital to notify all bone doctors to stop performing any surgery using 'injectable bone void fillers" and "if your hospital does not give any concrete response within 5 days, related evidence will be presented and a lawsuit will be filed against your hospital and the director of the Department of Orthopedics without further notification." The aforesaid wording was a serious warning and at the end of the letter it was added that that the hospital could request for a letter of guarantee from suppliers promising that there would be no infringement of the patent in question. Then, a second lawyer's letter was issued on April 21, 2011 to repeat the demand for presentation of a letter of guarantee.

3. Grounds for disposition:

(1) Without presenting any concrete evidence of infringement, the patentees demanded through the lawyer's letters 173 medical institutions to request their bone void filler suppliers to provide an affidavit to assure that there was no patent infringement. The wording in the warning letters could easily make the recipients believe the informer and others had probably infringed the patent in question. Furthermore, before sending out the warning letters, the patentees had not taken any preliminary procedure to confirm that their patent had been infringed at all. Hence, the conduct could not be considered a justifiable measure taken to exercise their rights according to the Patent Act.

(2) Meanwhile, the findings of the investigation also showed that about 23.80% of the recipients of the warning letters had indeed requested for an explanation or affidavit from their suppliers after receiving the letters. The impact on trading order

was thus apparent. Therefore, the sending of warning letters by the patentees was obviously unfair conduct able to affect trading order in violation of Article 24 of the Fair Trade Law. The FTC imposed an administrative fine of NT$50,000 on each of the patentee.

Summarized by Lin, Hsiao-Hung; Supervised by Lin, Gin-Lan □

Amway Taiwan Company Limited

1080th Commissioners' Meeting (2012)

Case: Amway Taiwan Company Limited violated the Fair Trade Law by sending out lawyer's letters without justification
Key Word(s): Warning letter, lawyer's letter, fair competition
Reference: Fair Trade Commission Decision of July 18, 2012 (the 1080th Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101088
Industry: Other Retail Sales in General Merchandise Stores (4719)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. Carrefour Taiwan (Carrefour) filed with the FTC a compliant that Amway Taiwan Company Limited (Amway) had delegated Chang, Lin & Wu International Law Firm (CLS Law Firm) to send a lawyer's letter accusing Carrefour of selling mugs whose design had infringed the patent right of Amway and demanded Carrefour to take all the products in question off its shelf. As Amway had not taken the required procedure according to the "Fair Trade Commission Disposal Directions (Guidelines) on the Reviewing of Cases Involving Enterprises Issuing Warning Letters for Infringement on Copyright, Trademark, and Patent Rights," it is in violation of Article 24 of the Fair Trade Law was suspected and the FTC therefore conducted an

investigation.

2. Findings of the FTC after investigation:

At the request of the FTC, both parties provided related information in writing and came to the FTC to make their statements as well as present supplementary evidence. The Intellectual Property Office of the Ministry of Economic Affairs also provided related documents on the issue. These materials indicated that the mugs referred to in the lawyer's letter had five different patterns of colorful design and were placed on display carts in Carrefour stores. On the underside of each mug was a tag indicating the place of origin, the supplier, and its contact phone number and address. The lawyer's letter did not specify whether the patent or copyright in question was on the design itself, the product the design was put on, or the way of expression of the design. Neither did it mention the creator or date of the design or explain the relation between the design and Amway. The FTC compared the evidence closely and found that the design on the mugs was a ladybug with open wings while the wings of the ladybug in the design drawings and documents attached to the lawyer's letter were closed.

3. Grounds for disposition:

(1) Amway could have easily found out from the tag on the product who the manufacturer, importer, or agent responsible for the product was and made the contact. However, based on the assumption that the retailer had the obligation to provide the information, Amway sent the lawyer's letter without contacting the supplier of the mugs in question and requesting it to stop the infringement.

(2) Since Amway was unable to provide sufficient information with regard to its copyright or the design involved in the alleged infringement, it was difficult for the recipient of the letter to understand the specific content regarding the infringement and to cooperate with Amway to stop the infringement. The recipient of the letter might just take all related products off its shelf for fear that there was really an infringement as accused.

(3) The recipient of the said lawyer's letter was a major hypermarket operator that

provided daily commodities at affordable prices through over 60 outlets across the country. Each outlet had hundreds of thousands of products and more than 10 outlets had business with mug suppliers, with the supplier of the mugs in question being one of the bigger trading counterparts. The FTC's decisions on the illegality of sending right infringement notices in the past had focused on whether the right holder had taken the due procedure to exercise its right. In this case, the lawyer's letter had made the seller take the products off its shelf to avoid trouble. The lawyer's letter had created certain impact on the related market and retail business. It was obviously unfair conduct able to affect trading order.

(4) As a well known multilevel sales business in the country, Amway had never engaged in any conduct in violation of multilevel sales regulations on. However, the infringement warning letter disposal directions of the Fair Trade Commission had been enforced for years. The lawyer's letter did not mention the right in concern, its content and coverage, or the details of the infringement. Sending such a letter was obviously unfair conduct able to affect trading order in violation of Article 24 of the Fair Trade Law. The FTC found it impossible to decide not to apply the infringement warning letter disposal directions just because the company had never violated any multilevel sales regulation. Otherwise, it would be creating loopholes for businesses in the future. Therefore, the FTC imposed an administrative fine of NT$60,000 on Amway.

Appendix:
Amway Taiwan Company Limited's Uniform Invoice Number: 84308897

Summarized by Chen, Ying-Ju; Supervised by Hung, Hsiu-Hsing □

2 individuals' Violation

1082nd Commissioners' Meeting (2012)

Case: Mr. A and Mr. B violated the Fair Trade Law by using the movie time schedules of other businesses without acquiring their consent in advance
Key Word(s): Obviously unfair, trading information, application programs
Reference: Fair Trade Commission Decision of August 1, 2012 (the 1082nd Commissioners' Meeting), Disposition Kung Ch'u Tzu No.101094
Industry: Other Information Supply Services Not Elsewhere Classified (6399)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC was informed by Global Net Technology Inc. that a large amount of the movie time information on the @Movies website the company had set up to provide movie and TV show information and reviews had been reproduced and posted on iPhone App Store of US-based Apple Inc. as the content of the "moovy" application program for the public to browse and download. The informer had investigated and discovered that the 'moovy"application program had been developed by Mr. B. The informer then put in some wrong movie time information for certain movie theaters on purpose and found that the movie time information displayed on 'moovy"was exactly the same. The informer tested it several times and the result was the same every time. Therefore, the informer found a third party, a public notary, to testify that its information was being plagiarized and used as the content of the 'moovy"application program in violation of Article 24 of the Fair Trade Law.

2. Findings of the FTC after investigation:

After an investigation, the FTC found out that Mr. B had developed the "moovy"application program and contacted Apple Inc, while Mr. A represented the company and signed a contract with Fullerton Digital Technology to cooperate on the development of a online movie ticket booking system. Both people agreed to split the work and undertake related tasks. The situation complied with the description of "any

other person or organization engaging in transactions through the provision of goods or services"set forth in subparagraph 4, Article 2 of the Fair Trade Law. The informer operated the @Movies website and authorized other businesses to use the movie time information as a business. The said information it collected and compiled had certain economic value. Other businesses intending to obtain the said information for commercial purposes would have to purchase it.

3. Grounds for disposition:

(1) To collect the evidence of the illegal activities of Mr. A and Mr. B, the informer put in some wrong movie time information for some movie theaters on purpose and found that the movie time information displayed on 'moovy"was exactly the same. The informer tested it several times and the result was the same every time. Therefore, the informer found a public notary to serve as the witness. Meanwhile, Mr. A and Mr. B also admitted that they had indeed made reference to the information on the informer's @Movies website. They put their "moovy"application program on iPhone App Store of Apple Inc and used the movie time information from the @Movies website without paying any fee to the informer or acquiring the informer's consent. During the period of about five months that the application program was put online, two hundred and thirty thousand downloads were made. Apparently, the cost they invested and the competition edges they acquired were incommensurable. The conduct was use of the results of others' efforts to promote one's own products or services.

(2) Mr. A and Mr. B used the website information of another business without acquiring its consent in advance. They took advantage of the results of the informer's efforts that had involved certain investment risk and offered the said information as the content of their own application program to create business opportunities for themselves. The conduct jeopardized trading order that should center around performance competition on prices, quality or services. It was an inexcusable violation of commercial competition ethics and an obviously unfair act that could affect trading order.

(3) After assessment, the FTC decided that the conduct of Mr. A and Mr. B to

use the movie time information of another business without acquiring its consent in advance and offer such information as the content of the application program they had developed to promote their own products or services was an obviously unfair act able to affect trading order in violation of Article 24 of the Fair Trade Law. Acting according to paragraph 1, Article 41 of the same law, the FTC ordered both people to immediately cease the unlawful act and also imposed on them an administrative fine of NT$50,000 each.

Summarized by Hsu, Hsiu-Feng; Supervised by Chiou, Shwu-Fen □

9.2 Judicial Cases

Dante Coffee and Foods Co., Ltd.

Supreme Administrative Court (2011)

Case: The FTC appealed to the Supreme Administrative Court for Taipei High Administrative Court's ruling regarding Dante Coffee and Foods Co., Ltd.'s violation against the Fair Trade Law
Key Word(s): Franchise contract, important trading information, information
Reference: Supreme Administrative Court Judgment (2011) Pan Tzu No.1456
Industry: Nonalcoholic Beverage Service Activities via Shops (5621)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. Dante Coffee and Foods Co., Ltd. (hereinafter referred to as Dante Co.) had failed to disclose in writing to its trading counterparts 10 days before its establishing the franchise relationship with trading counterparts the important trading information regarding the "franchise royalties to be collected before franchise contract is officiated signed and during the contract period as well as the items, amounts, calculation, collection approaches, and reimbursement conditions of other expenses," "evaluation of potential franchisees' applications for intellectual property right licensing or the corresponding timeframe, content of the intellectual property right, and valid period," and the "statistics on the numbers of franchisees in the country and the county/city in concern and those terminating their franchise contracts in the previous fiscal year." It had been obviously unfair conduct able to affect the trading order of the chain store franchise market in violation of Article 24 of the Fair Trade Law (FTL) and therefore the Fair Trade Commission (hereinafter referred to as the FTC) of the Executive Yuan had sanctioned Dante Co. via Disposition Kung Ch'u Tzu No.098080. Dante Co. found the sanction unacceptable and filed a petition but it was overruled. In subsequence, the company filed an administrative litigation with the Taipei High Administrative Court. The Taipei High Admnistrative Court then decided that "the original sanction and petition decision are revoked and the defendant shall

be responsible for the litigation expenses." The FTC found the decision unacceptable and appealed to the Supreme Administrative Court.

2. The key points of the verdict made by the Taipei High Administrative Court (hereinafter referred to as the original court) which revoked the petition decision and the original sanction are as follows:

The basis of the FTC's argument that the "obviously unfair" conduct as stipulated in Article 24 of the FTL of Dante Co. to have failed to disclose the aforesaid information was "a franchiser taking advantage of the information asymmetry of its trading counterparts during the transaction." The so-called "obviously unfair" as set forth in the said article refers to use of obviously unfair approaches to engage in market competition or business transactions and not just taking advantage of the trading counterpart's "information asymmetry. Otherwise, any conduct of a trading party with better access to related information can be regarded "taking advantage of information asymmetry" when transacting with its trading counterparts. The failure of Dante Co. to fully disclose necessary information did not have much impact on the risk assessment of the trading parties intending to enter the coffee shop chain franchise market in 2007. As a result, it was difficult to conclude that Dante Co. actually took advantage of information asymmetry to transact with its counterparts. Moreover, the information Dante failed to disclose was not significant enough to have an effect on the judgment of a reasonable person when he or she assessed the risk in the franchise market to decide whether to join the franchise. The original sanction was merely based on the single factor of the market share of Dante Co. when the decision regarding the impact of the conduct on market trading order was made. Apparently, whether the seriousness of the conduct in this case was "enough to affect trading order" was uncertain because other related matters had not been taken into consideration. Hence, the judgment was not sound and the original sanction was therefore inappropriate.

3. The Supreme Administrative Court reviewed the decision made by the original court and decided that the original court has applied inappropriate laws on the above facts and ruled for the FTC. The outline of the reasons given are as follows:

The original court decided that Dante Co. had failed to fully disclose to the informer the aforesaid important trading information 10 days before establishing the franchise relationship with its trading counterparts. Since franchising is neither an individual event nor a non-recurring act, the potential existed that Dante Co. could engage in the same or similar conduct and create a large number of victims. It is therefore inappropriate to consider the conduct of Dante Co. as an individual and non-recurring act to which Article 24 of the FTL does not apply. In any sense, causing actual damage should not be a prerequisite. As long as the conduct is already objectively unfair, it is unlawful. Neither is it necessary to find out whether the informer was able to assess the costs beforehand or if the information was publicly accessible and the informer was to do the research. The appealer's decision, by applying the first section of Article 41 of the same law, to order Dante Co. to immediately cease the unlawful act starting on the day of receiving the disposition and to impose on the company an administrative fine of NT$500,000 for its exploitation of the informer's information asymmetry or other trading disadvantages and lack of transparency in the transaction which was considered an act of obviously unfair conduct seriously detrimental to business ethics and market competition and able to affect the trading order of the chain store franchise market in violation of Article 24 of the FTL shall be considered legally appropriate and therefore shall be sustained.

Appendix:
Dante Coffee and Foods Co., Ltd.'s Uniform Invoice Number: 84478864

Summarized by Lai,Chia-Ching; Supervised by Lee, Wen-Show □

Zhen An Technology Co., Ltd.

Supreme Administrative Court (2012)

Case: The Supreme Administrative Court rejected the appeal of Zhen An Technology Co., Ltd. over the disposition by the FTC for the company's violation of the Fair Trade Law
Key Word(s): Gift giving, identity concealment, gas valve
Reference: Supreme Administrative Court Order (2012) Tsai Tzu No.1314
Industry: Retail Sale of Other Household Appliance and Supplies in Specialized Stores (4749)
Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. Zhen An Technology Co., Ltd. (the appellant, hereinafter referred to as Zhen An Technology) intentionally concealed its identity for the purpose of selling its gas valve. Initially, Zhen An Technology enticed people who had no intention of making purchases of the gas valve to attend its sales presentations with gifts. Then its salespeople followed the attendees to their homes to push them to make purchase decisions while the customers' free will was under suppression. The sales approach was deceptive and obviously unfair conduct able to affect trading order in violation of Article 24 of the Fair Trade Law. The FTC (the appellee) therefore took action in accordance with the first section of Article 41 of the same law and issued on April 14, 2011 the Disposition Kung-Ch'u-Tzu No.100050 and ordered the appellant to immediately cease its unlawful act starting on the day following its receipt of the said disposition and at the same time imposed on the company an administrative fine of NT$4,000,000. Zhen An Technology found the sanction unacceptable and filed for administrative litigation but was rejected by the original court. It then filed the appeal.

2. Article 24 of the Fair Trade Law stipulates that "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 term "trading order" refers to decent business behavior in compliance with social morals and competition ethics of efficient market. When assessing whether certain conduct is "able to affect trading order," the impact on the overall trading order of the market has to be taken into consideration (such as the number of victims, the extent of damage, whether the sanction is enough to send out a warning message to other businesses, and whether the deceptive unfair conduct was carried out against specific targets or groups, or whether a large number of potential victims will be affected in the future). In other words, the application of this article is not limited to the impact already created on the trading order of the market. Meanwhile, the term "deceptive" refers to intentional deception or concealment through non-action about important trading information to mislead trading counterparts to make transactions; and in addition, the term "obviously unfair" refers to use of coercion or harassment to push trading counterparts to make their transaction decisions when their free will is under suppression.

3. Zhen An Technology intentionally concealed its identity and enticed people who had no intention of making purchases of its gas valve to attend sales presentations with gifts. Then it made false statements about the prices of the products and sent its salespeople to follow the attendees to their homes and push them to make the purchase while their free will was under suppression. The sales approach was deceptive and obviously unfair conduct able to affect the trading order of the market in violation of Article 24 of the Fair Trade Law. The reasoning of the appeal was overall a pronouncement against the justification of the original verdict, including reiteration of what had been discarded as unacceptable by the original court, or contestation against the original court's decision on the validity of evidence and the execution of authority, or rebuttal against the reasons behind the original court decision. Nothing concrete was mentioned about the regulations applied or the validity of such application in the original verdict. Neither did the appellant cite any of the subparagraphs of paragraph 2 of Article 243 of the Code of Administrative Procedure in its defense. In other words, there was no concrete accusation of how the

original verdict had been against any law and the appeal was therefore rejected by the Supreme Administrative Court.

Appendix:
Zhen An Technology Co., Ltd.'s Uniform Invoice Number: 28302441

Summarized by Peng, Chia-Yu; Supervised by Lee, Wen-Show □

Appendix I

Fair Trade Law of 2011

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;
Amendments 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.)
Amendment of Article 21 Promulgated on June 9, 2010;
Amendment Promulgated on November 23, 2011
(The 2011 Amendments amended Articles 21 and 41, and added Article 35-1.)

CHAPTER I
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 exempted 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.

The act of a trade association to restrict activities of enterprises 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-1evel marketing" 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 marketing enterprise" as used in this Law means an enterprise that adopts a multi-level marketing operations plan or organization and

conducts overall planning of multi-level marketing activity.

A participant of a foreign enterprise or a third party that introduces the multi-level marketing plans or organizations of such enterprise shall be deemed a "multi-level marketing 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 marketing 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 II
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 Act or Article 28-2 of the Securities and Exchange Act, 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 approve an application for merger filed pursuant to the preceding article 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 refered to in Article 11, paragraph 4 herein in order to ensure that the overall economic benefit of the merger out weighs the disadvantages resulted 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 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 III
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 esale 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 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 should have known to be 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 should have known to be likely to mislead the public, it shall be jointly and severally liable with the principal of such advertisement for the damages arising therefrom. Where any endorser provides any testimonials that he knows or should have known to be likely to mislead the public, he shall be jointly and severally liable with the principal of such advertisement for damages arising therefrom. However, endorsers who are not celebrities, specialists or organizations shall be held jointly and severally liable with the advertiser for only up to 10 times of the reward they have received from the advertiser.

The endorser set forth in the preceding paragraph shall refer to any person or organization, other than the principal of the advertisement, who expresses opinions, trust, findings, or results of personal experiences with regard to the goods or services.

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 marketing 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 marketing 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 marketing 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 marketing 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 marketing.

Within thirty days from the termination of the agreement in accordance with the preceding paragraph, the multi-level marketing 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 urchase 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 marketing 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 marketing enterprise' filing for record, inspection of activities, Certified Public Accountant(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 IV
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 V
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 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 expenses of the infringing party.

CHAPTER VI
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 35-1

The central competent authority may grant reduction of or exemption from fines to be imposed in accordance with Article 41 on enterprises in violation of Article 14 but meeting one of the following conditions:

1. The enterprise files a complaint or informs the central competent authority in writing about the concrete illegal conduct of the concerted action in which it has partaken and also submits the evidence and assists the investigation before central competent authority is aware of the said illegal conduct or initiated an investigation in accordance with this Law.
2. The enterprise reveals the concrete illegal conduct as well as submits the evidence and assists the investigation during the period in which the central competent authority investigates the said illegal conduct in accordance with this Law.

The central competent authority shall enact the regulations with regard to the

eligibility of the subjects to whom the preceding paragraph applies, the criteria of the said fine reduction and exemption and the number of enterprises to be granted the said fine reduction or exemption, evidence submission, identity confidentiality, and other matters in relation to the enforcement of the said regulations.

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 fine of not less than one hundred thousand no r 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 fine 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 fine 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 fine 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.

The central competent authority may impose an administrative fine up to 10% of the total sales income of an enterprise in the previous fiscal year without being subject to the limit of administrative fine set forth in the preceding paragraph if the enterprise is deemed by the central competent authority as in serious violation of

Articles 10 and 14.

The central competent authority shall enact the regulations with regard to the calculation of the total sales income of the previous fiscal year, definition of serious violations, and calculation of administrative fines.

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 fine 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 fine 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 fine 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 fine 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 fine is assessed pursuant to the preceding four articles refuse to pay such fine, the matter shall be referred to the court for compulsory execution.

CHAPTER VII
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 Act, Trademark Act, or Patent Act.

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 II

Enforcement Rules of Fair Trade Law of 2014

Promulgated on 24 June, 1992
by Fair Trade Commission Order (81) Kung Mi Fa Tzu No.015;
Amendments Promulgated on 30 August, 1999
by Fair Trade Commission Order (88) Kung Mi Fa Tzu No.02420;
Amendments Promulgated on 19 June, 2002
by Fair Trade Commission Order Kung Mi Fa Tzu No.0910005518;
Amendment to Article 29 Promulgated on April 18, 2014
by Fair Trade Commission Order Kung Fa Tzu No.10315603001

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 Act;
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 central competent 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 Institutions Merger Act and financial holding companies under Article 4 of the Financial Holding Company Act.

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; 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.
4. 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;
5. financial statement and operating report of each participating enterprise for the preceding fiscal year;
6. information of the market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;
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 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. he 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 authority:

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

(Deleted)

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 III

Multi-Level Marketing Supervision Act of 2014

Promulgated on January 29, 2014.
by Presidential Decree Hua Zong Yi Yi Zi No.10300013741

CHAPTER I
GENERAL PROVISIONS

Article 1

This Act is enacted for the purpose of assuring sound transaction order of the multi-level marketing, and protecting the rights and interest of participants.

Article 2

The term "competent authority" as used in this Act means the Fair Trade Commission.

Article 3

The term "multi-level marketing" as used in this Act means the marketing practice to establish multi-level organizations by having participants introduce new participants into multi-level marketing enterprises, and promote and sale goods or services.

Article 4

The term "multi-level marketing enterprise" as used in this Act means the companies, sole proprietorships or partnerships, groups or individuals that conduct overall planning or the carrying out of multi-level marketing activities as referred to in the preceding article.

A participant of foreign multi-level marketing enterprise or a third party that

introduces or carries out the multi-level marketing plans or organizations of such enterprise shall be deemed a "multi-level marketing enterprise" as referred to in the preceding paragraph.

Article 5

The term "participants" as used in this Act means persons who may earn commissions, bonuses and other economic benefits by taking part in the plans of a multi-level marketing enterprise and promoting or selling goods or services, and who may earn commissions, bonuses and other economic benefits by introducing other persons to participate, to promote, sell goods or services or introduce more persons.

The persons who enter into contracts with multi-sale enterprises that after meeting specific conditions such persons may get the qualification to promote, sell goods or services, or to introduce other persons to participate shall be deemed as participants from the time such contracts are entered into.

CHAPTER II
PROCEDURES OF REPORT FILING FOR RECORD BY MULTI-LEVEL MARKETING ENTERPRISES

Article 6

Prior to engaging in multi-level marketing operations, a multi-level marketing enterprise, should prepare a report containing the following items, and apply for record by the competent authority:

1. the basic information and business places of the multi-level marketing enterprise;
2. the multi-level marketing plans, and conditions of participation;
3. the content of contracts that will be executed with participants;
4. the itemized products or services, prices, and source;
5. the evidence of marketing practice in compliance with laws or regulations other than this Act, or having ex-ante approval issued by other authorities,

where the compliance or the ex-ante approval is imposed by such laws or regulations;

6. the calculation methods, criterion, and reasons, when multi-level marketing enterprises deduct the devaluation amount from the price in repurchasing the goods or services pursuant to the later sentence of paragraph 3 of Article 21, or Article 24 of the Act;
7. such other matters as may be required by the competent authority.

When multi-level marketing enterprises fail to provide documents and materials according to the requirements of the preceding paragraph, the competent authority may order them to provide within specific deadlines additional supplemental amendments. If multi-level marketing enterprises fail to provide within specific deadlines additional supplemental amendments, it shall be deemed to not have applied at all, and the competent authority may return their report, and order them to resubmit a complete one for record.

Article 7

Except for the following situations, when there is any change in the content of submitted documents and materials, the multi-level marketing enterprise shall report in advance:

1. For changes of enterprises' basic information as referred in subparagraph 1, paragraph 1of preceding article, a report is not required except for the change of enterprise's names.
2. For changes of enterprise's names, it should be reported within 15 days after the change is in effect.

If multi-level marketing enterprises fail to report the change according to the preceding paragraph, when the competent authority considers it to be appropriate, it may order the enterprises to provide within specific deadlines additional supplemental amendments. If multi-level marketing enterprises fail to provide within specific deadlines such additional supplemental amendments, it shall be deemed to not have reported the changes at all, and the competent authority may return their report, and order them to resubmit a complete one for record.

Article 8

The format and process of report referred in the preceding two articles will be prescribed by the competent authority.

Article 9

Multi-level marketing enterprises which intend to cease their multi-level marketing operations, shall file a written report with the competent authority prior to cessation, and shall have announcement in each business place to notify participants about their rights and interests to return goods to multi-level marketing enterprises according to participation contracts.

CHAPTER III
THE PRACTICE OF MULTI-LEVEL MARKETING ACTIVITIES

Article 10

Before a participant takes part in the plan or organization of a multi-level marketing enterprise, the enterprise shall inform the participant of the following particulars, and shall make no concealment, false, or misleading presentations:

1. paid-up capital and gross business volume of the multi-level marketing enterprise;
2. multi-level marketing plan, and conditions of participation;
3. laws and regulations relevant to multi-level marketing;
4. obligations and responsibilities of a participant, and conditions of withdrawal by a participant from the organization or plan, and rights and obligations arising from the withdrawal;
5. matters relevant to the goods or services;
6. the calculation methods, criterion, and reasons, when multi-level marketing

enterprises deduct the devaluation amount from the price in repurchasing the goods or services pursuant to the later sentence of paragraph 3 of Article 21, or Article 24 of the Act;

7. such other matters as may be required by the competent authority.

When a participant introduces another person to participate in the organization or plan, such participant shall make no false or misleading presentations on items listed in the preceding paragraph.

Article 11

When recruiting participants by advertising or other means, a multi-level marketing enterprise shall make it clearly known that it is engaged in multi-level marketing activities; neither may it recruit participants under the disguise of recruiting employees or on other pretense.

Article 12

When promoting or selling goods or services or recruiting participants by means of declared cases of success, a multi-level marketing 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 13

A multi-level marketing enterprise shall enter into a participation contract in writings with that who intends to participate in the plan or organization, and the multi-level marketing enterprise shall give the participant an original participation contract.

The writings referred to in the preceding paragraph may not be in the form of an electronic document.

Article 14

The content of written contract should include the following:

1. matters referred in Articles 10, paragraph 1, subparagraph 2 to 7;

2. breaches of contract by the participants and the measures to the breaches;
3. the rights and obligations as referred in Articles 20 through 22, or the provisions that are more beneficial for participants;
4. the method for handling a request by a participant to return goods, when the contract is terminated because of participants' violation of business rules or plans, or breaches as referred in paragraph 1 of Article 15, or other reasons attributable to participants;and
5. the conditions for renew of contracts and the method of handling, when the contracts stipulate specific term of participation.

Article 15

Multi-level marketing enterprises shall stipulate in contract that the following are breaches of the participant, and shall prescribe methods for handling such breaches in order to prevent such breaches:

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 marketing enterprise or through its organization;
3. engaging in sales by means that run counter to public order or good morals;
4. affecting consumers' rights and interests by improper direct sales calls;
5. engaging in sales that violate the Criminal Code or other laws or regulations governing industry and commerce.

Multi-level marketing enterprises shall enforce the handling methods referred in the preceding paragraph faithfully.

Article 16

Multi-level marketing enterprises may not recruit incapacitated persons to be participants.

A multi-level marketing enterprise recruiting a person with limited capacity to be a participant shall first obtain the written consent from the legal representative of such a person and also attach the said written consent to the contract.

The written consent referred to in the preceding paragraph may not be an electronic document.

Article 17

A multi-level marketing enterprise shall prepare the balance sheet and income statement for its multi-level marketing operations in the previous accounting year before the end of May each year and keep them in its main office.

When the capital of a multi-level marketing enterprise reaches the amount specified in paragraph 2 of Article 20 of the Company Act or the total multi-level marketing business volume in the previous accounting year exceeds the amount announced by competent authority, the multi-level marketing enterprise shall require auditing and certification by a certified public accountant for its financial statements.

Participants may request to inspect the aforesaid financial statements of the multi-level marketing enterprise to which they belong and the multi-level marketing enterprise may not refuse such requests without justifications.

Article 18

Multi-level marketing enterprises shall have participants engaged in promoting and selling goods or service in reasonable market price as their major income, instead of earning mainly by introducing new participants.

Article 19

A multi-level marketing 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, promotion or other like activities;
2. requiring a participant to pay any security deposit, breach penalty, or other fee, which 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. giving specific persons preferential treatment in a manner contrary to the multi-level marketing organization or plan and therefore damaging other participants' rights and interests;
5. unduly request a participant to buy or grant a participant permission in two or more multi-level marketing organizations;
6. requiring a participant to undertake obviously unfair obligations.

Participants shall not engage in the activities referred in the proceeding paragraph, subparagraph 1 through 3, 5 and 6 against the persons he or she introduce to participate.

CHAPTER IV
RESCISSION AND TERMINATION OF CONTRACTS

Article 20

Any participant may rescind or terminate the participation contract by giving the multi-level enterprise notice in writings within thirteen days after entering into such contract.

Within a period of thirty days after rescission or termination of the contract takes effect, the multi-level marketing 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 to the multi-level enterprise.

In returning the payments made by the participant according to the preceding paragraph, the multi-level marketing 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 are collected by the enterprise, the enterprise may deduct the shipping costs required for such collection.

Article 21

After the lapse of the period as referred to in the first paragraph of the preceding article, the participant at any time may still terminate the contract by writing and withdraw from the multi-level marketing plans or organizations, and request to return the goods , provided that when six months lapse since the date that the products are deliverable, the participant may not request to return the goods.

Within thirty days from the termination of the contract in accordance with the preceding paragraph, the multi-level marketing enterprise shall buy back all goods possessed by the participant at ninety percent (90%) of the original purchase price.

The multi-level marketing enterprise may deducted the bonuses or remuneration paid to the participant for the purchase as well as the amount of the decreased value of the goods.

If the returned goods are collected by the enterprise, the enterprise may deduct the shipping costs required for such collection.

Article 22

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

When the sold goods are supplied by third parties, and the participants exercise the right to rescind or terminate, the multi-level marketiing enterprise shall handle the returning of goods and repurchase according to the preceding two articles, and shall pay the damages or penalties third party suppliers charge the participants.

Article 23

Multi-level marketing enterprises shall not improperly hinder a participant from returning goods according to provisions of this Act.

Multi-level marketing enterprises shall not unjustifiably withhold commissions, bonuses, or other economic benefit payable to a participant after rescission or termination of the contract.

Article 24

The regulations relevant to the goods in this Chapter shall apply mutatis mutandis to services.

CHAPTER V
PROCEDURE OF BUSINESS INSPECTIONS AND SANCTIONS

Article 25

A multi-level marketing enterprise shall record the organization development, sales of goods or services, payment of bonuses, and handling of goods returning within the territory of the Republic of China on a monthly basis and keep such records in its primary place of business for inspection by the competent authority.

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 marketing practice.

Article 26

The competent authority may at any time dispatch personnel to inspect, or order an enterprise to fill forms and provide materials about the operation and development within specific deadline in the methods and format required by competent authority, and the enterprise shall not evade, impede, or refuse.

Article 27

The competent authority may investigate and handle, upon complaints or ex officio, any violation of the provisions of the Act.

Article 28

In conducting investigations under the Act, the competent authority 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 the parties and any related third party 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 parties or any related third party.

Things that may serve as evidence and are found during inspections referred above may be seized by competent authority, and the scope and duration of seizure shall be limited to an extent necessary for examination, inspection, verification or other purposes in connection with the preservation of evidence.

The person who is under investigation conducted according to paragraph 1 may not evade, impede, or refuse without justifications.

An investigator carrying out its duties under this Act shall present the documents supporting its duties, and the person to be investigated may refuse the investigation where the investigator fails to present such documents.

CHAPTER VI
PUNISHMENT

Article 29

If any person violates the provisions of Article 18, the violator shall be punished by imprisonment for not more than seven years and at the same time may be fined not more than one hundred million New Taiwan Dollars.

Shall any representative, agent, employee or other staff of a juristic person be punished for the violation of Article 18 in conducting business, not only the violator shall be punished in accordance with the preceding paragraph, the juristic person shall also be fined as prescribed in the preceding paragraph.

Article 30

Where any other laws provide for more severe punishment than those prescribed

in the preceding article, the provisions of such other laws shall apply.

Article 31

The competent authority may order the multi-level marketing enterprise violating the provisions of Article 18 to dissolve, suspense or terminate business operation not longer than six months.

Article 32

If any person violates the provisions in paragraph 1 of Article 6, paragraph 2 of Article 20, paragraph 2 of Article 21, Articles 22 or 23, the competent authority may order the violators to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and fine New Taiwan Dollar 100,000 or more and not more than New Taiwan Dollar 5,000,000, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take any necessary corrective action, the competent authority may again order the violators to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and fine New Taiwan Dollar 200,000 or more and not more than New Taiwan Dollar 10,000,000 each time until the violator ceases therefrom, rectifies such conduct, or takes necessary corrective action. If the situation is serious, the competent authority .may order the violator to dissolve, suspense or terminate business operation not longer than six months.

The provisions of preceding paragraph shall apply to the violation of paragraph 2 of Article 20 when applied mutatis mutandis according to Article 24, paragraph 2 of Article 21, Articles 22 or 23.

When the protection institution violates the regulations relevant to business operation methods and inspection prescribed in paragraph 5 of Article 38, the competent authority may impose a sanction according to paragraph 1 of this Article.

Article 33

If any person violates the provisions of Article 16, the competent authority may order the violators to cease therefrom, rectify its conduct, or take necessary corrective

action within the time prescribed in the order, and fine New Taiwan Dollar 100,000 or more and not more than New Taiwan Dollar 2,000,000, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take any necessary corrective action, the competent authority may again order the violators to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and fine New Taiwan Dollar 200,000 or more and not more than 4,000,000 each time until the violator ceases therefrom, rectifies such conduct, or takes necessary corrective action.

Article 34

If any person violates paragraph 1 of Article 7, Article 9 to 12, paragraph 1 of Article 13, Articles 14, 15, 17 and 19, paragraph 1 of Article 25, or Article 26, the competent authority may order the violators to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and fine New Taiwan Dollar 50,000 or more and not more than New Taiwan Dollar 1,000,000, and after the lapse of such period, shall such enterprise fail to cease therefrom, rectify such conduct, or take any necessary corrective action, the competent authority may again order the violators to cease therefrom, rectify its conduct, or take necessary corrective action within the time prescribed in the order, and fine New Taiwan Dollar 100,000 or more and not more than New Taiwan Dollar 2,000,000 each time until the violator ceases therefrom, rectifies such conduct, or takes necessary corrective action.

Article 35

When the competent authority conducts investigation according to Article 28, if the party under investigation violates paragraph 3 of Article 28, the competent authority may fine New Taiwan Dollar 50,000 or more and not more than New Taiwan Dollar 500,000. If after notice again, the party under investigation evade, impede, or refuse without justifications, the competent authority may continue to issue notice for investigation, and fine New Taiwan Dollar 100,000 or more and not more than New Taiwan Dollar 1,000,000 each time until the party accepts investigation, appears to respond, or renders relevant materials like books and records, documents, or exhibits.

CHAPTER VII
SUPPLEMENTARY PROVISIONS

Article 36

For the enterprises not meeting the definition of multi-level marketing enterprise prescribed in Article 8 of the Fair Trade Law, but actually conducted multi-level marketing business prior to the implementation of this Act shall apply for record by the competent authority according to Article 6 within three months after this Act takes effect. Any enterprises that fail to apply shall be subject to punishment under Article 6, paragraph 1.

The multi-level marketing enterprises as referred in preceding paragraph shall enter into written contract with the participants having participated prior to the implementation of this Act according to paragraph 1 of Article 13 within six months after this Act takes effect. Any enterprises that fail to enter into written contract shall be subject to punishment under Article 13, paragraph 1.

Participants participating in multi-level marketing enterprises prior to the implementation of this Act may rescind or terminate contract according to Articles 20, 22, and 24 since the day this Act takes effect through 30 days expires after the contract referred in preceding paragraph is entered. Even after such period, participants may still terminate contract according to Articles 21, 22, and 24.

For the participants terminating contracts after this Act takes effect, the period prescribed in the exception clause of paragraph 1 of Article 21 shall start from the day this Act takes effect.

Article 37

If any multi-level marketing enterprises have applied for record prior to the implementation of this Act, they still shall revise the filing documents according to paragraph 1 of Article 6, and provide competent authority within two months after this Act takes effect supplemental amendments. If any multi-level marketing enterprises do not provide supplemental amendments, the competent authority will make decision as the enterprises in violation Article 7, paragraph 1.

If any multi-level marketing enterprises have applied for record prior to the implementation of this Act, they still shall revise the written contract entered into with participants, notify participants the revision content in written, and make announcements in business places. If any multi-level marketing enterprises do not notify participants the revision content in written, the competent authority will make decision as the enterprises in violation Article 13, paragraph 1.

After receiving the notification referred in preceding paragraph, if participants do not object within specific period, it will be deemed as they accept the revision.

Article 38

The competent authority shall designate the multi-level marketing enterprises having applied for record to donate certain property in order to establish a protection institution in charge of protecting the rights and interests of multi-level marketing enterprises having applied for record, and participants, and dispute resolution. The donation amount may be deducted from the protection fund and annual fee as prescribed in paragraph 2.

The protection institution may collect protection fund and annual fee from the multi-level marketing enterprises having applied for record. The collection methods and specific amount shall be determined by the competent authority.

If the multi-level marketing enterprises having applied for record fail to pay according the preceding two paragraphs, it will be deemed as in violation of paragraph 1 of Article 32, and sanctioned accordingly.

The enterprises may request the protection offered by the protection institution only after paying fund and annual fee according to the rules issued by the competent authority.

The organizations, duties, fee appropriation, operation procedures, and its monitoring and management shall be determined by the competent authority.

Article 39

After this Act takes effect, the provisions in the Fair Trade Law relevant to multi-level marketing shall not apply.

Article 40

The enforcement rules of this Act shall be made and promulgated by the competent authority.

Articl 41

This Act shall take effect upon promulgation.

Appendix IV

Enforcement Rules of Multi-Level Marketing Supervision Act of 2014

Enacted and promulgated on 17 April, 2014
by Fair Trade Commission Order Kung Fa Tzu No.10315602971

Article 1

These enforcement rules are enacted in accordance with Article 40 of Multi-Level Marketing Supervision Act (hereinafter referred to as the Act).

Article 2

The basic information of the multi-level marketing enterprise stated in subparagraph 1 of paragraph 1 of Article 6 of the Act refer to the name, capital, representative or responsible person, office address, date of establishment registration, certificate of company or other kind of business entity.

The business places of the multi-level marketing enterprise stated in subparagraph 1 of paragraph 1 of Article 6 of the Act refer to the main business places and other business places.

Article 3

The multi-level marketing plans stated in subparagraph 2 of paragraph 1 of Article 6 of the Act refer to the names of each level in the multi-level marketing organization, qualifications of grant and conditions of promotion, content of commissions, bonuses, and other economic benefit, conditions of payment, calculation methods and maximum percentage of such payments on total revenue.

Article 4

The gross business volume of the multi-level marketing enterprise stated in

subparagraph 1 of paragraph 1 of Article 10 of the Act the refer to the gross business volume of preceding year, and if the enterprise has been operating for less than one year, it refer to the cumulative business volume for the months of operation.

The multi-level marketing plans stated in subparagraph 2 of paragraph 1 of Article 10 of the Act refer to the names of each level in the multi-level marketing organization, qualifications of grant and conditions of promotion, content of commissions, bonuses, and other economic benefit, conditions of payment, and calculation methods.

Article 5

The matters relevant to the goods or services stated in subparagraph 5 of paragraph 1 of Article 10 of the Act refer to the itemized products or services, prices, content of warranties against defects, and other related matters.

Article 6

The principle in deciding reasonable market price stated in the Act Article 18 are as follow:

1. When there are competing products or services in the market, the price and quality of same or similar products or services in domestic or foreign markets may be the major reference, the return on investment of multi-level marketing enterprises and enterprises which are not multi-level marketing enterprises but sell same or similar products or services will be compared, the technology and service level will be considered especially, and then a decision will be made based on all above factors.
2. When there is no competing product or service in the market, reasonable market price will be decided case by case.

To be considered as major as stated in Article 18 of the Act, the criterion will be 50%, and the actual situations in the individual case such as whether there is intentional violation, damages caused, and seriousness of damages will also be considered.

Article 7

The participant stated in paragraph 3 of Article 20 and paragraph 3 of Article 21 refer to the party who rescind or terminate the contracts, and does not include other participants.

Article 8

The date that the products are deliverable stated in proviso in paragraph 1 of Article 21 of the Act refer to the date when multi-level marketing enterprises have prepared sufficient stocks for the products to be promoted and sold, and multi-level marketing enterprises may prove the deliverable status by producing documents or other methods.

Article 9

The organization development, sales of goods or services, payment of bonuses, and handling of goods returning stated in paragraph 1 of Article 25 of the Act refer to the following:

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 each month;
3. each participant's name or appellation, citizen's ID card number or uniform business number, 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 commissions, bonuses, 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 stated in the preceding paragraph may be stored by documents or

means of electronic data storage media.

Article 10

After a participant joins the sales organization or plan of a multi-level marketing enterprise, the enterprise shall educate and train the participant with respect to laws and regulations relevant to multi-level marketing and to channels for filing complaints about infractions of law by enterprises.

Article 11

The roster of reported multi-level marketing enterprises and the important developments of the relevant information thereof shall be published on the World Wide Web site by the competent authority.

The roster of reported multi-level marketing enterprises and the important developments of the relevant information thereof stated in the preceding paragraph includes roster of fully reported cases, roster of cases pending for supplemental amendments, roster of enterprises relocated to an unknown location or showing no evidence of operation, and roster of enterprises which have been filed suits against or with judicial decisions, etc.

Article 12

When multi-level marketing enterprises dissolve, suspense or terminate business operation, the competent authority may delete their names from the roster of reported multi-level marketing enterprises stated in preceding article.

Article 13

The competent authority may refuse to process complaints that lack substantive content or have no genuine name or address affixed thereto.

Article 14

When issuing notice pursuant to subparagraph 1 of paragraph 1 of Article 28 of the Act, the 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, or group, the name of the responsible person and the location of the 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 15

A person notified pursuant to the preceding article may retain an attorney to appear and make statements on his or her behalf, provided that when the competent authority deems necessary, it may give notice requiring appearance in person.

Article 16

After a person notified pursuant to the provisions of Article14 has appeared and made a statement, the competent authority shall produce a 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 17

When issuing notice pursuant to subparagraph 2 of paragraph 1 of Article 28 of the Act, the 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, or group, 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 18

After the competent authority has received books and records, documents, and any other required materials or evidence provided by the parties or related persons, the Competent Authority shall issue a receipt at the request of the provider.

Article 19

When assessing fines in accordance with the Act, all circumstances shall be taken into consideration, and the following items shall be noted:

1. motivation, purpose, and expected improper benefit of the violations;
2. the degree of the act's harm to trade order;
3. the duration of the act's harm to trade order;
4. benefits derived from the unlawful act;
5. scale and operating condition of the violator;
6. whether or not the type of unlawful act involved in the violation has been the subject of warning by the 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 20

These enforcement rules shall take effect from the date of promulgation.

Chronological Table of Cases

The numbers in the first column represent the times of Commissioners' Meetings at which the cases were decided. The numbers within parentheses represent the dates and the years when the Commissioners' Meetings were held. Next to the Commissioners' Meetings dates, the names of the cases are listed. The last numbers after the names of the cases represent the reference pages for the cases.

985(09/21/10)	The FTC initiated an ex officio investigation to find out if domestic bottled LPG distributors had undertaken any concerted action or unjustifiable discriminative treatment in violation of the Fair Trade Law	43,122
985(09/21/10)	Taoyuan County Photographic Studio Association violated the Fair Trade Law by undertaking concerted action	47
987(10/09/10)	Hung Yi Instrument Co., Ltd. violated the Fair Trade Law for posting false contents on its website	181
987(10/06/10)	Well Long Information Co., Ltd. violated the Fair Trade Law by sending an attorney letter alleging trademark infringement	276
988(10/13/10)	Nan-I Book Enterprises Co., Ltd. and Kang-Hsuan Education Publishing Group violated the Fair Trade Law by providing inappropriate gifts during the period of textbook selection for junior high schools in Taipei City, Taipei County and Keelung City in 2010	279
989(10/20/10)	Mr. Xiong Guanming violated the Fair Trade Law for failing to file for record with the FTC before undertaking multilevel sales	242
23 Ad Hoc (10/29/10)	Dafu Media Co., Ltd. filed a pre-merger notification to the FTC regarding its intention to merge with Shengting Co., Ltd., Kbro Co., Ltd. and 12 cable TV systems operators controlled by Kbro Co.	11

Taipei Supreme Administrative Court

Supreme Administrative Court Judgment (2011) Pan Tzu No.1978	The Supreme Administrative Court overruled FarGlory Land Development Co., Ltd.'s appeal over the FTC's decision	233
Supreme Administrative Court Judgment (2012) Pan Tzu No.1070	Supreme Administrative Court overruled the appeal of administrative litigation by Rui Ing Co., Ltd. regarding its violation of the Fair Trade Law	163
Supreme Administrative Court Order (2012) Tsai Tzu No.1314	The Supreme Administrative Court rejected the appeal of Zhen An Technology Co., Ltd. over the disposition by the FTC for the company's violation of the Fair Trade Law	339

Keyword Index

Industry Index

Other Glass and Glass Product Manufacturers	2319	261
Other Information Supply Services Not Elsewhere Classified	6399	333
Other medical device and product manufacturer	3329	134,299
Other Mining and Quarrying	0700	76
Other Optoelectronic Materials and Components Manufacturing	2649	15
Other Personal Services	9690	227
Other Retail Sales in General Merchandise Stores	4719	330
Other Unclassified Financial Agent	6499	5,137
Photographic Studios	7601	47
Prepared Animal Feeds Manufacturing	0870	89
Professional Associations	9422	50
Ready-mixed Concrete Manufacturers	2332	95
Real Estate Agency	6812	233,271
Real Estate Development	6700	199,281,301
Rental and Leasing of Other Transport Equipment	7729	230
Repair of Audio and Video Electronic Products and Electric Appliances	9523	207
Restaurants	5610	201,307
Retail Sale in General Merchandise Stores with Food, Beverages or Tobacco Predominating	4711	67,225

Wholesale of Motor Vehicles and Motorcycles and Related Parts and Accessories	4651~4653	204
Wholesale of Other Foods	4549	106
Wholesale of Other fuel Products	4639	97