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Chapter 1

Introduction

The Fair Trade Commission (FTC) compiled cases to lay out its practices and the practices of the courts regarding the Fair Trade Law (FTL) and Multi-level Marketing Supervision Act in the past few years.

The supervisory of multilevel marketing practices used to be regulated in accordance with the provisions specified in the FTL. However, the FTL is a competition law designed to fight competition restrictions and unfair completion. The two things are different in essence. Therefore, the FTC enacted the Multilevel Marketing Supervision Act as an independent law in January 2014 to assure sound transaction order and protect the rights and interest of participants.

After that, the FTL was also amended in January and June, 2015. About 70 percent of the provisions were revised or adjusted. This was the largest amendment since the FTC first enforced in 1992.

Coverage of this Book

This book compiles 75 selected typical cases decided by the FTC between 2013 and 2014, and 4 judicial cases decided by Supreme Administrative Court. In addition to this chapter, the chapter arrangements of this compilation are as follows:

- Chapter 2 compiles 3 cases on monopoly, which are defined in Article 5 and regulated by Articles 5, 5-1 and 10 of the Fair Trade Law of 2011.
- Chapter 3 compiles 8 cases and 1 judicial case on merger, which are defined in Article 6 and regulated by Articles 6, 11, 11-1, 12 and 13 of the Fair Trade Law of 2011.
- Chapter 4 compiles 9 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 of 2011.

- Chapter 5 compiles 7 cases on unfair competition, which are related to resale price maintenance and regulated by Article 18 of the Fair Trade Law of 2011.
- Chapter 6 compiles 6 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 of 2011.
- Chapter 7 compiles 23 cases and 1 judicial case on false, untrue and misleading advertisements, which are regulated by Article 21 of the Fair Trade Law of 2011.
- Chapter 8 compiles 1 judicial case on damaging to others' business reputation, which is regulated by Article 22 of the Fair Trade Law of 2011.
- Chapter 9 compiles 3 cases on 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 of 2011.
- Chapter 10 compiles 15 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 11 compiles 1 case on the violations of Multi-level Marketing Supervision Act.

Chapter 2

Monopoly

Formosa Chemicals & Fibre Corporation and Formosa Plastics Corporation

1134th Commissioners' Meeting (2013)

Case: FCFC and FPC violated the Fair Trade Law by cutting sodium sulfate supply

Key Word(s): Chemical material, sodium sulfate

Reference: Fair Trade Commission Decision of July 31, 2013 (the 1134th Commissioners' Meeting); Dispositions Kung Ch'u Tzu No. 102118 and No.102119

Industry: Basic Chemical Material Manufacturing (1810)

Relevant Law(s): Article 10 (iv) of the Fair Trade Law

Summary:

1. Joint Union Enterprise Co., Ltd. (hereinafter referred to as the complainant) sold chemical materials as its main business while both Formosa Chemicals and Fibre Corporation (hereinafter referred to as FCFC, a producer of sodium sulfate) and Formosa Plastics Corporation (hereinafter referred to as FPC, a producer of caustic soda) were the complainant's suppliers. However, the complainant claimed that both FCFC and FPC used their monopolistic power in the relevant chemical material markets and suddenly cut the supply of sodium sulfate and caustic to the complainant despite that the complainant had not violated any trading conditions imposed by FCFC and FPC. Therefore, the complainant believed that the conduct of the FCFC and FPC was in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1)The duration of business relations and the amounts and frequency of sodium

sulfate transactions between the complainant and FCFC indicated that the complainant would need continuous supply of sodium sulfate from FCFC as there was no drastic change in the supply and demand of the domestic sodium sulfate market. For this reason, the excuse of FCFC that it had stopped supplying the complainant because the complainant had not placed further orders was unjustifiable. In the meantime, FCFC also claimed that it had been unable to supply sodium sulfate to the complainant due to its sodium sulfate production rearrangement as a result of reduced production of rayon staple fiber. However, the FTC's investigation showed that the sodium sulfate production of FCFC in August, 2012 had been greater than in the production of the same month the previous year. Apparently, there had been no decrease in sodium sulfate supply. Another finding also indicated that FCFC had continued to supply sodium sulfate to other main trading counterparts after August 1, 2012. The sodium sulfate supply provided to these businesses had never been stopped because of the said production rearrangement. Therefore, FCFC had cut sodium sulfate supply to the complainant without justification.

(2) Meanwhile, FPC claimed that it had decided to stop selling to the complainant because the complainant had failed to order the agreed quantity of caustic soda. An inspection of the company's statistics on the sales of caustic soda chips and granules to its major trading counterparts in 2012 indicated that, besides the complainant, other businesses had also ordered less or more than agreed quantities, meaning that the complainant's failure to order the agreed quantity had not been unusual at all. Meanwhile, between 2009 and the third quarter of 2012 the complainant had made monthly purchases from FPC sometimes less than the agreed quantity while sometimes more than the agreed quantity. In other words, during that period, the complainant had not only ordered less than the agreed quantity. If FPC had thought the complainant's failure to order the agreed quantity had had an impact on its normal operation, it could have taken appropriate business measures and notified the complainant to order the agreed quantity each quarter or even requested the complainant to compensate for its loss resulting from the complainant's failure to order the agreed quantity. However, instead of choosing a measure advantageous to both sides, FPC had suddenly decided to cut its supply to the complainant and created

a serious impact on the complainant's business. Moreover, FPC had never taken the same action against other trading counterparts failing to order agreed quantities. It was obviously unfair that FPC had discontinued its caustic soda supply to the complainant without justification.

3. Grounds for disposition:

(1)The duration of the complainant's business relations with FCFC and FPC and the amounts it had purchased proved that the complainant had been a major trading counterpart of FCFC in sodium sulfate and of FPC in caustic soda. However, both FCFC and FPC abused their monopolistic status respectively in the domestic sodium sulfate and caustic soda markets and unilaterally cut their supply of sodium sulfate and caustic soda to the complainant without justification. Despite that the complainant had been able to obtain such materials temporarily from other trading counterparts of FCFC and FPC and continued to supply its own customers, the complainant's sales of sodium sulfate and caustic soda had dropped as a result of discontinuation of supply by FCFC and FPC. Since there existed no substitutive products for the said materials, the refusal of FCFC and FPC to continue doing business with the complainant had obviously been intended to hurt the complainant and the complainant's business operation costs (supply unit price and transportation cost) and risks (the aforesaid indirect suppliers suddenly stopping supply for fear of becoming involved in the supply dispute between the complainant and FCFC and FPC) had thus gone up. Under such circumstances, the likelihood of the complainant becoming excluded from the competition in the domestic sodium sulfate and caustic soda markets had been greatly heightened.

(2)After assessing the motives of FCFC and FPC in engaging in the illegal conducts and the unlawful gains they expected from the said conduct, the level of damage incurred to trading order, and the duration of such damage, the FTC ordered the two companies to immediately cease their unlawful acts and also imposed administrative fines of NT\$ 3 million on FCFC and NT\$ 2 million on FPC respectively.

Appendix:

Formosa Chemicals & Fibre Corporation's Uniform Invoice Number: 58650902

Formosa Plastics Corporation's Uniform Invoice Number: 75708007

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

Taiwan International Ports Corporation Ltd.

1139th Commissioners' Meeting (2013)

Case: Taiwan International Ports Corporation Ltd. violated the Fair Trade Law
by imposing discriminative warehouse rental rates on cargo handling
businesses

Key Word(s): Taichung Port, cargo handling business, dock

Reference: Fair Trade Commission Decision of September 4, 2013 (the 1139th
Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102154

Industry: Supporting Services to Water Transportation (5259)

Relevant Law(s): Article 10 (iv) of the Fair Trade Law

Summary:

1. According to the complainant, Port of Taichung (originally the Port Authority of Taichung, Ministry of Transportation and Communications, and it was reorganized on March 1, 2012), Taiwan International Ports Corporation Ltd. (hereinafter referred to as TIPC) removed restrictions on bulk and general cargo handling operations in 2005. However, it continued to charge the rent on the basis of building costs of different warehouses. As a consequence, the complainant had to pay prices for warehouses rent that was different from those paid by Taichung Harbor Warehousing and Stevedoring Co., Ltd. (hereinafter referred to as THWS) and Tehlong Warehousing and Stevedoring Co., Ltd. (hereinafter referred to as TLWS). As a result, the complainant

was unable to compete on a fair basis. The complainant thought this constituted discriminative treatment in the warehouse rental rates adopted by Port of Taichung.

2. Findings of the FTC after investigation:

(1)The warehouse rentals charged by Port of Taichung were divided into two types, namely “warehouses built under collaboration and leased to the partner after the expiration of the rent-free period” and “warehouses built by former Port Authority and leased to users.” The calculation formulas for the rent were established according to the warehouses construction type, building cost and risk management. The formula for the first type was the original building cost x 10%. As for the second type, it was the original building cost x (the construction cost general index for the year before leasing the warehouse/the construction cost general index for the year before building the warehouse) x (1+10%) x 10%.

(2)The warehouses on Lots No. 5 to No. 8 (built under collaboration between THWS and Port of Taichung in 1976) were rented to THWS and those on Lots No. 12 to 15 (built under collaboration between TLWS and Port of Taichung in 1982) rented to TLWS. When the complainant started its cargo handling operation in Port of Taichung in 2005, the rental-free period for THWS and TLWS had already expired (lasting for 17 to 18 years). Therefore, whether the warehouses had been constructed under collaboration or by the former Port Authority, they belonged to TIPC. In addition, the building partners had enjoyed 17 to 18 years of use of the warehouses without rentals and there was no further need to recover their investments and minimize business risks. It was no longer legitimate or necessary to give them better rent offers than other competing tenant. Furthermore, since the two companies had continued to rent the warehouses for 15 to 19 years after the end of the rent-free period and the warehouses built by the former Port Authority were now over 27 years, there was no reason to differentiate the rentals. However, TIPC continued to calculate the rentals based on their “original building cost” for warehouses built under partnerships but used the “re-installment value or current value of the building” as the calculation basis when it came to warehouses built by the former Port Authority. The difference was obvious. As a result, compared to its competitors the complainant had

paid an extra of NT\$34.16 million as of 2012 for the warehouses on Lots No. 24 and 25 that it started to rent respectively in 2002 and 2005. It was a rather considerable amount. Apparently, new comers had to pay higher warehouse rents than existing competing tenants in the market. The adoption of such differentiated standards was likely to restrict competition or impede fair competition on the cargo handling market.

3. Grounds for disposition:

(1)TIPC's collection of warehouse rents was divided into two types. For the ones not built under collaboration, the re-installment value or current value was applied as the basis of calculation while the original building cost was adopted to calculate the rents for those constructed under partnerships without reassessing the construction cost annual increase rate. It constituted discriminative treatment imposed on essential facilities for cargo handling businesses without justification and also abuse of market power by a monopolistic enterprise in violation of Article 10(iv) of the Fair Trade Law.

(2)The reason behind the differentiated standards was that different regulations and procedures were applied to cargo handling businesses that started their operations at different times. The motive and objective of the unlawful practice had never been to create unfair competition. After assessing the expected unlawful gains, the damage incurred to trading order and its duration, the profits obtained through the unlawful act, the scale of the enterprise, its management condition and market status, the types and number of times of past violations, the intervals and proper penalties to be received, and remorse and attitude of cooperation throughout the investigation, the FTC acted according to the first section of Article 41(1) of the Fair Trade Law and ordered TIPC to make necessary corrections before June 30, 2014.

Appendix:

Taiwan International Ports Corporation Ltd.'s Uniform Invoice Number: 53026486

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

Koninklijke Philips Electronics, N.V.

1175th Commissioners' Meeting (2014)

Case: The FTC looked for an appropriate penalty on Koninklijke Philips Electronics, N.V. for its violation of the Fair Trade Law

Key Word(s): CD-R, orange book, licensing agreement

Reference: Fair Trade Commission Decision of May 14, 2014 (the 1175th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.103060

Industry: Manufacture of Magnetic and Optical Media (2740)

Relevant Law(s): Article 10(ii) of the Fair Trade Law

Summary:

1. Domestic CD-R companies informed the FTC in 1999 that Koninklijke Philips Electronics, N.V. (hereinafter referred to as "Philips"), Sony Corporation (hereinafter referred to as "Sony"), and Taiyo Yuden Co., Ltd. (hereinafter referred to as "Taiyo Yuden") violated the Fair Trade Law when licensing their CD product specifications patent. The FTC reached a decision in its Commissioners' Meeting in 2001 to impose administrative penalties on the companies. The companies filed an appeal with the Executive Yuan, and the Executive Yuan reached the decision to revoke the original penalty and replace it with an appropriate penalty. The FTC reexamined the case and reached a decision in its Commissioners' Meeting in 2002 to impose administrative penalties. However, the companies were unwilling to accept the decision and appealed. After their appeal was dismissed, they filed an administrative lawsuit in Taipei High Administrative Court, which rendered the judgment to revoke the original penalty, and instructed the FTC to decide on an appropriate penalty after reexamination. The FTC's appeal was dismissed and petition for retrial was also dismissed. The FTC replaced the original disposition and imposed administrative penalties of NT\$3.5 million, NT\$1 million and NT\$500 thousand on the aforementioned companies. The companies refused to accept the administrative penalties and appealed. After their appeal was dismissed, they filed an administrative lawsuit in the Intellectual Property Court, where their lawsuit was dismissed (Xing

Gong Su Tzu Judgment No.4 and No.5 in 2011 were final because Sony and Taiyo Yuden did no appeal). Philips appealed to the Supreme Administrative Court, which rendered the judgment: “Revoke the original judgment. Revoke all penalties besides decisions that were final and parts of the original penalty that were final.” The FTC’s petition for a retrial was dismissed and thus obeyed the Supreme Administrative Court’s judgment to find an appropriate penalty.

2. Findings of the FTC after investigation:

The FTC sent letters to both parties requesting explanations regarding this case. During the investigation period before the original penalty was imposed, the FTC sent numerous letters requesting both parties to come to the FTC to provide explanations and materials, and also sent investigators to domestic CD-R manufacturers and Asia-Pacific Technology & Intellectual Property Services Inc. The FTC also asked the Electronics and Optoelectronics Research Laboratories of Academia Sinica on numerous occasions for their expert opinion, and the facts of this case are clearly established. Considering the Supreme Administrative Court’s judgment on the appeal and petition for retrial, the FTC will impose an appropriate penalty accordingly.

3. Grounds of disposition:

(1) The market in this case would be the CD-R market. Philips, Sony and Taiyo Yuden jointly established an “orange book” of CD-R standard specifications, so that any CD-R manufacturer and distributor around the world must gain licensing of their CD-R patent. The patent licensed by the companies is necessary for entering the CD-R market and can restrict competition in the said market. From a technical standpoint, CD-R is a compact disc that can be written once, and considering the supply, demand, production, sales and cost of CD-R in the market at the time, there was no substitutable product for CD-R. Although others were still free to develop technical specifications in competition, it is an undeniable fact that CD-R manufacturing worldwide must follow the standard specification in the “orange book.” The main patent technology of the specification is owned by the companies of this case, and is provided through jointly licensing, giving the companies an absolute

advantage. Other companies that intend to enter the CD-R market were restricted by the standard specifications set by the companies of this case. The FTC determined that the companies constitute a monopoly as referred to in Article 5 of the Fair Trade Law based on the description set forth in Paragraph 3 of Article 3 of the Enforcement Rules of Fair Trade Law, which was amended on August 30, 1999, stating that “the central competent authority may determine that an enterprise constitutes a monopoly when laws or technology restrictions or other means capable of restricting competition in a particular market restricts the establishment of an enterprise or goods or services provided by an enterprise from entering the market, even though the preceding two paragraphs do not apply.”

(2) Philips, Sony and Taiyo Yuden gained a monopolistic position in the CD-R market by jointly establishing an orange book that defines the standard specifications of CD-R and jointly licensing their patents. The companies refused to negotiate with licensees even when the market situation has significantly changed, and continued to maintain the original pricing method. The FTC determined that the companies violated Article 10 (ii) of the Fair Trade Law by improperly maintaining the licensing fee, and imposed an administrative penalty of NT\$1.8 million on Philips.

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

Chapter 3

Merger

3.1 Decisions

Far Eastern New Century Corporation & Far Eastern Textile Ltd.

1131st Commissioners' Meeting (2013)

Case :The FTC initiated an ex officio investigation on FENC's suspected violation of failing to file a pre-merger notification regarding its possession of 100% shares of FET

Key Word(s): Solid polyester granule , polyester staple fiber

Reference: Fair Trade Commission Decision of July 10, 2013 (the 1131st Commissioners' Meeting)

Industry: Basic Chemical Material Manufacturing (1810)

Relevant Law(s): Articles 6, 11, 11-1 and 12 of the Fair Trade Law

Summary:

1. When Far Eastern New Century Corporation (hereinafter referred to as FENC) was established on December 28, 2011, it already possessed 100% shares of Far Eastern Textile Ltd. (hereinafter referred to as FET). In the year of 2011, FENC claimed 51.4% and 42.9% market share of the solid polyester granule and polyester staple fiber respectively. However, the company never filed a pre-merger notification to the FTC and was therefore suspected as having violated the Fair Trade Law.
2. Findings of the FTC after investigation:
 - (1) As FENC did hold 100% shares of FET when it was established on December 28, 2011, the condition met the description in Article 6(1)(ii) of the Fair Trade Law, that is "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.” According to FENC’s annual report in 2011 and its statements presented to the FTC as well as information retrieved from the FTC’s industrial database, FENC accounted for over one quarter of the domestic polyester staple fiber market and therefore reached the threshold for pre-merger notification filing set forth in Article 11(1)(ii) of the Fair Trade Law that “one of the enterprises in the merger has one fourth of the market share.” Hence, holding 100% shares of FET without filing a pre-merger notification with the FTC, FENC was suspected in violation of this regulation.

(2) However, the findings of the FTC’s investigation revealed that the name FET had been adopted for nearly 60 years since the company’s establishment in 1951 until it was changed to FENC as a result of its shareholders assembly’s decision in 2009. According to the first section of Article 18(1) of the Company Act, “No company may use a corporate name which is identical with that of another company.” In other words, the name of a company is an important basis in distinguishing a company from others and therefore should be regarded an intangible asset with economic value.

3. Grounds for disposition:

Considering that the accumulated business reputation of FET in the last six decades and how consumers and its trading counterparts would relate the name FENC with the business entity, FENC therefore held 100% shares of FET to prevent confusion in case that the name FET being registered and used by another business. This meant that the company was aware of the significance of the name FET to its business operations and the order of the relevant market and the name FET has been an important part of the company’s assets. Meanwhile, since the business items of newly set-up FENC did not include manufacturing of solid polyester granules and polyester staple fiber, there was no impact on these two product markets. In other words, the establishment of FENC and its holding of 100% shares of FET could be considered an enterprise expanding its scale by transferring the principal part of its property to a newly set-up independent business. Under such circumstances, the case

shall be regarded as meeting the requirement for exemption from filing pre-merger notifications with the FTC as set for in Article 11-1(ii) of the Fair Trade Law. In short, there was not enough evidence to conclude that FENC had violated the Fair Trade Law.

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

Taiwan Taxi Corporation & 4 other Taxi Companies

1179th Commissioners' Meeting (2014)

Case: Taiwan Taxi Corporation and 4 other taxi companies violated the Fair Trade Law by failing to file pre-merger notifications to the FTC

Key Word(s): Merger, taxi dispatch service, direct control, business operations

Reference: Fair Trade Commission Decision of June 11, 2014 (the 1179th Commissioners' Meeting); Dispositions Kung Ch'u Tzu No.103077, No.103078 and No.103079

Industry: Taxi Transportation (4932)

Relevant Law(s): Article 11(1) of the Fair Trade Law

Summary:

1. Taiwan Taxi Corporation was complained for merging with Daai, Fuxie and Fanya Taxi Fleets in March and May 2013, gaining 43% and 69% market share nationwide and in the greater Taipei area, respectively, but was suspected of violating the Fair Trade Law by failing to file a pre-merger notification to the FTC.

2. Findings of the FTC after investigation:

Taiwan Taxi Corporation controls 70% of Longxing Taxi Company's shares and directly controls its business operation and the appointment and discharge of personnel, meeting the description of merger set forth in Subparagraphs 2 and 5 of

Article 6(1) of the Fair Trade Law. Taiwan Taxi Corporation signed an agreement through Longxing Taxi Company with Longdian Taxi Company, which operated Daai Taxi Fleet, and Huangxing Taxi Company, which operated Fuxie Taxi Fleet, for Longxing Taxi Company to operate the taxi dispatch services of Longdian Taxi Company and Huangxing Taxi Company and use their assets (i.e. Daai Taxi Fleet and Fuxie Taxi Fleet) for 5 years. Taiwan Taxi Corporation indirectly controlled Longdian Taxi Company and Huangxing Taxi Company through Longxing Taxi Company, meeting the description set forth in Subparagraphs 3 and 5 of Article 6(1) of the Fair Trade Law. Furthermore, Taiwan Taxi Corporation signed an agreement with Fanya Taxi Company to operate the taxi dispatch services of Fanya Taxi Company and use its assets (i.e. Fanya Taxi Fleet) for 5 years, allowing Taiwan Taxi Corporation to directly control the business operation of Fanya Taxi Company. This merger met the description set forth in Subparagraphs 3 and 5 of Article 6(1) of the Fair Trade Law. Taiwan Taxi Corporation had 1/4 of the taxi dispatch service market and reached the threshold for filing a pre-merger notification according to Article 11(1)(ii) of the Fair Trade Law. Taiwan Taxi Corporation did not meet any of the exemptions set forth in Article 11-1 where Article 11(1) would not apply.

3. Grounds of disposition:

Taiwan Taxi Corporation violated Article 11(1) of the Fair Trade Law by failing to file pre-merger notifications to the FTC. Considering that this was the first violation of Taiwan Taxi Corporation in terms of revenue and market share, and that taxies were disadvantaged when competing with mass transportation, the FTC imposed fines of NT\$1.5 million on Taiwan Taxi corporation, NT\$200,000 on Longxing Taxi Company, NT\$150,000 on Longdian Taxi Company, NT\$100,000 on Huangxing Taxi Company, and NT\$100,000 on Fanya Taxi Company.

Appendix:

Taiwan Taxi Corp.'s Uniform Invoice Number: 27767961

Longxing Taxi Company's Uniform Invoice Number: 54166822

Longdian Taxi Company's Uniform Invoice Number: 27995698

Huangxing Taxi Company's Uniform Invoice Number: 86866517

Fanya Taxi Company's Uniform Invoice Number: 80501370

Summarized by Chang, Hsin-Yi; Supervised by Kuo, An-Chi

Hualien Cable TV Network, Tung Tai Cable TV and Tong Ya Cable TV

1187th Commissioners' Meeting (2014)

Case: Hualien Cable TV Network, Tung Tai Cable TV and Tong Ya Cable TV violated the Fair Trade Law by conducting frequent joint operations without filing a pre-merger notification to the FTC as required by law

Key Word(s): Joint management, cable TV

Reference: Fair Trade Commission Decision of August 6, 2014 (the 1187th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 103098

Industry: Cable and Other Subscription Programming (6022)

Relevant Law(s): Article 11(1) of the Fair Trade Law

Summary:

1. The FTC received from the National Communications Commission (hereinafter referred to as NCC) on Aug. 1, 2013 a copy of sanction notice indicating that Hualien Cable TV Network (hereinafter referred to as HL Cable TV) and Tung Tai Cable TV Corp. (hereinafter referred to as TT Cable TV), the two being controlling and affiliate companies in terms of their mutual relationship, together were in possession of 49% of the shares of Tong Ya Cable TV Co., Ltd. (hereinafter referred to as TY Cable TV). The FTC launched an investigation and found out that HL Cable TV and TT Cable TV were respectively the sole cable TV service provider in the Hualien area of Hualien County and the Yuli area of Hualien County. The cable TV services provided

by each company accounted for over one quarter of the market share but had never filed a pre-merger notification to the FTC as required by law. The conduct was in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) HL Cable TV, TT Cable TV, and TY Cable TV procured domestically produced programs from Zhong Du International Co., Ltd. and acquired foreign programs in accordance with the joint procurement agreement they had entered into. At the same time, a team of personnel was in charge of the three enterprises' channel operation, business promotion and production work. Apparently, the three enterprises were under joint management in terms of channel operation and business promotion. In addition, the organizational charts of the three companies showed that their vice general managers, managers and directors had rotated among the three companies whereas certain vouchers, remittance receipts and deposit notices also showed the same with the accountants and handling personnel. These were indicated in the NCC's administrative inspection records.

(2) HL Cable TV and TT Cable TV also acknowledged in their statements presented at the FTC that TY Cable TV was a smaller cable TV system and therefore HL Cable TV provided personnel and accounting support while TT Cable TV provided technical assistance. HL Cable TV also confessed that it had neglected the regulations provided by the Fair Trade Law on the filing of pre-merger notifications. This was clearly indicated in the FTC's statement records.

3. Grounds for disposition:

(1) With the cable TV industry, the provisions regarding "joint operation" set forth in Article 6(1)(iv) of the Fair Trade Law include but are not limited to consolidation of program purchases, signal reception and transmission, network installation, customer service, as well as administrative, personnel and financial operations necessary for business management.

(2) The FTC's investigation revealed that the administrative, personnel and financial operations of HL Cable TV, TT Cable TV and TY Cable TV were

consolidated. Therefore, it was reasonable to conclude that the frequent joint operations of the three enterprises between Dec. 2011 and 2013 met the merger description specified in Article 6(1)(iv) of the Fair Trade Law. In addition, the three companies respectively accounted for over one quarter of the share of the cable TV service market in the Hualien area of Hualien County, the Taitung area of Taitung County, and the Yuli area of Hualien County, whereas none of the exemption provisions in the subparagraphs of Article 11-1 of the Fair Trade Law was applicable. Consequently, they were required to file a merger notification with the FTC. As they have never did so and thus the conduct at issue was in violation of Article 11(1) of the Fair Trade Law. Acting according to Article 36 of the Enforcement Rules of Fair Trade Law, the FTC took into consideration the facts that HL Cable TV, TT Cable TV, and TY Cable TV had engaged in the unlawful conduct for as long as two years and they respectively had about 49,000, 23,000 and 13,000 subscribers in the Hualien area of Hualien County, the Taitung area of Taitung County, and the Yuli area of Hualien County. The sizes of these markets were smaller than those in metropolitan areas, and further decided that the offenders had made corrections and also cooperated throughout the investigation. Therefore, the FTC applied Article 40 (1) of the Fair Trade Law and imposed an administrative fine of 1 million NT dollars (the same currency applies hereinafter) on HL Cable TV, 500,000 on TT Cable TV, and 300,000 on TY Cable TV.

Appendix:

Hualien CATV Corporation's Uniform Invoice Number: 16449841

Tung Tai Cable TV Corporation's Uniform Invoice Number: 97177762

Tong Ya Cable T.V. Co. Ltd.'s Uniform Invoice Number: 16080958

Summarized by Chen, Ching-Yi; Supervised by Kuo, An-Chi

3.2 Non-Prohibited Cases

Yuanta Financial Holdings & New York Life Insurance Taiwan Corporation

1035th Commissioners' Meeting (2013)

Case: Yuanta Financial Holdings filed a pre-merger notification regarding its intention to acquire 100% issued shares of New York Life Insurance Taiwan Corporation

Key Word(s): Conglomerate, personal insurance market

Reference: Fair Trade Commission Decision of August 7, 2013 (the 1035th Commissioners' Meeting)

Industry: Personal Insurance (6510)

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

Summary:

1. The FTC received in July, 2013, a pre-merger notification from Yuanta Financial Holding Co. Ltd. (hereinafter referred to as Yuanta Financial Holdings) regarding its intention to acquire 100% issued shares of New York Life Insurance Taiwan Corporation (hereinafter referred as New York Life). The intended merger met the description set forth in Article 6(1)(ii) of the Fair Trade Law. Before the merger, Yuanta Financial Holdings operated in securities and banking business through its subsidiaries, namely Yuanta Securities, Yuanta Commercial Bank and Yuanta Futures, but did not directly engage in personal insurance business. New York Life, on the other hand, was a personal insurance company and did not engage in securities and banking business. Hence, there was no overlap of business items between the two merging parties. The relationship between the two companies was neither horizontal nor upstream-downstream. Therefore, it was a conglomerate merger.

2. Yuanta Financial Holdings intended to enter the personal insurance market through the merger. Since there were other large personal insurance companies and

New York Life did not have a significant proportion of the personal market share, Yuanta Financial Holdings and New York Life would not obtain enough market power through the merger to raise insurance premiums or impede or eliminate other competitors from contesting in the market. In other words, competition in the personal insurance market would not be weakened as a result of the merger. Meanwhile, as far as vertical restraints in the market competition are concerned, Yuanta Financial Holdings might be able to create vertical foreclosure through its subsidiaries Yuanta Life Insurance Agency and Yuanta International Insurance Brokers, yet the after-merger entity accounted only for a limited proportion of the insurance intermediary service market share. If vertical foreclosure was adopted as a strategy, Yuanta Financial Holdings would have to sacrifice the profits from other insurance products it was originally marketing and New York Life would also have to forgo its profits from the products it was selling through other channels. As both merging parties did not occupy any significant amount of the personal insurance market share, objectively speaking, it would not be easy for them to block off their competitors. Therefore, the FTC found it difficult to conclude that the merging parties would have the incentive or capacity to bring forth market foreclosure by investing in the upstream market and expanding downstream sales channels after the merger.

3. Grounds for disposition

The FTC believed that the potential competition restrictions from the merger between Yuanta Financial Holdings and New York Life Insurance would be limited and thus there shall no significant concern on competition restrictions at all. Therefore, acting according to Article 12(1) of the Fair Trade Law, the FTC did not prohibit the merger.

Appendix:

Yuanta Financial Holdings' Uniform Invoice Number: 70796749

New York Life Insurance Taiwan Corporation's Uniform Invoice Number: 80329815

Summarized by Tsai, Jing-Hui; Supervised by Liao, Hsien-Chou

Taiwan Depository, Clearing Corporation and Taiwan Integrated Shareholder Service Company

1055th Commissioners' Meeting (2013)

Case: TDCC filed a Pre-merger notification regarding its intention to merge with TISSC

Key Word(s): Horizontal merger, shareholder electronic voting service, overall economic benefit

Reference: Fair Trade Commission Decision of December 25, 2013 (the 1055th Commissioners' Meeting)

Industry: Other Securities (6619); Data Processing, Hosting and Related Services (6312)

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

Summary:

1. Taiwan Depository & Clearing Corporation (hereinafter referred to as TDCC) intended to merge with Taiwan Integrated Shareholder Service Company (hereinafter referred to as TISSC), after which TDCC will become the surviving company. The condition met the description set forth in Article 6(1)(i) of the Fair Trade Law. Moreover, the post-merger capacity of both companies would meet the merger filing threshold specified in Subparagraphs 1 and 2, Paragraph 1, Article 11(1) of the Fair Trade Law while the exemption provisions prescribed in Article 11-1 of the same law were inapplicable. Therefore, TDCC and TISSC filed a pre-merger notification to the FTC.

2. Competition restriction analysis: Since both merging parties, TDCC and TISSC, provided shareholder electronic voting platform service, the merger would be a horizontal one. After the merge, TDCC would become the only firm providing the above service in the relevant market. However, as TDCC's service charge standards would still require the approval of the Financial Supervisory Commission (hereinafter referred to as FSC) as stipulated in the Regulations Governing Centralized Securities

Depository Enterprises, TDCC would not be able to obtain any power to raise its service charges or limit its output through the merger.

3. Overall economic benefit assessment:

(1) The industry (shareholder electronic voting platform service) involved in this case had the characteristics of economies of scale and the market was limited since market demand depended on the applicable range of electronic voting defined by the FSC. In countries with mature capital market, there would be usually only one electronic voting platform operation. Under such circumstances, the FTC believed that it would be economically efficient to have only one business to provide the service in the market.

(2) As the electronic voting platform operated by TISCC had not yet passed information system certification as required by the law, the company would have had to withdraw from the shareholder electronic voting platform service market whether it merged with TDCC or not. In other words, the merger would not increase additional negative effects on market competition.

(3) The merger could provide public companies and investors with safer and more convenient electronic voting platform service and this would have a positive effect on industrial development.

(4) The FSC, the regulatory authority in charge of the oversight of the financial industry, believed the merger would facilitate achieving goals of financial supervision policy and the existed proper price supervision mechanisms in order to prevent excessive pricing and anti-competition practices.

4. Based on the abovementioned considerations, the FTC concluded that the overall economic benefit of the merger between TDCC and TISCC would be greater than disadvantages brought by the competition restrictions thereof incurred. Therefore, the FTC acted according to Article 12 (1) of the Fair Trade Law and did not prohibit the merger.

Appendix:

Taiwan Depository & Clearing Corporation's Uniform Invoice Number: 23474232

Taiwan Integrated Shareholder Service Company's Uniform Invoice Number:
27545547

Summarized by Tsai, Jing-Hui; Supervised by Liao, Hsien-Chou

Easycard Corporation & DDPowers Corporation.

1169th Commissioners' Meeting (2014)

Case: Easycard Corporation filed a pre-merger notification to the FTC regarding the intention of 8 companies to jointly invest in and operate the bonus points business of DDPowers Corporation

Key Word(s): Conglomerate merger, bonus points, micro payment

Reference: Fair Trade Commission Decision of April 2, 2014 (the 1169th Commissioners' Meeting)

Industry: (6399)

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

Summary:

1. DDPowers Corporation intended to raise capital and 8 companies, including Easycard Corporation, Chunghwa Telecom, Taiwan FamilyMart Co., Ltd., Itochu Taiwan Corporation, Itochu Corporation, Senao International Co., Ltd., MiTAC Information Technology Corporation, and Fubon Financial Holding Co., Ltd., intended to jointly invest in and operate DDPowers Corporation. The intended merger met the description set forth in Article 6(1)(iv) of the Fair Trade Law. Chunghwa Telecom met the description set forth in Article 11(1)(ii) of the Fair Trade Law by having more than one fourth of the telecommunication market share, and did not meet

any of the exemptions set forth in Article 11-1 of the same law. Hence, the companies filed a pre-merger notification to the FTC.

2. Findings of the FTC after investigation:

The companies involved in the merger each provided different products and services, and although they would be jointly operating the bonus points business, it would be within the scope of their respective markets. Since the merger did not involve horizontal or vertical competition, it met the description of a conglomerate merger. The companies were in different markets, including telecom carrier, chain convenience store, micro-payment tools, 3C product distribution, and venture capital, where they each had market competitors. The payback rate of bonus points was currently quite low and could be easily replaced by other methods of competition. Moreover, bonus points did not create an entry barrier to the market. Hence, bonus points would not restrict competition in the telecom, chain convenience store, micro-payment tool, and 3C product distribution markets within the foreseeable future. The companies involved would possibly conduct joint marketing in the future, which would increase efficiency on the supply side and achieve economies of scale in satisfying consumer demand. Also, the companies involved would be expanding the scope of their business through joint investment, and would be sharing research and development and production cost, gaining economies of scope and further increasing their overall economic benefits. However, since the companies would be jointly investing in and operating the bonus points business, a “two-sided market,” in which Chunghwa Telecom would be the leader of the telecom market, while Easycard Corporation has issued 42 million Easycards, which would make it the largest issuer of electronic stored value cards, the “network effects” of a “two-sided market” in this case creates the possibility for DDPowers Corporation to gain a monopoly over the bonus points market. In the long-term, the companies involved in the merger and other companies that may join in the future might engage in restrictive or unfair competition, such as concerted action, boycotting, differential treatment, and vertical restriction, which may result in restrictive competition in the telecom, chain convenience store, micro-payment, and 3C product distribution markets.

3. Grounds of disposition:

After careful consideration of the aforementioned factors, the FTC believed that the overall economic benefits of this merger would be greater than the disadvantages from market competition restriction. However, to eliminate potential competition restriction and ensure the overall economic benefits, the FTC acted in line with Article 12(2) of the Fair Trade Law and attached the following conditions but did not prohibit the merger:

- (1) All companies participating in the merger may not impel franchisers to cut off supply, purchase or conduct other transactions to harm a specific company.
- (2) All companies participating in the merger may not impose improper conditions to restrict franchisers of DDPowers Corporation to deal exclusively with them.
- (3) When conducting joint marketing, all companies participating in the merger and franchisers may not restrict the freedom of consumers to choose individual products.
- (4) All companies participating in the merger may not obtain the personal information and transaction records of members of DDPowers Corporation.
- (5) DDPowers Corporation may not reject the franchise application of companies other than those participating in the merger without proper cause.
- (6) DDPowers Corporation may not give differential treatment, collect improper management fees, or conduct other transactions in terms of its bonus point services to companies not participating in the merger without proper cause.
- (7) DDPowers Corporation shall submit its directions for collecting, handling, and using the personal information and transaction records of its members to the FTC one month before recruiting members, and shall announce the directions on its website before the directions take effect.
- (8) DDPowers Corporation shall submit its directions for recruiting franchisers to operate its bonus points business to the FTC one month before recruiting franchisers, and shall announce the directions on its website before the directions take effect.
- (9) DDPowers Corporation shall provide the following information to the FTC before the end of March every year within five years after this merger is completed:

its revenue in the previous year, number of members, amount of bonus points redeemed and ratio, number and name of franchisers, and new businesses not recorded in the declaration statement.

Appendix:

Easycard Corporation's Uniform Invoice Number: 28988941

DDPowers Corporation's Uniform Invoice Number: 53340231

Summarized by Jan, Lih-Ling; Supervised by Kuo, An-Chi

Financial Information Service & 2 other companies

1182nd Commissioners' Meeting (2014)

Case: Financial Information Service and two other companies filed a pre-merger notification regarding their intention to jointly manage a payment service

Key Word(s): TSM platform, conglomerate merger, financial institution

Reference: Fair Trade Commission Decision of July 2, 2014 (the 1182nd Commissioners' Meeting); Disposition Kung Jie Tzu No. 103003

Industry: Other Activities Auxiliary to Financial Service Activities (6639)

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

Summary:

1. Financial Information Service Co., Ltd., National Credit Card Center of R.O.C. and the Taiwan Payments Clearing System Development Foundation intended to set up a joint venture named Taiwan Mobile Payment Co. (hereinafter referred to as the new enterprise) to operate a payment service provider trusted service manager ("PSP TSM"). The above plan met the merger description of "an enterprise operates jointly

with another enterprise on a regular basis” set forth in Article 6(1)(iv) of the Fair Trade Law as each of the merging parties also accounted for one quarter of the share of the relevant market. Therefore, the said businesses filed a merger notification with the FTC.

2. Analysis of potential competition restrictions and effects on the overall economy:

(1) The focus of analysis of the effects of potential competition restrictions in this case: The new enterprise intended to provide PSP TSM services. There would be no overlaps with the interbank payment settlement (clearing) operations, credit card transaction processing and check clearing, and settlement services of the merging enterprises. Therefore, it was a conglomerate merger. In addition, none of the merging parties had planned for cross-industry development to operate a trusted service manager (hereinafter referred to as “TSM”) on its own. Consequently, significantly potential competition among the merging enterprises would be unlikely because the merger would not lessen potential competition among the merging enterprises. Furthermore, the new enterprise would provide PSP TSM services through a membership system to banks, credit card issuers, and other financial institutions. Since the merging enterprises had had close business relations with financial institutions over the years and the new enterprise intended to offer stock options to financial institutions, if the new enterprise restricted its members from using the services of other TSM platforms, it could make other TSM platforms unable to attract enough service providers (especially financial institutions) to join them. In turn, this would cause foreclosure or exclusion to other TSM platforms and weaken competition in the market. Meanwhile, as the merging parties all accounted for a significant percentage of the share of the relevant market, if they used their market power to force their trading counterparts to join the PSP TSM operated by the new enterprise or use its services so that the new enterprise can increase its market share, it could cause foreclosure or exclusion to other TSM platforms and weaken competition in the market.

(2) Overall economic benefit assessment: Once the new enterprise was set up, the

number of TSM platform operators in the market would increase from 3 to 4. The new enterprise would start to compete with existing operators in terms of content, quality and price of service. It could help check and balance the powers of other operators and prevent any specific competitor from monopolizing the market, thus increasing the benefits for consumers.

3. After evaluating the abovementioned factors, the FTC acted according to Article 12(2) of the Fair Trade Law and approved the merger with the following conditions attached to ensure that the overall economic benefit would outweigh potential disadvantages resulting from the competition restrictions thereof incurred:

(1) The new enterprise may not restrict service providers from joining other TSM platforms or using their services.

(2) The enterprises in the merger may not force their trading counterparts to join the TSM platform operated by the new enterprise or use its services.

(3) Before starting its operation, the new enterprise is required to present to the FTC the templates of the contract to be entered into between the new enterprise and the service providers, as well as provide the FTC with related documents of the said contracts. The new enterprise is also required to provide the FTC with the following information by the end of March each year for five years: the list of shareholders, the sales in the preceding year, the number and names of collaborating service providers, and new business items not registered in the original declaration statement.

Appendix:

Financial Information Service Co., Ltd.'s Uniform Invoice Number: 16744111

National Credit Card Center of R.O.C.'s Uniform Invoice Number: 01508949

Taiwan Payments Clearing System Development Foundation's Uniform Invoice Number: 15578682

Taiwan Mobile Payment Co.'s Uniform Invoice Number: 54390700

Summarized by Yang, Chung-Lin; Supervised by Liao, Hsien-Chou

BASF Taiwan & Taiwan Sheen Soon

1203rd Commissioners' Meeting (2014)

Case: BASF Taiwan filed a pre-merger notification regarding its intention to acquire the main business operations and assets of Taiwan Sheen Soon

Key Word(s): Thermoplastic polyurethane (TPU), polyurethane (PU)

Reference: Fair Trade Commission Decision of November 26, 2014 (the 1203rd Commissioners' Meeting)

Industry: Manufacture of Synthetic Resin and Plastic Materials (1841)

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

Summary:

1. BASF Taiwan Ltd. (hereinafter referred to as BASF Taiwan) intended to acquire the thermoplastic polyurethane business operations and assets of Taiwan Sheen Soon Co., Ltd. (hereinafter referred to as Taiwan Sheen Soon). The condition met the merger description specified in Subparagraph 3 of Paragraph 1 of Article 6 of the Fair Trade Law. At the same time, BASF Taiwan accounted for over one quarter of the UV protection agent market and the electronic grade H₂O₂ market of Taiwan in 2013 while in the preceding fiscal year BASF Taiwan and Taiwan Sheen Soon both exceeded the sales merger-filing threshold announced by the FTC. The intended acquisition was therefore subject to Subparagraphs 2 and 3 of Paragraph 1 of Article 11 of the Fair Trade Law and BASF Taiwan was required to file a merger notification with the FTC.

2. The merger was a horizontal one. The product market affected would be the polyurethane (PU) market while the geographic market would be the domestic market of Taiwan. Therefore, the considerations were as follows:

(1) The unilateral effect: Since there were other competitors in the domestic PU market, such as Bayer Utechllan and Headway, and the merging parties would increase their market share by only 3.75% after the merger, the effect on the domestic PU market was therefore limited. Furthermore, the merging parties had yet to face

competition from other competitors in price, quality, service or other transaction conditions. They would be unable to raise product or service prices unilaterally without being constrained by the competition in the market.

(2) The coordinated effect: There were 523 PU importers and suppliers in the market of Taiwan. The market competition was fierce and the merging parties did not have a high market share percentage. No significant change would occur to the domestic PU market structure after the merger. Hence, the merger would not lessen the current competition in the market and would not lead to any coordinated effect.

(3) Ease of market entry: There were no regulations in Taiwan to restrict entry to the market at issue and neither was there any obstruction to access to raw material sources or tariff barriers. Any trading company could import PU products from overseas and bring competitive pressure on existing businesses. In other words, new competitors could enter the market any time and the merger would not have any influence on the ease of market entry.

(4) Countervailing power: The competition in the domestic PU market was fierce and the trading counterparts of BASF Taiwan and Taiwan Sheen Soon were all multinational businesses with powerful price-negotiating abilities. They could exercise strong countervailing power against the two merging enterprises to prevent them from raising product prices. Viewed from this aspect, the merger was unlikely to weaken the market competition to any significant degree.

(5) After considering the above mentioned, the FTC therefore acted according to Article 12(1) of the Fair Trade Law and decided not to prohibit the merger.

Appendix:

BASF Taiwan Ltd.'s Uniform Invoice Number: 23930512

Taiwan Sheen Soon Co., Ltd.'s Uniform Invoice Number: 16060236

Summarized by Tsai, Tsung-Yung; Supervised by Lin, Gin-Lan

3.3 Judicial Case

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

Supreme Administrative Court (2013)

Case: Supreme Administrative Court overruled administrative litigation filed by Uni-President over the FTC's decision

Key Word(s): Overall economic benefit, instant noodles, market concentration

Reference: Supreme Administrative Court Judgment (2013) Pan Tzu No. 500

Industry: Noodle Manufacturing (0892)

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

Summary:

1. The appellant (Uni-President Enterprises Corporation) filed a pre-merger notification with the appellee (FTC) twice in 2008 and 2010 respectively regarding its intention to merge with Wei Lih Food Industrial Co., Ltd. (hereinafter referred to as Wei Lih Foods) through indirect holding of over one third stocks of Wei Lih Foods. Acting according to Article 12 (1) of the Fair Trade Law, the appellee prohibited the merger on the grounds that disadvantages from competition restrictions thereof incurred could outweigh the overall economic benefit and informed the appellant of the decision via Decision Kung Jie Tzu No. 097005 dated September 10, 2008 and Decision Kung Jie Tzu No. 099003 dated September 8, 2010 respectively. Finding the decision unacceptable, the appellant appealed and filed administrative litigation. Both were overruled and the appellant therefore appealed to the Supreme Administrative Court.

2. The Fair Trade Commission Disposal Directions (Guidelines) on Handling Merger Filing established by the appellee by making reference to practices and

precedents of competition authorities of different countries are a reasonable interpretation of the concept of market specified in Article 11 of the Fair Trade Law achieved in accordance with the statutory authority conferred on the appellee. There is no inconsistency with the merger regulations set forth in the same law or any fabricated stipulation to restrict people from exercising their rights. Hence, the said guidelines are in compliance with the principle of legal reservation. In the meantime, the merger being a horizontal one, it would reduce the number of businesses in the current market. Besides eliminating existing competition, it could also increase market concentration. If an enterprise obtained market power through such a merger, it could become capable of raising prices above normal competitive price levels and the interests of consumers would thus be jeopardized. At the same time, such an enterprise could also use its market power to suppress market competition inappropriately. After analyzing the competitiveness of the appellant, the unilateral and coordinated effects, ease of entry and countervailing power in the market after the merger, the appellee concluded that the merger could lead to competition restrictions and create significant disadvantages. Furthermore, being the first and second largest businesses in the instant noodle market, the two enterprises involved were the main competitors. After the merger, the appellant could claim over 65% of the market share and pressure from its principal competitor would no longer exist. Market concentration would increase and unilateral effects resulted from its capacity to adjust product prices could not be ruled out. Therefore, the appellee's decision according to Article 12 (1) to prohibit the merger was legally sound.

3. Grounds for disposition:

Combining the above, the appellee believed the pressure from competition between the merging parties would cease to exist, market concentration would grow more significant, and unilateral effects resulted from the capacity to adjust product prices could not be ruled out. Likely disadvantages from competition restrictions thereof incurred would outweigh the overall economic benefit. Hence, the merger prohibition decision was legally well-grounded. The appeal was filed with the same argument previously presented to contest the original decision as legally unsound and

request the decision be discarded. The appellee found the argument unjustifiable and the appeal had to be overruled.

Appendix:

Uni-President Enterprise's Uniform Invoice Number: 73251209

Summarized by Lai,Chia-Ching; Supervised by Ren,Han-Ying

Chapter 4

Concerted Action

5 LPG Stations in the Greater Taipei Area

1108th Commissioners' Meeting (2013)

Case: Private LPG stations for autos in greater Taipei area violated the Fair Trade Law by joint cancellation of discounts for cash payments

Key Word(s): LPG station, LPG for autos, discount for cash payments

Reference: Fair Trade Commission Decision of January 30, 2013 (the 1108th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102016

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

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

Summary:

1. The FTC received complaints from private individuals about joint cancellation of discounts for cash payments by five private LPG stations effective from April 2, 2011 in the greater Taipei area. However, the result of the FTC investigation revealed that 10 other private LPG stations had also participated and therefore the FTC decided to extend its investigation.

2. Findings of the FTC after investigation:

There were 15 private LPG stations in the greater Taipei area and 13 of them had offered discounts for payments made in cash before Apr. 1, 2011. The investigation revealed that the operators of 10 private LPG stations had attended a meeting held by the LPG Station Association on March 22, 2011. When having a meal together, some operators proposed that all the LPG stations cancelled the discounts for cash payments and none of the others objected to the proposal. Afterwards, except for one station that continued to give discounts for cash payments, the remaining 9 stations cancelled the discounts effective from April 2011. Apparently, the cancellation was

the result of the mutual understanding established by the said LPG station operators. Therefore, the FTC concluded that the said 9 operators were responsible for the conduct in question.

3. Grounds for disposition:

The private LPG station operators met and established the mutual understanding to cancel the discounts for cash payments. It was a concerted action to not engage in price competition. As the said 9 LPG stations accounted for 64.7% of the auto LPG sold in the greater Taipei area, the cancellation of discounts of NT\$1-2 per liter effective from Apr. 2011 had affected the supply-demand function of the auto LPG retail market in the greater Taipei area and was in violation of the regulation against concerted actions set forth in Article 14(1) of the Fair Trade Law. Acting according to the first section of Article 41(1) of the Fair Trade Law, the FTC ordered the said parties to immediately cease their unlawful act and also imposed on them administrative fines ranging from NT\$100,000 to NT\$360,000. The fines totaled to NT\$2.06 million.

Appendix:

Liu Tong Development Co., Ltd.'s Uniform Invoice Number: 70378082

Rui Shan Autos LPG Filling Station Co., Ltd.'s Uniform Invoice Number: 16330442

Greater Taipei Filling Station Co., Ltd.'s Uniform Invoice Number: 28772597

Sure Service Station Co., Ltd.'s Uniform Invoice Number: 22745790

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

Taipei Bar Association

1112nd Commissioners' Meeting (2013)

Case: Taipei Bar Association was complained for violation of the Fair Trade Law for issuing notices requesting members “to charge consultation fees according to established rates”

Key Word(s): Legal consultation service, fee standard, Bar Association

Reference: FairTrade Commission Decision of February 27, 2013 (the 1112nd Commissioners' Meeting)

Industry: Professional Associations (9422)

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

Summary:

1. The FTC had decided that the Taipei Bar Association had violated Article 14(1) of the Fair Trade Law for printing and issuing notices to request its “members to charge consultation fees according to established rates” and ordered the association to cease the unlawful act via Disposition Kung Ch'u Tzu No. 100016 dated February 18, 2011. The Taipei Bar Association found the decision unacceptable and filed an appeal to the Executive Yuan. The Executive Yuan revoked the above original sanction and instructed the FTC to make a more appropriate decision.

2. Findings of the FTC after investigation:

During the investigation conducted by the FTC, the Taipei Bar Association contested that the issuance of the notices had been legally justifiable and thus it had not been a concerted action as described in the Fair Trade Law. At the same time, the association had stopped actively issuing the notices after the board of directors and supervisors had made decision against it in a meeting held on December 9, 2010.

3. Grounds for disposition:

After further examination and analysis, the FTC concluded that, according to the

findings of its previous investigation, since the lawyers interviewed had all concurred that the consultation fee to be charged depended on the complexity of each case and other considerations, it was therefore difficult to prove whether the said notices had really affected the consultation fees to be collected by lawyers. Meanwhile, according to the statement offered by the Taipei Bar Association, its board of directors and supervisors had decided against active issuance of the said notices. This meant the association had rectified its conduct and there was no need to impose any sanction. Moreover, as set forth in the Attorney Regulation Act, bar associations may establish its standards of consultation fees to be collected. As the notices issued by the Taipei Bar Association did not contain either the bottom or upper limit of consultation fees to be collected, the conduct in question therefore did not violate the Attorney Regulation Act and it would be inappropriate to consider the conduct in violation of the Fair Trade Law. In other words, based on available evidence, it was difficult to conclude that the Taipei Bar Association had violated Article 14(1) of the Fair Trade Law and the FTC therefore decided not to impose any further sanction on Taipei Bar Association.

Summarized by Tsai,Jing-Hu; Supervised by Liao,Hsien-Chou

Lifting Service Operators in Hualian County

1115th Commissioners' Meeting (2013)

Case: Lifting service operators in Hualian County violated the Fair Trade Law
for joint price increase

Key Word(s): Concerted action, market supply and demand, price increase

Reference: Fair Trade Commission Decision of March 20, 2013 (the 1115th
Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102039

Industry: Rental and Leasing of Other Transport Equipment (7729)

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

Summary:

1. The FTC received from private individuals complaints about the lifting service operators in Hualian County jointly raising the charge from NT\$2,000 per hour to N\$2,500 due to gasoline price increase. However, after the gasoline price fell back down to around NT\$32 per liter, the above-mentioned lifting service operators did not reduce the charge rates back to the original standards. The informers believed that the above conduct was in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

The result of the FTC's investigation showed that 8 lifting service operators in Hualian County, namely San Tong Lifting Engineering Co., Ltd., Tong Jie Mechanical Engineering Co., Ltd., Chang Xiong Mechanical Engineering Co., Ju Ye Lifting Engineering Co., Ltd., Dong Jian Transport Enterprise Co., Ltd., Da Tong Lifting Engineering Co., Hong Wei Lifting Engineering Co. and Da Xiong Mechanical Engineering Co., had met in a hotel in April 2012 to discuss ways to cope with the rises of fuel, tire, engine oil and hydraulic oil prices. During that meeting, they reached a consensus to raise the first hour charge for cranes with the capacity of lifting up to 25 tons to NT\$2,000 and NT\$1,200 per hour from the second hour onward, as well as the first hour charge for cranes with the capacity of lifting up to 45 tons to NT\$4,000 and NT\$2,000 per hour from the second hour onward, effective from early May.

3. Grounds for disposition:

It would have been justifiable if the 8 operators involved in the concerted action had acted independently to adjust their prices according to their own costs, the supply and demand of the market, and their own management strategies. Instead, they had chosen to make price decisions together and the conduct caused other competitors to follow suit. The number of cranes owned by the 8 operators in concern accounted for at least 74% of the total number of cranes in Hualian County. As a result, their joint price increase decision and restriction on the business activity of one another were able to

affect the supply-demand function of the lifting service market in Hualian County. The said conduct was in violation of Article 14(1) of the Fair Trade Law. In addition to ordering the said operators to cease their unlawful act, the FTC also imposed an administrative fine of NT\$200,000 on each of San Tong Lifting Engineering Co., Ltd. and Tong Jie Mechanical Engineering Co., Ltd., 150,000 on Chang Xiong Mechanical Engineering Co., and 50,000 on each of Ju Ye Lifting Engineering Co., Ltd., Dong Jian Transport Enterprise Co., Ltd., Da TongLifting Engineering Co., Hong Wei Lifting Engineering Co., and Da Xiong Mechanical Engineering Co.

Appendix:

San Tong Lifting Engineering Co., Ltd.'s Uniform Invoice Number: 94744665
Tong Jie Mechanical Engineering Co., Ltd.'s Uniform Invoice Number: 23687636
Chang Xiong Mechanical Engineering Co.'s Uniform Invoice Number: 70957189
Ju Ye Lifting Engineering Co., Ltd.'s Uniform Invoice Number: 94810539
Dong Jian Transport Enterprise Co., Ltd.'s Uniform Invoice Number: 94814599
Da TongLifting Engineering Co.'s Uniform Invoice Number: 2098310
Hong Wei Lifting Engineering Co.'s Uniform Invoice Number: 08145134
Da Xiong Mechanical Engineering Co.'s Uniform Invoice Number: 92093498

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

3 Turkey Businesses

1125th Commissioners' Meeting (2013)

Case: Turkey sellers violated the Fair Trade Law by engaging in concerted action

Key Word(s): Concerted action, discontinuation of supply, turkey

Reference: Fair Trade Commission Decision of May 29, 2013 (the 1125th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102098, No. 102099 and No. 102100

Industry: Wholesale of Meat and Meat Products (4542)

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

Summary:

1. A private citizen filed a complaint on July 24, 2012 to the FTC about receiving a letter from the R.O.C. Turkey Association (hereinafter referred to as ROTCA) stating that "To adjust turkey production and marketing order, the association has accepted the suggestion regarding its supply from a number of turkey businesses and the majority of the members of the board of directors of the association have accordingly decided to discontinue supply of turkey poult to your farm temporarily. If there is a need for turkey poult, please contact us by phone and the supply will be resumed if the association approves your request." The complainant believed such conduct was in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

The FTC's investigation revealed that the complainant had distributed advertising flyers to many turkey rice venders around the country between May and July in 2012 to promote its turkey by offering prices lower than the market prices. As a result, some venders originally buying from the other five suppliers switched to the complainant. Some of the five suppliers lost two or three customers and their business operation was affected. To stop the complainant from engaging in price competition, the five suppliers requested the ROTCA to hold a meeting at Sin Gang Siang Yi

Cultural Center Garden Restaurant in Singang Township, Chiayi County on July 20, 2012 to discuss the issue. To maintain turkey prices, the attending turkey business representatives made the decision collectively to request turkey poult suppliers to stop supplying the complainant and the ROCTA would send a written notice dated July 24, 2012 to the complainant. Meanwhile, three suppliers met again at the end of July 2012 to discuss discontinuation of turkey poult supply to the complainant. Although they did not reach any conclusion during the said meeting, their intention to “discontinue turkey poult supply” to stop the complainant from engaging in price competition was beyond doubt.

3. Grounds for disposition:

(1) The mutual understanding achieved in this case was to request turkey poult suppliers to stop their supplies provided to the complainant, not setting a price restriction on one another. However, according to the statements from the ROCTA, the complainant and one of the suppliers, the case was triggered by the complainant’s price-cutting practice. The complainant had also been asked to consult and increase the prices according to the said turkey suppliers. Besides the turkey poult suppliers had also been requested to discontinue supplies provided to the complainant so that the complainant would have no product to sell eventually and this was aimed at forcing the complainant to negotiate and adjust its prices. The objective of such concerted action was to avoid price competition and the conduct met the description of jointly determining the price of goods or services in Article 7 (1) of the Fair Trade Law.

(2) According to the Council of Agriculture, the total output of ROCTA members accounted for at least 85% of domestic turkey production, whereas the ROCTA said that the annual demand was about 230 thousand turkeys and the five suppliers at issue accounted for about 32.87% of the market share. To stop their competitor from engaging in price competition and as a result jeopardizing their business, the five suppliers therefore decided to request turkey poult suppliers to discontinue their supplies provided to the complainant so that turkey prices could be maintained at original levels. However, the practice restricted the price competition and affected the

supply-demand function in the turkey market. It was a concerted action as described in Article 7 of the Fair Trade Law and in violation of Article 14(1) of the same law.

(3) Considering that the turkey poult suppliers did not actually discontinue their supplies provided to the complainant and the said practice was terminated without causing serious damage to the market while the five suppliers fully cooperated throughout the investigation and made no further effort to engage in similar conduct, the FTC acted according to the first section of Article 41(1) of the Fair Trade Law, ordered the said parties to immediately cease their unlawful conduct and also imposed an administrative fine of NT\$50,000 on each of them.

Summarized by Kuo, An-Chi; Supervised by Chiou, Shwu-Fen □

Waste Electronic & Electrical Equipment Disposal Businesses

1128th Commissioners' Meeting (2013)

Case: The Executive Yuan revoked the FTC's decision on domestic waste electronic and electrical equipment disposal businesses' concerted action by setting up of an operation center and instructed the FTC to come up with a more appropriate resolution

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

Reference: Fair Trade Commission Decision of June 19, 2013 (the 1128th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102096

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

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

Summary:

1. It was originated from that the FTC received phone calls from private

individuals complaining that the waste electronic, electrical and information equipment disposal businesses had offered different purchase prices before they set up a joint operation center and, after the center was set up, the disposal businesses met regularly to decide their rates for purchase prices. After a prior investigation, the FTC decided at the 1059th Commissioners' Meeting on February 22, 2012 that E&E Recycling Company (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 purchase prices 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 appealed to the Executive Yuan. The Executive Yuan revoked FTC's original decision. The FTC made a new decision at the 1092nd Commissioners' Meeting on October 3, 2012 and the offenders again found the new decision unacceptable and appealed. The Executive Yuan revoked the decision again on the grounds that the FTC had failed to provide in the disposition the basis of its decision and calculation of the administrative fines imposed, whether the reasonable profit and excessive profit from the unlawful act had been differentiated, whether the calculation of the profit obtained by the offenders in the 3-5 year period of time in question had exceeded the statute of limitations imposed upon the FTC's discretionary power, the total subsidies provided by the Recycling Fund Management Board (RFMB) in accordance with the environmental protection policy and whether it was appropriate to include this amount when calculating the business profit of the appellants, the respective administrative fines the FTC had imposed on the appellants, and the criteria applied when making the decision. In sequence, the case was presented during the 1121st Commissioners' Meeting to discuss the instruction from the Executive Yuan requesting "the FTC to come up with a more appropriate decision in accordance with the appeal decision."

2. Findings of the FTC after investigation:

- (1) The "table of percentages of subsidies received by domestic waste electronic

and electrical equipment disposal businesses from the RFMB” that the FTC compiled according to the ratios of subsidies E&E and the 12 other domestic waste electronic and electrical equipment disposal businesses (13 plants in total) received between 2003 and 2011 and the amounts each business obtained from 2005 to July 2011, indicated that each of the said businesses had been given more or less the same percentage of subsidy. Another finding of the FTC showed that some of the said businesses had opened an account under the name of “Joint Waste Electronic and Electrical Equipment Recycling and Disposal Management Team” at a bank in Pingtung. The FTC sent its staff members to the involved businesses to record their statements and also interview and attain the statements of the downstream trading counterparts (recycling plant operators) of the involved businesses. During the investigation, the FTC obtained 14 items of information, including meeting minutes of the said businesses.

(2) Meanwhile, acting according to the decision of the Executive Yuan, the FTC examined the annual business income tax return applications and annual waste electronic and electrical equipment capacity utilization rates of the offenders. In addition, the FTC initiated a legal procedure to acquire from the RMBF the subsidization details listed in related financial reports and its opinions.

3. Grounds for disposition:

(1) The Executive Yuan revoked the FTC’s original decision but the content of its decision indicated that the Executive Yuan had affirmed and supported the FTC’s conclusion with regard to the facts and confirmation of the said violation. The reason for the revocation was that the FTC had to review the approach and the basis of calculation of the administrative fines and also clarify whether it was appropriated to include the subsidies from the Environmental Protection Administration (EPA) in business profit calculation.

(2) The facts considered for the new disposition made by the FTC:

(i) Parties intending to enter the waste electronic and electrical equipment disposal market are required to apply to the EPA according to related regulations set by the EPA and pass written and on-site evaluation before they can begin the business of

dismantling waste electronic and electrical equipment generated in the country each year. Therefore, the product market in this case 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.

(ii) The result of the FTC investigation showed that there were 12 waste electronic and electrical equipment disposal businesses registered with the EPA, namely E&E, Hung Kung Recycling Company, HanLin Environmental Technologies Corporation, Chiu-Fa Environmental Protection & Engineering Company, Liuh-Jian Company, Perfect Recycling Company, FGD Recycling Industrial Company, Hong Chin Recycling Enterprise Corporation, Ke Bai Sheng Company, Rui Yuan Environmental Protection Company, Big South Resource Recycling Company and Da Chi Environmental Technologies Company. The above businesses first acquired the status to apply for subsidies from the EPA before they started to collect waste electronic and electrical equipment both on their own and from recycling plants and 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 points of time), 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 implementation of the above agreement, each business turned in a check or promissory note for NT\$3,000,000 as the guarantee deposit. Although Hung Kung Recycling Company and HanLin Environmental Technologies Corporation claimed that they had never signed the agreement or participated in the allocation of recycling and disposal work, the result of the FTC investigation revealed that they had indeed entered the negotiations, filled out daily recycling reports, made adjustments to their inventories, and shared the expenses of Guo Meng Recycling Co., Ltd. In fact, Hung Kung joined the “joint waste electronic and electrical equipment recycling and disposal” operation at the latest in April 2011 and HanLin in September of the same

year. There was no doubt that the two businesses participated in the concerted action.

(iii) 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 breaches 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 an operation center under it. Also specified in these regulations were the rate for the purchase prices for recyclable objects, establishment of inventories and daily reports, work allocation 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 of the council. The management team meeting was convened each month and meeting minutes were taken every time. During these meetings, the businesses discussed and determined the purchase prices. At the same time, the council of signees, the highest decision-making body, met quarterly to discuss important issues, such as recruitment of new members, work allocation ratios, handling of violations by the members, and so forth. The operation center under the management team was responsible for the execution of the decisions made at team meetings and enforcement of management regulations. It also presented business reports to the management team on a regular basis and was in charge of allocation of recycling and disposal work among the plants, accounting, custody of documents of the management team, and general affairs.

(iv) 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 allocation 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.

(3) Factors considered in determination of new administrative fines:

(i) The gross profit is the amount acquired after subtracting management costs from net business income which is obtained after deducting goods returned and discounts given from total sales. Since E&E and the other offenders listed the subsidies from the RFMB as part of business income, the subsidies therefore had to be included in business profit calculation. However, due to the source and nature of the subsidies, the FTC regarded the subsidies as an important factor in consideration of penalty reduction.

(ii) The concerted action was achieved through negotiations and meetings among the offenders and decisions were made with regard to the ratios of work distribution (allocation ratios) agreed upon. Each plant then carried out the recycling and disposal work accordingly. The businesses also agreed to adopt the purchase prices determination mechanism approved by the management team to ensure the consistency of their purchase prices for waste electronic and electrical equipment. After the disposal of waste electronic and electrical equipment was done, the businesses applied to the EPA for subsidies whose amount were decided according to the quantities processed in compliance with established criteria. Every one of the businesses admitted that the subsidies had been considered and listed as part of its business income. As mentioned earlier, except for E&E's Taipei Plant, the amount (ratio) of recyclable objects to be processed was evenly distributed among the plants. Hence, with the exception of E&E (which had two plants and its Taipei Plant was given a larger proportion), the subsidies each plant received from the EPA were more or less the same. Meanwhile, after treatment, some of the recycled objects were reusable and sold, and the income was also listed as part of business revenue. As the businesses had agreed to share the allocation management expenses, this cost for each

plant was generated as a result of the concerted action and was therefore considered illegitimate. Therefore, the FTC's adoption of the revenue of each business from disposal of waste electronic and electrical equipment as a standard for fine determination was legally justifiable. The participants in the concerted action purchased waste electronic and electrical equipment, allocated the disposal work, and then applied to the RFMB for subsidies. Their earnings could not be separated from the concerted action and therefore there was no need to differentiate the excessive profit from their illegal conduct and their reasonable profit.

(iii) After assessing the length of participation of each offender in the concerted action, its role in the concerted action, the ratio of disposal work it was allocated, its cooperation with the FTC during the investigation, the amount of information it provided, the profit it made, and its business scale and size of capital, the FTC acted according to the first section of Article 41(1) of the Fair Trade Law, ordered the said businesses to cease their unlawful act, and also imposed an administrative fine of NT\$12.5 million on E&E, NT\$7.5 million on each of FGD Recycling Industrial Company, Perfect Recycling Company, and Hong Chin Recycling Enterprise Corporation, NT\$6 million on Liuh-Jian Company, NT\$5.5 million on Chiu-Fa Environmental Protection & Engineering Company, NT\$4.5 million on Da Chi Environmental Technologies Company, NT\$3.5 million on Big South Resource Recycling Company, NT\$1.6 million on Rui Yuan Environmental Protection Company, NT\$1.2 million on Ke Bai Sheng Company, NT\$500,000 on Hung Kung Recycling Company, and NT\$200,000 on HanLin Environmental Technologies Corporation. The fines totaled to NT\$58 million.

Appendix:

E&E Recycling Corporation's Uniform Invoice Number: 16636181

FGD Recycling Industrial Co., Ltd.'s Uniform Invoice Number: 16181490

Perfect Recycling Company's Uniform Invoice Number: 16725373

Hong Chin Recycling Enterprise Corp.'s Uniform Invoice Number: 16393240

Liuh-Jian Co., Ltd.'s Uniform Invoice Number: 16821593

Chiu-Fa Environmental Protection & Engineering Co., Ltd.'s Uniform Invoice

Number: 22926912

Da Chi Environmental Technologies Co., Ltd.'s Uniform Invoice Number: 80703951

Big South Resource Recycling Company's Uniform Invoice Number: 27224616

Rui Yuan Environmental Protection Company's Uniform Invoice Number: 80426350

Ke Bai Sheng Company's Uniform Invoice Number: 28792313

Hung Kung Recycling Co., Ltd.'s Uniform Invoice Number: 80632513

HanLin Environmental Technologies Co., Ltd.'s Uniform Invoice Number: 24360525

Summarized by Chen, Shu Hua; Supervised by Wu, Lieh-ling

9 Independent Power Plants

1148th Commissioners' Meeting (2013)

Case: 9 independent power plants (IPPs) violated the Fair Trade Law by engaging in concerted action

Key Word(s): Independent power plant (IPP), basic amount, capacity rate, energy rate

Reference: Fair Trade Commission Decision of November 6, 2013 (the 1148th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102092

Industry: Electricity Supply (3510)

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

Summary:

1. 9 independent power plants (IPPs) achieved a mutual understanding and refused to adjust the rates of power they sold to Taiwan Power Company from August 2008 to October 2012. The FTC imposed on them an aggregate fine of 6.32 billion NT\$ (same currency applies hereinafter) via Kung Ch'u Tzu Disposition No. 102035 dated March 15, 2013. The 9 IPPs found the sanctions unacceptable and appealed to the

Executive Yuan. The Executive Yuan decided that “the original fines imposed on the appellants are revoked; the original sanctioning authority shall come up with a more appropriate decision within 2 months.”

2. The FTC had made the original sanction by applying Article 41(1) together with the “Regulations for Calculation of Administrative Fines for Serious Violations of Articles 10 and 14 of the Fair Trade Law” (hereinafter referred to the Regulations for Calculation of Administrative Fines for Serious Violations) for the first time in its regulatory history to raise the upper limit of administrative fines. However, the Executive Yuan revoked the decision on the said fines on the following grounds:

(1) According to Articles 5 and 7 of the Regulations for Calculation of Administrative Fines for Serious Violations, the basic amount and upper limit of fines are established according to the calculation of administrative fines based on 30% of the sales achieved during the violation period and 10% of the sales in the preceding fiscal year. Does it serve the purpose of depriving the offenders of their unlawful gains or merely raise the upper limit of fines?

(2) As the violation began before the revision of Article 41(2) of the Fair Trade Law, could IPPs foresee the legal consequence of receiving an increased administrative fine when engaging in the said conduct? Shouldn’t the fines to be imposed be calculated separately for the violation before and after the revision of the applicable law?

(3) It was claimed that unadjusted capacity rates had caused Taiwan Power Company a loss up to 5.9 billion in 2011 and exceeding 7 billion in 2012. Is there any concrete evidence? Taiwan Power Company claimed that IPPs had agreed to revise the contract and the company would save 24.9 billion in power purchases as a consequence. Shouldn’t the duration and range of each IPP’s reasonable profits or unlawful gains as a result of its contract performance be clarified and distinguished instead of calculating only the statutory maximum of the administrative fine and basic amount for each IPP and imposing huge fines according to a fixed percentage?

(4) The FTC claimed that the nature of the offense of the appellants, their participation in the activities of an association and their deferment and refusal to

revise contracts was not different from that of similar offenses by other businesses. However, different penalties were imposed for same culpable conduct. What were the reasons behind the decision?

3. The considerations taken into account in re-deliberation of the case and the administrative fines decided are as follows:

(1) The consequences of concerted actions often have a considerable impact on the economy and consumers. For this reason, the punitive measures in most countries are not designed only to deprive offenders of their unlawful gains but also to deter similar intentions. Since the amount of sales can reflect the scale, profits and competitiveness of a business, the legislative tendency around the world is usually to calculate fines in accordance with the basic amount obtained by an enterprise during the violation period or a percentage of the enterprise's annual revenue in the preceding year. Meanwhile, the FTC's Regulations for Calculation of Administrative Fines for Serious Violations provide concrete supplementary stipulations for the regulation on imposition of administrative fines set forth in Article 41(2) of the Fair Trade Law. The regulation on the increase of administrative fines for serious violations is unquestionable and the legislative purpose of the said paragraph indicates that the regulation includes but is not limited to deprivation of unlawful gains.

(2) The related provisions added to the Fair Trade Law and promulgated on November 23, 2011 apply to law enforcement agencies as well as businesses. There should be no difference whether the FTC or the IPPs had foreseen the legal consequence or not. In both Supreme Administrative Court Judgment Pan Tzu No. 505 dated 2010 and Ministry of Justice Fa Lyu Tzu Interpretation No. 10203501570 dated February 8, 2013, concerted actions were considered continuous conduct. Despite that part of such continuous conduct took place before new regulations became effective, new regulations should apply throughout the entire period of the conduct. However, considering this case was the first time the regulation for the increase of the upper limit of administrative fines set forth in Article 41(2) of the Fair Trade Law was applied, the FTC therefore considered similar regulations in international competition law, took into account the IPPs disadvantage of having been

unable to foresee the change of upper limit of fines in the regulations, and calculated the fines before and after the amendment separately.

(3) According to Article 95 of the Administrative Appeal Act, when an administrative appeal decision is conclusive and irrevocable, for the subject matter, it shall bind all relevant agencies. The FTC therefore acted in line with the Executive Yuan's decision on the appeal and provided the details of the amount of loss of Taiwan Power Company as a result of the nine IPPs' failure to adjust capacity rates, the estimated reduction in Taiwan Power Company's power purchase spending during the remaining contract periods, and the profit Taiwan Power Company already obtained as of the end of 2012 in consequence of the adjustment of energy rates. Then, the basic amount of each IPP acquired from the unlawful practice after the amendment was actuarially calculated to provide references for the FTC in the determination of the administrative fines. Since the applicable "basic amount" for each IPP way exceeded 10% of its annual sales in the preceding year, the FTC therefore referred to Paragraphs 2 and 3 Article 41 of the Fair Trade Law, Article 36 of the Enforcement Rules to the Fair Trade Law and Article 6(3) of the Regulations for Calculation of Administrative Fines for Serious Violations, took into consideration that each IPP had immediately negotiated with Taiwan Power Company as soon as the investigation had begun, shown repentance, told the truth and cooperated throughout the investigation and taken measures to remedy the damage, and adopted the same penalty standard on each IPP. Using 6% of the annual sales of each IPP in the preceding fiscal year as the basis of the fines calculation, the FTC then determined the final administrative fine after subtracting two thirds or one third according to the level of repentance, the amount of evidence provided and the degree of cooperation.

(4) After reviewing the facts of violation, choosing lighter penalties for the period before the amendment, calculating separately the illegal conduct before and after the revision of the law, removing the maximum fine of 25 million for the period before the revision and also reducing 5 million on each IPP for their efforts to establish remedial measures, a decrease of 30 million for each IPP, the FTC imposed on the nine IPPs administrative fines that totaled to 6.05 billion.

Appendix:

Offender	Uniform Invoice Number	Fine (NT\$)
Mai-Liao Power Corporation	96975970	1.82 billion
Ho-Ping Power Company	16096852	1.32 billion
Ever Power IPP Co. Ltd	96933037	610 million
Hsin-Tao Power Corporation	16596337	550 million
Sun Ba Power Corporation	70783499	500 million
Star Energy Power Corporation	70783765	400 million
Kuo Kuang Power Co., Ltd	70833553	380 million
Chiahui Power Corporation	96976990	370 million
Hsing Yuan Power Co., Ltd.	27945086	100 million
Sum		6.05 billion

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

Association of Taoyuan Land Administration Agents

1159th Commissioners' Meeting (2014)

Case: The Association of Taoyuan Land Administration Agents violated the Fair Trade Law by issuing a reference price list to its members

Key Word(s): Trade association, concerted action, jointly establishing a price list

Reference: Fair Trade Commission Decision of January 22, 2014 (the 1159th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.103012

Industry: Scrivener Activities (6912)

Relevant Law(s): Articles 7 and 14 of the Fair Trade Law

Summary:

1. The complainant is the plaintiff of a civil lawsuit, who stated that the defendant's attorney submitted the "land administrator office reference price list" issued by the Association of Taoyuan Land Administration Agents (hereinafter referred to as the "Association") as evidence during trial, and suspected that the Association was involved in concerted action.

2. Findings of the FTC after investigation:

(1) The FTC inquired the defendant's attorney alleged by the complainant by letter, and the attorney indicated that the reference price list was indeed issued by the Association to members to use when being commissioned to handle affairs. The FTC sent officers to conduct an investigation of land administrator's in Taoyuan who became members of the Association in 2011 and 2012, showing them the reference price list provided by the complainant. Four of the subjects indicated that the Association did indeed provide a reference price list upon joining membership, and that they filled in the name of their office in the heading. The 4 subjects provided the reference price list issued by the Association as evidence. An examination of the reference price list revealed that besides the name of the land administrator's office in the heading, some had 4 digit codes, and all service items, prices, remarks and format were identical to the reference price list brought by the FTC. After examining the Association's website, the 4 digit codes on the reference price list were found to be the code for members of the Association.

(2) The FTC arranged a meeting with the Association and the chairman admitted that a director moved to "discuss issuing a reference price list" in the 6th meeting of the 8th board of directors and supervisors on January 4, 2008, and decision was made to "discuss the reference price list in the Rights Committee meeting and notify all directors and supervisors to attend meeting." The Association discussed the "reference price list" for members in the 7th meeting of the 8th board of directors and supervisors on March 14, 2008, and decided that "the first option would be used and will be provided to members after the revision is approved." The chairman of the

Association stressed that they stopped issuing the reference price list after 2008, and claimed that he did not instruct personnel to issue the reference price list, nor did he know the reason why new members still received the reference price list in 2011 and 2012.

3. Grounds of disposition:

(1) As defined in Article 7(4) of the Fair Trade Law, concerted action is: “the act of a trade association to restrict activities of enterprises by means of... a board meeting of directors or supervisors,” which is prohibited pursuant to Article 14(1) of the same law. The Association’s board of directors and supervisors’ decision to provide a reference price list to members meets the description set forth in Article 7(4) of the Fair Trade Law. Furthermore, members of the Association cover 81% of market participants, and the issuing of a reference price list restricts their core means for competition and has continued for 5 years, which is enough to affect market supply and demand. Hence, the Association’s conduct shall be concluded as a violation of Article 14(1) of the Fair Trade Law.

(2) Paragraphs 1 and 2 of Article 27 of the Administrative Penalty Act stipulates: “The power to impose administrative penalty is expired upon the lapse of a period of three years. The period specified in the preceding paragraph shall commence from the day the act in breach of duty under administrative law is complete, except where the consequence of such an act occurs at a later day, in which case the period shall commence from the day on which the consequence occurs.” Although the Association made the decision to issue the reference price list to its members in 2008 and claimed that it ceased issuing the reference price list in 2008, the FTC found several land administrators who joined the Association in 2011 and 2012 and still received the reference price list. The said land administrators were able to provide the reference price list they received, proving that the Association has continued to issue the reference price list. Hence, the period for imposing administrative penalty in this case has not expired.

(3) Acting in accordance with the first section of Article 41(1) of the Fair Trade

Law, the FTC ordered the Association to immediately cease its unlawful act and imposed a fine of NT\$400,000.

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

Kaohsiung Association of Real Estate Appraisers

1201st Commissioners' Meeting (2014)

Case: Kaohsiung Association of Real Estate Appraisers violated the Fair Trade Law by imposing restrictions on its members' bid offers

Key Word(s): Trade association, bidding

Reference: Fair Trade Commission Decision of November 12, 2014 (the 1201st Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 103134

Industry: Other Real Estate Activities Not Elsewhere Classified (6899)

Relevant Law(s): Articles 7 and 14(1) of the Fair Trade Law

Summary:

1. Kaohsiung Association of Real Estate Appraisers (hereinafter referred to as the KAREA) imposed restrictions on its members' bid offers in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) The KAREA had 74 members from Chiayi, Tainan, Kaohsiung, Pingtung, Taitung, and Hualien areas. These members were real estate appraisers who accepted delegations to appraise land and buildings and crops thereon, as well as the corresponding rights. The number of the KAREA's practicing members accounted for 23.27% of the total number of practicing real estate appraisers in Taiwan.

(2) As specified in Article 7 of the KAREA's member self-discipline agreement established in 2004, "No members shall adopt reduction of charges by a large margin or other inappropriate measures to compete for business with other members." The "reduction of charges by a large margin" was not defined and, as a result, the KAREA was never capable of handling complaints filed by its members regarding strategies on market competition by price undercutting. In order to give the content of Article 7 a precise definition, the KAREA reached a resolution on Jan. 15, 2014 at the 7th joint meeting of the board of directors and board of supervisors of the 4th term, providing that "reduction of charges by a large margin or other inappropriate measures" meant that "if the association is informed that three or more members have taken part in a tender and the winning offer is significantly lower than the offers of other bidders, it shall be regarded a violation of Article 7 of the member self-discipline agreement. The aforesaid 'winning offer being lower than the offers of other bidders' shall be the difference between the winning offer and the average of the offers of other bidders reaching 20% or more." The KAREA also sent the resolution to all of its members by mail.

(3) After the abovementioned resolution was reached, the KAREA did notify five bid-winning members in eight tenders to provide written explanations on their offers and present their explanations to the association because their winning offers had been 20% lower than the average of the offers of other bidders.

3. Grounds for disposition:

(1) According to Article 7(4) of the Fair Trade Law, "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 is also deemed as horizontal concerted action as used in Paragraph 2." Article 14(1) of the Fair Trade Law also prohibited concerted actions. Under the KAREA's restriction on the members' bid offers, when its members determined their bid offers, besides considering the possibility of "not winning the tender for bidding too high" or "suffering profit loss for bidding too low," they also had to make sure that their "bid offer is not lower than the average of the offers of other bidders by 20% or more" to

prevent the risk of violating the above member self-discipline agreement. To avoid this risk, the members had no choice but to adopt more conservative bidding strategies and make higher bid offers. They might even resort to consulting with or jointly determining the bid offers with other bidders before bidding. Under such circumstances, price competition among bidders would be sabotaged.

(2) Although the resolution of the KAREA did not involve establishment of unified bid offers or bid rigging, their members, being afraid of becoming the targets of the association's investigations and sanctions for violating the above self-discipline agreement, were bound to avoid competition by offering low prices in subsequent tenders. They might even consult with one another on the bid offers or bid regions. In the long run, this would lead to suppression of price competition among the members.

(3) The KAREA contested that the resolution was merely moral persuasion and there were no concrete penalty regulations. However, according to Article 21 of the KAREA's member self-discipline agreement, the association could admonish or warn its members when they violate the agreement or even refuse to give them cases to be assigned by rotation. Those who involve serious violations might even receive sanctions. In reality, the KAREA did notify certain members offering "bids significantly lower than the bids of others" to present their explanations and to be questioned by the functionaries of the association. In other words, the resolution was by no means merely to serve as moral persuasion to its members.

(4) As for whether the case involved violation of Article 87(4) of the Government Procurement Act providing "a person who causes the supplier not to tender or not to proceed with price competition by means of contract, agreement or other forms of meeting of minds, with the intent to adversely affect the price of award or to gain illegal benefits," and the question as to the applicability of Article 26 of the Administrative Penalty Act providing that "if one and single act constitutes simultaneously a criminal offense or offenses as well as a breach of duty under administrative law, it shall be punishable under the criminal law," the Public Construction Commission's official opinion noted that whether the Government Procurement Act was applicable in the case would depend on whether the Government Procurement Act applied to cases in which the members of the KAREA

offered bids. Meanwhile, the KAREA expressed that the resolution in question was to be applied in all public tenders, not only limited to tenders put up by government agencies or public enterprises. In other words, it also applied in public real estate appraisal service tenders put up by private businesses to which the Government Procurement Act did not apply. Therefore, the conduct involved in this case was a restriction imposed by a trade association on the bid offers provided by its members in unspecific public tenders. It did not concern bidding suppliers not bidding or not making price competition in specific government procurement projects as a result of contracts, agreements or other types of mutual understanding. Hence, the regulations against concerted actions in the Fair Trade Law were still applicable.

(5) After assessing the collective market power of the members of the KAREA, the nature and actual execution of the restriction, as well as its impact on market competition, the FTC concluded that the KAREA had violated Article 14(1) of the Fair Trade Law. Therefore, citing the first section of Article 41(1) of the same law, the FTC ordered the KAREA to immediately cease the unlawful act at issue and also imposed on it an administrative fine of NT\$400,000.

Appendix:

Kaohsiung Association of Real Estate Appraisers ‘ Uniform Invoice Number:
8660292

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

39 Enterprises Engaging in Joint Shipment of Wheat Imports

1203rd Commissioners' Meeting (2014)

Case: 39 enterprises engaging in joint shipment of wheat imports was complained for violating the Fair Trade Law by disregarding conditions attached to FTC's approval of their concerted action by refusing Jing Zhong Enterprise and Taiwan Grains to be part of the operation

Key Word(s): Wheat, joint shipment, exceptional approval

Reference: Fair Trade Commission Decision of November 26, 2014 (the 1203rd Commissioners' Meeting)

Industry: Manufacture of Grain Mill Products (0862)

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

Summary:

1. Lien Hwa Industrial Corp. and 38 other enterprises engaging in joint shipment of wheat imports (hereinafter referred to as the 39 enterprises) refused Jing Zhong Enterprise Co., Ltd. (hereinafter referred to as Jing Zhong Enterprise) and Taiwan Grains Co., Ltd. (hereinafter referred to as Taiwan Grains) to be part of the joint operation of wheat import shipment (hereinafter referred to as the joint shipment of wheat imports). The FTC initiated an ex officio investigation to find out whether the decision was against the condition that "the 39 enterprises may not refuse other wheat importers to join the concerted action without justification" attached to the FTC's Letter Kung Lian Tzu No. 101007. At the same time, the requests from Lien Huei Co., Ltd. (hereinafter referred to as Lien Huei Co.) and Lu Cheng Trading Co., Ltd. (hereinafter referred to as Lu Cheng Co.) to the 39 enterprises for approval to be part of the joint shipment of wheat imports were also reviewed as part of the case.

2. Findings of the FTC after investigation:

The 39 enterprises refused Jing Zhong Enterprise and others to be part of the joint shipment of wheat imports to prevent problems in slot space arrangement, warehousing facility allocation, shipment scheduling, and financial risk that could

result from the uncertainty of these trading companies' wheat import quantities and difficult coordination of purchasing operations. However, the decision could be in violation of the condition attached to the FTC's Letter Kung Lian Tzu No. 101007. Therefore, the FTC visited the Taiwan Flour Mills Association (hereinafter referred to as TFMA) to explain the FTC's standpoint. Subsequently, the 39 enterprises presented the "Operating Regulations for Other Enterprises to Join the Joint Shipment of Wheat Imports" (hereinafter referred to as the Operating Regulations) and expressed that other trading companies could become part of the joint shipment of wheat imports in accordance with the Operating Regulations as long as the joint shipment could be smoothly operated. Jing Zhong Enterprise and the other trading companies all gave their consent.

3. Grounds for disposition:

(1) Point 2 of the Operating Regulations specified the upper limit of purchase quantity for each ship that each new participant could register while a proviso regarding adjustment of the said upper limit was also attached. According to Point 2, the said upper limit for each new participant was 2% to 3.5% of the capacity of each vessel (about 800 to 1,400 tons if calculating the capacity of each vessel as 40,000 tons). The quota could meet the amount that Jing Zhong Enterprise and the other trading companies needed to bring in to supply Kinmen Kaoliang Liquor Inc. and Taiwan Tobacco and Liquor Corporation for their liquor production. Moreover, the proviso stipulated in the same point that the registered quantity for each vessel could be adjusted provided that domestic food supply and demand would not be affected made it evident that the regulation set forth in this point was aimed to maintain the stability of flour and food supply, not to control the total amount of specific businesses' imports or restrict the freedom of such businesses to determine their quantity of imports. As for the remaining provisions in the Operating Regulations, they were internal regulations with regard to the current practices and requirements in joint shipment. Therefore, it is impossible to determine that the Operating Regulations is in violation of the condition attached to the Letter Kun Lian Tzu No. 103007 and therefore no violation of the Fair Trade Law was found. Hence, the FTC concluded

that the incident was a matter of contractual autonomy in private law and it was inappropriate for the FTC to intervene.

(2) After Jing Zhong Enterprise, Lien Huei Co. and Lu Cheng Co. joined the joint shipment of wheat imports according to the Operating Regulations, the 39 enterprises could no longer be considered in violation of the condition attached to the Letter Kung Lian Tzu No. 103007. Therefore, the FTC did not sanction the 39 enterprises.

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

Chapter 5

Unfair Competition—Resale Price Maintenance

Run Far Outdoors

1125th Commissioners' Meeting (2013)

Case: Run Far Outdoors violated the Fair Trade Law for resale price maintenance by imposing restrictions on distributors

Key Word(s): Outdoor equipment, product distribution contract, suggested price

Reference: Fair Trade Commission Decision of May 29, 2013 (the 1125th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102074

Industry: Wholesale of Sports Goods (4582)

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

Summary:

1. Run Far Outdoors (hereinafter referred to as RFO) and 100 Mountain Sports Equipment Co., ltd. (hereinafter referred to as 100 Mountain) signed on May 13, 2011 a “product distribution contract” which made 100 Mountain an agent for RFO’s “Snow Peak” series of outdoor equipment and accessories. However, it was set forth in the contract and its appendices that the retail prices of 100 Mountain could not be lower than 90% of the minimum prices set by RFO; otherwise, RFO, if the conduct was not corrected, had the right to terminate the contract and stop supplying 100 Mountain with its products. The said conduct of RFO was in violation of Article 18 of the Fair Trade Law.

2. Findings of the FTC after investigation:
 - (1) RFO marketed the Japanese “Snow Peak” products through outdoor and sports

equipment stores around the island. To implement its pricing policy for the said products, RFO signed with every distributor a “Product Distribution Contract” to which a number of appendices were attached and it was clearly specified that the distributor could not sell the products at lower than 90% of the retail prices set by RFO. If any distributor violated the said clause and refused to correct its violation, RFO had the right to terminate the distribution contract and stop supplying the distributor with the said products.

(2) In early August 2012, 100 Mountain gave a 20% discount on the “Snow Peak” products, apparently lower than the minimum retail prices stipulated in the “Product Distribution Contract” and its appendices. RFO therefore issued to every distributor on August 14, 2012 a written notice to declare that it had terminated the distributorship of 100 Mountain.

3. Grounds for disposition:

(1) The retailers of the “Snow Peak” outdoor equipment supplied by RFO were distributors whose profit came from the difference between their purchasing prices and selling prices. They were not agents who received commissions for what they sold. Therefore, after supplying the “Snow Peak” outdoor equipment, RFO had to allow 100 Mountain complete freedoms to determine its own prices.

(2) However, RFO stipulated in the “Product Distribution Contract” and its appendices that the distributor could not sell the “Snow Peak” outdoor equipment for less than 90% of the prices it had decided; otherwise, RFO, if a distributor violated the said clause and refused to correct its violation, had the right to stop supplying the products to the distributor and deprive its distributorship. This is why soon after 100 Mountain gave a 20% discount on the “Snow Peak” outdoor equipment in early August 2012, RFO immediately notified in writing all the distributors in the country that it had terminated the distributorship of 100 Mountain and also stopped supplying 100 Mountain with its products. It was clear that RFO had restricted the resale prices of 100 Mountain for the “Snow Peak” outdoor equipment and the conduct had deprived a distributor of its freedom to decide its own prices. In other words, such a distributor was unable to set its own prices in accordance with the level of market

competition it faced and its own management strategy. The result would lessen the intra-brand price competition among different retailers and it was in violation of Article 18 of the Fair Trade Law.

Appendix:

Run Far Outdoors' Uniform Invoice Number: 80654852

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

Timer Technology Co., Ltd

1126th Commissioners' Meeting (2013)

Case: Timer Technology Co., Ltd. violated the Fair Trade Law by requesting distributors to maintain resale price for its "HOCO" cell phone leather cases

Key Word(s): Cell phone leather cases, parallel import, suggested price list

Reference: Fair Trade Commission Decision of June 5, 2013 (the 1126th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102091

Industry: Other Leather, Fur Products Manufacturing (1309)

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

Summary:

1. The FTC received complaints stating that Timer Technology Co., Ltd. (hereinafter referred to as Timer Co.) had notified all its retailers on August 12, 2011 to raise the prices of the "HOCO" cell phone leather cases from NT\$300 to between NT\$1,000 and NT\$1,300. It also threatened to distribute infringement letters to online auction platform operators if any retailer failed to comply with its notification. As a

consequence, the prices for the products were made consistent island wide.

2. Findings of the FTC after investigation:

(1) Timer Co. became the sole agent for the “HOCO” cell phone leather cases after obtaining the right to use the “HOCO” trademark in Taiwan from Hoco Technology Co., Ltd. in Hong Kong on October 16, 2011. The company marketed its products through 3 retail outlets it directly owned, online shops, and other retail channels. Except for one contracted distributor, all transactions between Timer Co. and the distributors or online auction operators were outright sales.

(2) After screening the information obtained from auction websites and physical outlets as well as interviewing those who sold the “HOCO” cell phone leather cases, the FTC found out that there were also parallel imports of the said cell phone leather cases available in the market. Since Timer Co. also sold the products on the Internet, online action platform operators would set their prices by referring to the prices of Timer Co. But, there were still price differences. However, in order to prevent distributors from price undercutting to promote their sales, Timer Co. specified in its distribution contract that the distributor had to sell the products according to the suggested retail prices. In addition, the penalty clause in the distribution contact stipulated that those who fail to comply with the suggested retail prices shall be punished. As for the threat to distribute infringement letters to online auction platform operators for suspected counterfeits, it was a justifiable action of exercising rights as set forth in the Trademark Act.

3. Grounds for disposition:

(1) It was stipulated in the said distribution contract that the distributor had to sell the products according to the suggested retail prices set by Timer Co. If auditors from Timer Co. discovered that a distributor was giving discounts or engaged in price undercutting without obtaining the consent of the company in advance, such a distributor had to accept, with any exception, the penalties agreed upon by both parties. For those who are found in violation for the first time, the fine would be 10 times of the suggested retail prices of the products in question multiplied by the quantity of the most recent order. For those who are found in violation for the second

time, the fine would be 20 times, plus suspension of supply for 3 days. For those who are found in violation for the third time, the fine would be 20 times and the distributorship would also be terminated.

(2) Since the transaction were outright purchases, the distributors got the ownership of the products after payment made and became responsible for risks associated with the products, sales, and finance. The contract that restricted the resale prices of distributors and the penalty clause of the distribution contract had deprived the freedom of the distributors to make their own price decisions. The distributors were thus unable to set prices in accordance with the level of market competition they faced and their own cost structure. The conduct was in violation of Article 18 of the Fair Trade Law. The FTC therefore ordered the company to cease its unlawful act and also imposed on it an administration fine of NT\$50,000.

Appendix:

Timer Technology Co., Ltd.'s Uniform Invoice Number: 24206988

Summarized by Chien, Hao-Yue; Supervised by Yang, Chia-Hui

Vicovation Company & Digital Star Technology Co., Ltd.

1136th Commissioners' Meeting (2013)

Case: VicoVation and Digital Star violated the Fair Trade Law by restricting online auction prices

Key Word(s): Event data recorder, online auction, product supply contract, suggested price

Reference: Fair Trade Commission Decision of August 14, 2013 (the 1136th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102135 and No. 102136

Industry: Other Communications Equipment Manufacturing (2729)

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

Summary:

1. The complainant purchased a batch of VICO DS2 event data recorders from A-Mego Information Technology Co., Ltd. (hereinafter referred to as A-Mego), a distributor for Digital Star Co., Ltd. (hereinafter referred to as Digital Star) and marketed them on the auction platforms of Yahoo! and Ruten. However, Digital Star would either make phone calls or leave messages on the platforms to force the complainant to auction the products at prices set by the company and also threatened to cut its supply to the complainant or not provide warranty or tell Yahoo and Ruten auction sites that the complainant had infringed its copyright and trademark right if the complainant failed to comply. As a consequence, the complainant was unable to sell the products and suffered financial losses. The complainant therefore believed Digital Star had violated Article 18 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) The statements from VicoVation, Digital Star and A-mego are as follows:

(i). VicoVation produced the VICO event data recorders and delegated Digital Star as its sales agent. The two companies signed a product supply contract. According to the contract, Digital Star purchased the products from VicoVation and was required to cooperate with VicoVation to maintain product prices. If retailers failed to comply, Digital Star had to take action immediately. If the prices went out of control or the products became difficult to market, VicoVation could terminate the exclusive agency contract with Digital Star. It was set forth in the contract that VicoVation also authorized Digital Star to control the prices of its products marketed online and the copyrights of corresponding texts and images. However, the distributors were not authorized to control prices.

(ii). Meanwhile, Digital Star also produced its own event data recorders under the brand name of Star Eye and delegated A-mego to market this product. Digital Star and A-mego signed a product supply contract according to which the two companies would consult each other to determine the suggested prices before the products were supplied to the clients of A-mego. The contract also stipulated that A-mego had to

cooperate with Digital Star to maintain product prices and take immediate action if any retailers (or sale agents) did not comply with the price policy. If A-mego failed to maintain prices as set forth in the contract, it would be considered a breach of contract and the contract would be terminated. As a result, Digital Star and A-mego looked closely on the Internet for sellers marketing the products at prices too low. Once they found any such case, they would demand rectification or notify the online platform to take the products in question off the shelf. However, they did not check whether there was any intellectual property right infringement involved in the said case.

(2) At the request of the FTC, online auction platform operators explained their procedure when they receive complaints about intellectual property right infringement. Normally, they would review the patentability requirements presented by the intellectual property right holder as a formality. However, once they received an infringement notification, they usually removed the web page in concern right away.

3. Grounds for disposition:

(1) The contract signed between VicoVation and Digital Star contained provisions on price agreement. In the meantime, the texts and images for the complainant's products that were taken off the shelf were not the same as those for VicoVation's products although the prices of the former were indeed lower than the latter. Moreover, the complaint was made to the online platforms by Digital Star who had been authorized by VicoVation to exercise price control, indicating that VicoVation was indeed serious about maintaining and controlling the prices of its VICO event data recorders, while Digital Star was bound by the contract and had to monitor the prices, take immediate action against businesses violating the price policy and inform online action platforms of infringement practices, and requested such products be taken off the shelf. In other words, the inclusion of the provisions against those violating VicoVation's price policy was an act of interference and coercion intended to achieve price control. It was therefore in violation of Article 18 of the Fair Trade Law. As for Digital Star, being bound by the contract, it had no choice but to maintain the retail prices. Therefore, the party responsible for the conduct in question was

VicoVation, not Digital Star.

(2) Digital Star, besides being the agent for VicoVation, also produced its own Star Eye event data recorders. The contract Digital Star signed with A-mego also contained provisions requiring A-mego to exercise price control and take immediate action against businesses or other agents failing to comply with the price policy. Punitive measures were also stipulated when violation arises. Both Digital Star and A-mego admitted to making consultations, jointly determining product prices and establishing a price list for retailers. They also looked on the Internet for sellers marketing the products at lower prices. When such sellers were found, they would demand rectification or notify online auction platforms to remove the products at issue off the shelf. For the distributors, such conduct was an act of interference and coercion and it indeed had the effect of maintaining product prices as it deprived the retailers of their freedom to decide their prices and would eventually weaken intra-brand price competition between different distributors. The conduct was thus in violation of Article 18 of the Fair Trade Law. However, being bound by the contract, A-mego had no choice but to exercise its price control power for Digital Star. Hence, the party responsible for the conduct in question was Digital Star, not A-mego.

Appendix:

Vicovation Company's Uniform Invoice Number: 25113396

Digital Star Technology Co., Ltd.'s Uniform Invoice Number: 53226581

Summarized by Ma, Ming Ling; Supervised by Wu, Lieh-ling

Apple Asia Ltd.

1155th Commissioners' Meeting (2013)

Case: The FTC initiating ex officio investigation into Apple Asia Ltd.'s violation of Fair Trade Law by restricting domestic telecom businesses' iPhone prices

Key Word(s): Cell phone, distributor contract, price of cell phone sold with contract plan, cell phone price subsidy

Reference: Fair Trade Commission Decision of December 25, 2013 (the 1155th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 103002

Industry: Telephones and Cellular Phones Manufacturing (2721)

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

Summary:

1. The FTC received complaints that Apple Asia Ltd. (hereinafter referred to as AAL) demanded telecom companies to submit their Apple cell phone prices to AAL for approval before they could sell the products. Violation of Article 18 of the Fair Trade Law was suspected and the FTC therefore initiated an ex officio investigation.

2. Findings of the FTC after investigation:

The telecom companies in concern and AAL turned in written explanations about their agreements and also gave their statements at the FTC. The investigation revealed that AAL was a subsidiary of US-based Apple Inc. responsible for marketing Apple's products in Taiwan. The principal sales channels for iPhones were Chunghwa Telecom, Taiwan Mobile and Far Eastone Telecom. The distributor contracts signed between AAL and these telecom companies contained stipulations on terms of purchase, payment and invoice issuance. According to the contracts, the ownership of the cell phones belonged to the telecom companies once they were paid for and the risks in guarding and storing the products also became the responsibility of the telecom companies. In other words, the domestic telecom companies bought to own

the products from AAL.

3. Grounds for disposition:

According to the above contracts, the said domestic telecom companies were required to submit cell phone rate plans involving iPhones for the approval of AAL. The FTC's investigation showed that the telecom companies did comply and present such rate plans (including cell phone prices) to AAL for its approval or confirmation before the rate plans could be promoted in the market. Emails between AAL and the telecom companies indicated that AAL had indeed requested the telecom companies to readjust the prices of Apple cell phones sold as part of their contract phone plans, their cell phone price subsidies, as well as the price difference between new and old cell phones. In addition, the contracts also included provisions that restricted the prices of Apple cell phones sold as part of the telecom companies' contract plans, demanded the telecom companies to keep up with each other in phone price subsidization and sales conditions, specified minimum purchased quantities, and requested them to submit special offer plans for approval from AAL in advance. The conduct deprived the telecom companies of their freedom to determine their prices according to their cost structure and market competition. It limited both intra-brand and inter-brand competition and was in violation of Article 18 of the Fair Trade Law. The FTC therefore acted according to the first section of Article 41(1) of the Fair Trade Law and ordered AAL to immediately cease its unlawful act, and also imposed on AAL an administrative fine of NT\$20 million.

Appendix:

Apple Asia Ltd.'s Uniform Invoice Number: 238265946

Summarized by Yeh,Su-Yen; Supervised by Wu, Lieh-Ling

Digilion Inc.

1164th Commissioners' Meeting (2014)

Case: Digilion Inc. violated the Fair Trade Law by restricting resale price

Key Word(s): ATM IC card reader, price list, quotation, suggested retail price

Reference: Fair Trade Commission Decision of February 26, 2014 (the 1164th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.103027

Industry: Manufacture of Other Computer Peripheral Equipment (2719)

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

Summary:

1. The FTC received complaints from a retailer of Digilion Inc. (hereinafter referred to as the “Company”) that it received an e-mail from the Company in April 2013 demanding that distributors may only sell the DIGILION EasyATM Pro2 (hereinafter referred to as the “Product”), the Company’s second generation ATM IC card reader, at a price of NT\$700, and will demand distributors to take down the Product and seek compensation in the event they do not comply within a specified period. The retailer thus sent a letter to the FTC inquiring whether if the conduct violated the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) The Company indicated that the retail price of its products is specified on its quotations, which also states that “distributors must strictly abide by the pricing strategy of the Company,” and the Company irregularly notified its distributors of the latest market price list. The Company indicated that if a distributor does not follow the pricing strategy, it will potentially impact profit and result in vicious competition, and the Company will no longer supply products to the distributor. Furthermore, e-mails in 2012 also contained information requesting clients of distributors to abide by the pricing strategy.

(2) The FTC sent letters to 28 distributors of the Company and downstream trading counterparts, 4 (including the complainant) received the price list in

contention, of which 3 adjusted prices accordingly. None of the downstream businesses (including the complainant) were penalized for not adjusting sales prices accordingly.

3. Grounds of disposition:

(1) The “distributor contract” signed between the Company and distributor contains stipulations on prices and is also attached with a price list. The contract also contains penalties in the event distributors do not abide by the retail price. The FTC found that the quotations provided by the Company to distributors (or retailers) not only specified the price of their transaction, but also the “retail price,” and the bottom of the quotations stated that: “Distributors shall strictly abide by the pricing strategy set by the Company.” The “online distribution channel price list” sent by the Company to distributors (retailers) specified the “suggested retail price,” “buyout price,” and the description “1. To maintain...please sell products according to the price strategy announced by the Company...4. The Company shall no longer supply products in the event the pricing strategy is not followed...” This provision clearly deprives distributors or retailers of their freedom to determine resale price.

(2) The Company admitted that when it found a distributor or retailer that set prices too low, it would ask the distributor or retailer’s upstream distributor to communicate with the distributor or retailer. If the distributor or retailer refused to adjust its prices, the Company would ask the upstream distributor to take back products and refund the client to stop the client from harming the balance of market prices. Although the Company claimed that it did not impose any penalties or seek compensation for damages, it admitted that distributors, such as TsannKuen Trans-Nation Group and Sunfar Computer Co., Ltd., all sold their products at the suggested retail price. Quite a few distributors of the Company indicated that they were indeed restricted by the contract and price list. Since there were contract and written agreements between the Company and distributors (retailers), they were restraining to both parties. In the event a distributor (retailer) did not abide by the stipulations in the contract, a penalty might be imposed on the distributor (retailer), or the Company might stop supplying products or terminate the contract, forming

pressure on distributors (retailers) psychologically. The freedom of distributors to set prices has been restrained by the aforementioned penalties. The Company's conduct has therefore interfered with and pressured distributors (retailers) to maintain resale price.

(3) The contract that restricted the resale prices of distributors had deprived the freedom of distributors to make their own price decisions. The distributors were thus unable to set prices in accordance with the level of market competition they faced and their business strategy, and it also restricted their sales arrangements for different brands. The conduct was in violation of Article 18 of the Fair Trade Law. The FTC therefore ordered the Company to cease its unlawful act and also imposed an administrative fine of NT\$50,000 in accordance with Article 41(1) of the Fair Trade Law.

Appendix:

Digilion Inc.'s Uniform Invoice Number: 80690251

Summarized by Liou, Wan-Jhen; Supervised by Wu, Lieh-Ling

Taiwan Sakura Corporation

1169th Commissioners' Meeting (2014)

Case: Taiwan Sakura Corporation violated the Fair Trade Law by restricting online sales prices

Key Word(s): Water heater, gas stove, online sales, product supply contract, suggested price

Reference: Fair Trade Commission Decision of April 2, 2014 (the 1169th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 103039

Industry: Manufacture of Other General-purpose Machinery (2939)

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

Summary:

1. The complainant sells water heaters and other products in stores and online, and signed a distributor agreement with Ying Chun Co., Ltd. (hereinafter referred to as “Ying Chun”). The agreement stipulates that the distributor’s price list may not be lower than the cost of products when purchased from the Company, and that the annual bonus and all benefits of violators will be cancelled and the contracted will be terminated. The complainant’s products were taken down by the online sales platform because the Company’s supplier – Taiwan Sakura Corporation (hereinafter referred to as “Taiwan Sakura”) believed that the complainant’s online sales price was too low, and reported the complainant to the online sales platform for copyright or trademark infringement. Ying Chun and Taiwan Sakura were thus suspected of violating Article 18 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) After inquiring Taiwan Sakura and Ying Chun about the case and investigating Taiwan Sakura’s exclusive distributor of each area and online distributors, the FTC found that Sakura products are produced by Taiwan Sakura and then distributed by exclusive distributors of 10 areas (Ying Chun is the exclusive distributor of Taipei), as well as distributors under each exclusive distributor. Taiwan Sakura signed exclusive distributorship agreements with its exclusive distributors in each area, in which exclusive distributors make outright purchases of products and bear the associated risks. Taiwan Sakura signed online sales agreements with online distributors, and claimed that most online distributors are also distributors under exclusive distributors. Exclusive distributors signed distributor incentive agreements with downstream distributors, which make outright purchases of the product and bear the associated risks.

(2) The FTC asked the operator of the online sales platform to explain its process for handling infringements on intellectual property rights, and learned that only a “formality examination” is performed based on claims brought forth by the owner of intellectual property rights. The operator of the online sales platform usually

immediately removes the webpage suspected of rights infringement upon receiving a notification from the owner of intellectual property rights.

3. Grounds of disposition:

(1) Taiwan Sakura signed the agreements with distributors on the resale of Sakura products and is responsible for the conduct in this case. Ying Chun did not enter into any agreements with its distributors on the resale price of products, and distributors verified that they were almost free to set the price in stores. Taiwan Sakura was the party that reported an infringement to the online sales platform, and also admitted that it was responsible for signing agreements and managing online distribution channels. Hence, Ying Chun cannot be deemed responsible for the conduct in this case.

(2) The abovementioned “exclusive distributorship agreement” and “online sales agreement” contained product pricing principles and penalty provisions in the event they were violated. The agreements or online sales agreements Taiwan Sakura signed with distributors were binding to both parties and the stipulation on pricing clearly restricts the freedom of distributors to decide their prices.

(3) Online distributors signed online licensing agreements for use of trademarks belonging to Taiwan Sakura. The provisions of such an agreement should only cover distributorship licensing, and the distributors should still have the freedom to set the resale price of products they were licensed. However, the agreement in contention contained stipulations on pricing principles and penalty provisions in the event of a violation. Hence, Taiwan Sakura restricted the resale price of its products through the licensing of its intellectual property rights. A considerable proportion of the web pages that were taken down did not use the trademark of Taiwan Sakura, but those with prices lower than the price on Taiwan Sakura’s official website were still taken down due to complaints that they “infringed on Taiwan Sakura’s trademark or copyright.” If the distributors did not comply with stipulations of the agreement, their distributorship might be terminated, their web page might be taken down, or their licensing might be terminated. For the distributors, such conduct was an act of interference and coercion and it indeed had the effect of maintaining resale prices as it deprived the retailers of their freedom to decide their prices, and would eventually

weaken price competition between different distributors. The conduct was thus in violation of Article 18 of the Fair Trade Law. The FTC therefore ordered the Taiwan Sakura to cease its unlawful act and also imposed an administrative fine of NT\$1 million in accordance with Article 41(1) of the Fair Trade Law.

Appendix:

Taiwan Sakura Corporation's Uniform Invoice Number: 23113940

Summarized by Ma, Ming-Ling; Supervised by Wu, Lieh-Ling

SofyDOG Co., Ltd.

1201st Commissioners' Meeting (2014)

Case: SofyDOG violated the Fair Trade Law for restricting distributors' pet food resale prices

Key Word(s): Resale price restriction, suggested price, pet food

Reference: Fair Trade Commission Decision of November 12, 2014 (the 1201st Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 103132

Industry: Wholesale of Other Food (4549)

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

Summary:

1. SofyDOG Co., Ltd. (hereinafter referred to as SofyDOG, an agent for pet food from ZiwiPeak of New Zealand and others, violated Article 18 of the Fair Trade Law for restricting the resale prices of its distributors. The FTC therefore started an investigation on SofyDOG's behaviors.

2. Findings of the FTC after investigation:

(1) SofyDOG had signed contracts with its distributors. SofyDOG delivered products according to orders made by its distributors and the distributors made their payments either in cash each time or on a monthly basis. SofyDOG admitted that the “New Zealand K9 Frozen Raw Food Sales (One-year) Agreement,” the “US Nature’s Variety Pet Food Contracted Sales Cooperation Agreement,” and the “New Zealand ZiwiPeak Pet Food Contracted Sales Cooperation Agreement” the company signed with its distributors included provisions that restricted distributors’ resale prices.

(2) The main reason why SofyDOG demanded its distributors to sell the products in accordance with the suggested prices stipulated in their sales contracts was that SofyDOG gave contract signers discounts when they achieved the minimum monthly amount of purchases. Therefore, it had to impose resale price restrictions to prevent its distributors from using such discounts to compete with each other by offering lower prices and affecting the profit of other shops because the higher the profit, the more willing the distributors would be to sell SofyDOG’s products. Furthermore, by doing so, potential disputes over price differences could also be avoided.

3. Grounds for disposition:

(1) The FTC’s investigation indicated that SofyDOG was the sole agent for ZiwiPeak pet food, K9 raw pet food from New Zealand, and Nature’s Variety pet food from the US. SoftDOG signed different sales contracts with its distributors on the above products of different brands. The distributors placed orders according to SofyDOG’s price quotations and either paid cash on each delivery or paid on a monthly basis. Some distributors were required to issue a check in advance for the total amount of the minimum monthly purchases and ordered products according to their sales performance. All distributors made profits from the difference between their selling prices and purchasing (wholesale) prices. The distributors also shouldered the potential risk arising from their product sales. Hence, since the trading relationship between SofyDOG and the distributors was outright sales, the distributors should have been given the liberty to determine their own retail prices.

(2) The FTC investigation also revealed that Item 4 of the Notices in the “New

Zealand K9 Frozen Raw Food Sales (One-year) Agreement” stipulated that “to maintain reasonable prices and protect distributors’ profits, Party B shall sell the products in accordance with the retail prices suggested by Party A; otherwise, Party A has the right to terminate the contract at any time and then demand Party B to compensate for transportation expenses.” Meanwhile, it was also set forth in Article 3 of the “US Nature’s Variety Pet Food Contracted Sales Cooperation Agreement” and the “New Zealand ZiwiPeak Pet Food Contracted Sales Cooperation Agreement” that “licensed sales of trademarked products shall be conducted according to the retail prices suggested by Party A to prevent malicious competition among distributors. All promotional and special offer activities shall require Party A’s consent in advance.” These restrictions appeared in the 2013 to 2014 and 2014 to 2015 contracts. It was evident that SofyDOG did impose resale price restrictions on its distributors.

(3) SofyDOG contested that the purpose of its resale price restrictions was to prevent its contracting distributors from taking advantage of purchase discounts to compete in the market by offering lower prices and affecting the profit of other shops. In doing this, it asserted, pet supply shops would be more willing to sell the company’s products while sales channel stability could be maintained and disputes over price differences could be prevented. SofyDOG also emphasized that if any distributor was found to be selling its products at prices lower than the suggested prices, it would admonish them to cooperate and it had never really cut supply on any distributor. However, it was set forth in the aforementioned agreements that “if Party B violates the abovementioned approaches of cooperation, Party A may cancel the discounts for Party B” and “...if Party B fails to abide by to the sales principle, Party A has the right to terminate the contract at any time and demand Party B to compensate for transportation expenses.” Judging from the above provisions of the agreements, apparently SofyDOG could immediately cancel the discounts it offered to the distributors or terminate the distribution contracts. This could easily formed mental pressure on the distributors. With their liberty to determine prices obviously constrained by such sanction threats, the distributors had no choice but to follow the suggested prices. Even though SofyDOG had never implemented the breach-of-contract provisions, the resale price restrictions remained effective. The

conduct of SofyDOG deprived the distributors of their freedom to determine their retail prices according to the competition they faced and their own cost structures. The result would lessen intra-brand price competition among different distributors in violation of Article 18 of the Fair Trade Law. Therefore, the FTC applied the first section of Article 41(1) of the same law and imposed an administrative fine of NT\$150,000 on SofyDOG.

Appendix:

SofyDOG Co., Ltd.'s Uniform Invoice Number: 28225732

Summarized by Yang, Hsiang-Yu; Supervised by Chiou, Shwu-Fen

Chapter 6

Unfair Competition—Lessening Competition or Impeding Fair Competition

6.1 Decisions

LiYi Shop International Co., Ltd.

1126th Commissioners' Meeting (2013)

Case: Liyi Shop International Co., Ltd. violated the Fair Trade Law for issuing notice on intellectual property right infringement to auction websites and then sending suggested price lists to urge those suspected of infringement to comply with suggested prices to avoid price competition

Key Word(s): Auction website, notice on intellectual property right infringement, suggested list price

Reference: Fair Trade Commission Decision of June 5, 2013 (the 1126th Commissioners' meeting); Disposition Kung Ch'u Tzu No. 102081

Industry: Retail Sale via Mail Order Houses or via Internet(4871)

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

Summary:

1. The FTC received from private individuals complaints stating that Liyi Shop International Co., ltd. (hereinafter referred to as Liyi Co.) had first issued a notice to auction websites where the said individuals were selling parallel imports of Nillkin cell phone cases and claimed that such sales were an intellectual property right infringement. As a consequence, the Nillkin product web pages of the said individuals were removed by the auction sites. However, the said individuals then received emails from Liyi Co. identifying itself as the agent for Nillkin in Taiwan and requesting them to sell the Nillkin products according to the suggested prices list provided in the

email; otherwise, they would no longer be allowed to use the trademark and the product pictures from Nillkin. To avoid receiving further notice on intellectual property right infringement and having their auction website accounts suspended as a result, the said individuals had no choice but to raise the prices.

2. Findings of the FTC after investigation:

Liyi Co. identified itself as the agent for the cell phone accessories in question and issued a right infringement notice to auction websites to point out controversial web pages. After reviewing the company registration and proof of intellectual property rights presented by Liyi Co., the auction websites removed all the web pages that Liyi Co. claimed to be involving in right infringement. Then, Liyi Co. sent an email containing a suggested prices list to sellers whose web pages had been removed and warned that its price review would be conducted weekly and those failing to comply with the prices it suggested would be disallowed to post the trademark and product pictures from Nillkin.

3. Grounds for disposition:

Auction websites had the regulation that the seller's account would be suspended if a number of infringement notices were received. In fact that the web pages of the seller who received the infringement notice had been removed. It proved that the notice from Liyi Co. did make the recipient be afraid that there would be further infringement notices leading to suspension of their accounts. Therefore the individual sellers had cooperated with Liyi Co. and raise their product prices. In other words, the conduct of Liyi Co. did scare those who received the notices. It led the sellers to make decisions against their will and thus create a restraint on the freedom of competitors to determine their prices. It met the description of "improper means" set forth in Article 19(iv) of the Fair Trade Law. Although Liyi Co. contested that it had not force the recipients of the notices to comply with the price suggestions, the email did stress that the company would continue to perform its price review widely and it was hoped that the recipient could sell their products at suggested prices so that price competition could be avoided. In other words, the notice and the email were not sent

only for the purpose of intellectual property right protection, but a measure to prevent sellers from engaging in price competition or to force them to stick to the suggested prices. In conclusion, the FTC considered that the conduct of Liyi Co. of issuing the intellectual property right infringement notices to auction websites and then sending emails containing the suggested prices list was an improper means to force others not to engage in price competition. It was an act of competition restriction or impediment to fair competition in violation of Article 19(iv) of the Fair Trade Law. In addition to ordering the company to cease its unlawful act, the FTC also imposed on it an administrative fine of NT\$100,000.

Appendix:

LiYi Shop International Co., Ltd.'s Uniform Invoice Number: 28519363

Summarized by Chou, Huang-Chun; Supervised by Liou, Chi-Jung

Taiwan Diesel Association

1153rd Commissioners' Meeting (2013)

Case: TDA violated the Fair Trade Law by setting a price list

Key Word(s): Taiwan Diesel Association, price list, illegitimate practice

Reference: Fair Trade Commission Decision of December 11, 2013 (the
1153rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.
102207

Industry: Power Generation, Transmission and Distribution Machinery
Manufacturing (2810)

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

Summary:

1. The Public Construction Commission forwarded to the FTC a letter from a business about being requested by Taiwan Diesel Association (hereinafter referred to as TDA) to establish a price list for its service charges and therefore concerted price increase was suspected. After assessing likely effects on the competition order of the market, the FTC initiated an ex officio investigation.

2. Findings of the FTC after investigation:

(1) The FTC visited randomly selected TDA members to understand the situation of the industry and look into related facts. The findings of the FTC were as follows:

(i) TDA was founded in 2007 and the chairperson was elected to serve a 3-year term. There were about 50 members at the time of investigation and the representative of the Diesel Square Enterprise Co., Ltd., (herein after as the offender), took office as TDA's chairperson in 2010.

(ii) During TDA's June 2011 meeting, the first routine meeting of 2011, a member proposed that a price list should be established to solve the problem of uneven charges in the market. Afterward, according to the prices of original diesel engine makers and his own business experience, the representative of the offender calculated the work hours needed for repair services provided at the time and listed out the corresponding amounts. Then he faxed the price list to all the members of TDA and asked those with opinions to fax their opinions back to his fax number. As a result, the chairperson revised the price list and sent it to each member by mail and some members started to charge for their services in the beginning of 2012 accordingly.

(2) The FTC sent a written request to the telecom company who provides service to the offender for the personal information of the user of the said fax number and correspondence records. The outcome confirmed that the offender was the user and faxes had indeed been sent from the number to TDA members in November, 2011.

3. Grounds for disposition:

(1) The said price list included charges for repairs of diesel engines of commonly seen models. Among the 100 or so diesel engine repair shops in the country, at least

51 of them were TDA members. Meanwhile, according to the FTC's inspection on the billing records of the members questioned, many of the charges collected were indeed consistent with the rates on the price list whereas many of the members questioned also admitted to setting their prices either based upon the price list or using the price list as a reference or making price negotiations with customers according to the price list. As for the offender, he also operated a diesel system repair service. His business ranked among the top repair shops in the market and accounted for a significant proportion of the market share. Under such circumstances, the price list established was undoubtedly able to influence the service price decisions of diesel engine repair shops and to make competitors or potential competitors not to engage in price competition. Such conduct substantively weakened price competition on the domestic diesel engine repair service market and had to be considered likely to restrict competition or impede fair competition.

(2) The price list was titled "TDA Pump and Injector Nozzle Repair Price List" and it was distributed to the 51 TDA members. Being the TDA chairperson, the representative of the offender established the price list on his own and then sent it via fax to the members to solicit opinions to create the facade that the price list was the result of the members' mutual understanding after discussion so that the members would adopt the price list. It was an illegitimate practice carried out to urge other businesses not to engage in price competition. The conduct was likely to restrict competition or impede fair competition and was therefore in violation of Article 19(iv) of the Fair Trade Law.

Appendix:

Diesel Square Enterprise Co., Ltd.'s Uniform Invoice Number: 04482845

Summarized by Liuh,Yu-Chuan; Supervised by Wu, Lieh-Ling

Yungshin Pharm Ind. Co. Ltd.

1157th Commissioners' Meeting (2014)

Case: Yungshin Pharm Ind. Co., Ltd. was complained for violating the Fair Trade Law by giving away gifts with its Yunnan Baiyao Toothpaste

Key Word(s): Toothpaste, gift giving

Reference: Fair Trade Commission Decision of January 8, 2014 (the 1157th Commissioners' Meeting)

Industry: Manufacture of Cleaning Preparations (1930)

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

Summary:

1. The complaint from Hawley & Hazel Chemical (Taiwan) Co., Ltd. (hereinafter referred to as “Hawley & Hazel”) was summarized as follows: Hawley & Hazel purchased Yunnan Baiyao Toothpaste (100g) sold by Yungshin Pharm Ind. Co., Ltd. (hereinafter referred to as “Yungshin”) at AMart at a price of NT\$168. The gift attached was a travel package worth NT\$120 (contains 30g Yunnan Baiyao Toothpaste, dual effect sensitive toothbrush, and interdental brush), exceeding 1/2 of the product’s price. This was suspected a violation of Article 2(1) of the FTC’s principles for handling gifts and prizes and a violation of Article 19(iii) of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) Yungshin became an agent of Yunnan Baiyao Group Co., Ltd. for the product Yunnan Baiyao Toothpaste in April 2012, and was a new entrant in the toothpaste market. Yungshin held the gift giving promotion in contention from July 2012 to January 2013. Yungshin’s distributor Vanguard Hyunion Corp. was responsible for supply the product to AMart. According to the statement from AMart, when the promotion started in July 2012, Vanguard Hyunion offered “buy 100g get 60g free,” but changed the gift to a “travel package” in August 2012 stating that they were short of the original gift. The package of the product in contention included the words

“Yungshin Pharm,” “free travel package,” and “gift worth NT\$120.” The information on the gift was already printed when Yungshin provided the product to Vanguard Hyunion. Hence, the FTC believed that Yungshin should be responsible for the gift giving conduct in contention.

(2) In the statement by Yungshin, the reasonable market price of the toothpaste (100g) was NT\$230 (retail price in distribution channels varied from NT\$168 to NT\$278). Using this for calculation, the reasonable market price for a 30g tube of toothpaste was NT\$69. If this amount was deducted from NT\$120, the value of the toothbrush and interdental brush in the travel package was NT\$51, which did not exceed 1/2 of the product’s actual sales price of NT\$168. The toothbrush and interdental brush was purchased by Yungshin from Yeong Hung Trading Co., Ltd. (hereinafter referred to as “Yeong Hung”), in which the unit cost of each item in the gift included: Shallop dual effect sensitive tooth brush NT\$5.8, Shallop interdental brush NT\$4, toothbrush case NT\$8.5, and hot foil stamping on the packaging NT\$0.1058. Hence, the actual cost of the gift would be NT\$20.6058, for which Yungshin produced invoices issued by Vanguard Hyunion, which was also lower than 1/2 of the price of the product in contention.

3. Grounds of disposition:

(1) The FTC found that after AMart acquired the product from Vanguard Hyunion, the price was set by AMart based on its business operations. The price of NT\$168 for the product that consumers saw was part of a short-term promotion held by AMart and was not decided by Yungshin. Furthermore, Yungshin did not have any direct trading relationship with consumers. Means for “inducement with interest” referred to in Article 19(iii) of the Fair Trade Law still required the company to cause a trading counterpart(s) of competitors to do business with “itself.” Observing cases of gift giving violations of the FTC over the years, the party holding a gift giving promotion always had direct trading relationships with consumers they intend to attract. Hence, the gift giving promotion of Yungshin did not violate Article 19(iii) of the Fair Trade Law.

(2) Yungshin printed the text “gift worth NT\$120” on the packaging of the product

in contention. The FTC found after investigation that the unit prices of a toothbrush and interdental brush of Yeong Hung were NT\$30 and NT\$19. As mentioned above, the price of a 30g tube of Yunnan Baiyao Toothpaste was roughly NT\$69, and adding the price of the toothbrush case and its contents, the price of the gift was roughly NT\$120. Yungshin conducted a market survey that found prices of travel packages between NT\$79 and NT\$160, which had an average price of NT\$120, showing that Yungshin did not put a false statement about the value of the gift on the package.

Appendix:

Yungshin Pharm Ind. Co. Ltd.'s Uniform Invoice Number: 56065601

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

Da Guan Technology Corp.

1176th Commissioners' Meeting (2014)

Case: Da Guan Technology Corp. violated the Fair Trade Law by using improper means to cause other companies to refrain from price competition

Key Word(s): Heat exchanger, shopping auction site, imagery infringement, refrain from price competition

Reference: Fair Trade Commission Decision of May 21, 2014 (the 1176th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.103068

Industry: Plumbing, Heat and Air-conditioning Installation (4332)

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

Summary:

1. The complainant received a call from Da Guan Technology Corp. (hereinafter

referred to as “Da Guan”) on July 24, 2013. The caller claimed to be the exclusive distributor of total heat exchangers of Mitsubishi Electric Taiwan Co., Ltd. (hereinafter referred to as “Mitsubishi Taiwan”) and requested that the complainant jointly raise sales prices. The complainant did not comply and Da Guan reported the complainant to the sales site of Yahoo for copyright infringement, resulting in the complainant’s products from being taken down. The complainant stated that this conduct severely damaged its rights and violated the Fair Trade Law.

2. Findings of the FTC after investigation:

Although Da Guan was a distributor of Mitsubishi Taiwan, it only received authorization to use product imagery, but not agency authorization for the imagery, and was not authorized to report imagery infringement. Yet, Da Guan did indeed call the complainant in July 2013 and indicated that the complainant’s price of total heat exchangers was too low. After which Da Guan reported the complainant to the sales site by fax stating that the complainant’s “lossnay structure and principles” infringed Da Guan’s copyright.

3. Grounds of disposition:

Da Guan was not the copyright owner of the image and did not receive authorization from Mitsubishi Taiwan to report online imagery infringement, but still claimed to be the copyright owner when notifying the sales site of imagery infringement, which resulted in its competitor’s webpage from being removed by the sales site. This conduct was the use of improper means to refrain competitors from price competition and violated Article 19(iv) of the Fair Trade Law. Considering that Da Guan already withdrew its complaint to the sales site before the complainant reported the conduct to the FTC, and that Da Guan’s conduct was only towards the complainant and not any other competitors, the FTC determined that it caused a mild impact on the market and imposed an administrative fine of NT\$50,000 in accordance with the first section of Article 41(1) of the Fair Trade Law.

Appendix:

Da Guan Technology Corp.'s Uniform Invoice Number: 28701897

Summarized by Yeh,Su-Yen; Supervised by Wu, Lieh-Ling

Zhongpu Township Betel Nut Association

1178th Commissioners' Meeting (2014)

Case: Zhongpu Township Betel Nut Association violated the Fair Trade Law
by jointly deciding the prices of betel nuts

Key Word(s): Betel nut, Zhongpu Township Betel Nut Association, improper
means, causing another enterprise to refrain from price
competition

Reference: Fair Trade Commission Decision of June 4, 2014 (the 1178th
Commissioners' Meeting); Disposition Kung Ch'u Tzu No.103072

Industry: Wholesale of Fruit and Vegetables (4541)

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

Summary:

1. The complainant stated that the Zhongpu Township Betel Nut Association (hereinafter referred to as the “Association”) has long jointly determined the prices of betel nuts in its meetings. At the beginning of the betel nut harvest season in 2013, some wholesalers who were members of the Association began purchasing betel nuts from farmers at a price lower than the price decided by the Association, violating the Fair Trade Law by increasing the price difference to gain illegal profit.

2. Findings of the FTC after investigation:

The Association had been established for several decades and was the first betel nut trade association in the country. It consisted of betel nuts wholesalers in Zhongpu

Township, and each village in the township was represented by one or more supervisors depending on the number of members from each village. The supervisors elected a chairman, who appointed a vice chairman, accountant, associate clerk, and general affairs director. Supervisors were responsible for collecting information on the betel nuts supply and demand of each village for the Association. The chairman would convene meetings with the vice chairman and supervisors at the beginning of the betel nuts harvest season and when market supply-demand changed, during which they decide the buy and sell prices of betel nuts based upon the information provided by the supervisors. The betel nut harvest season was similar in central parts and overlap considerably. Wholesalers all hoped to purchase and sell betel nuts at the same price to prevent resellers from lowering the price. Hence, after Betel Nut Associations were formed in Nantou, Taichung and Changhua, the chairmen or vice chairman of the associations would occasionally attend the Association's price setting meetings, and would provide the information on supply-demand in their respective area to help the Association decide the prices of betel nuts.

3. After the betel nut harvest season ended in June 2013, the Association's chairman had to leave the position for personal reasons and the general affairs director became the acting chairman of the Association. The acting chairman convened a meeting with the vice chairman and supervisors, as his predecessors did in the past years, at the beginning of the betel nut harvest season on August 17, but they did not reach a consensus during that meeting because some supervisors intended to change the method for setting purchase prices. The acting chairman did not convene any further meetings with the vice chairman and supervisors thereafter, but continued to collect market supply-demand information as requested by wholesalers and farmers, and decided the prices of betel nuts, and then had cadre members of the Association notify their members to have the prices as a basis for trading betel nuts.

4. Grounds of disposition:

(1) The betel nut prices decided by the acting chairman of the Association included buy and sell prices. Members only needed to employ the prices as the buy prices of betel nuts from farmers and then sell to resellers so that they would be guaranteed a

profit from the price difference. There was no incentive for them to engage in price competition on the betel nut market to gain trading opportunities. The purpose for setting the prices was not only to avoid resellers from surveying the prices of different wholesalers and lowering the prices of betel nuts, but also to prevent members from lowering their prices in competition with other members. Therefore, the aforementioned conduct caused members to buy and sell betel nuts at the predetermined price and to refrain from price competition, damaging market order that was based on the market competition in terms of quality, price and service. The conduct was punishable under business ethics and was the use of improper means to refrain other enterprises from price competition.

(2) Although the betel nut prices decided by the Association's acting director was only provided to members through cadre members, the information was highly accessible and could even be obtained online. As a result, all wholesalers in the central region of the country could easily acquire the information, and use the prices to deal with farmers and resellers, which prevented every wholesaler in the region from engaging in price competition. Farmers and resellers were thus faced with rigid trading conditions from wholesalers. The conduct damaged market order that was based on the market competition in terms of quality, price and service and restricted competition. Hence, the FTC determined that the conduct was in violation of Article 19(iv) of the Fair Trade Law.

(3) Considering the fact that the Association consists of more than one hundred members, and wholesalers in Chiayi, Nantou, Changhua and Taichung all buy and sell betel nuts at the price decided by the Association's acting chairman, it was determined that the market order had been severely damaged. In addition, the facts regarding the volume of betel nuts per volume, their 2013 revenue, period of violation roughly 6 months, first violation, and their cooperation with the FTC's investigation were taken into consideration too. Consequently, the FTC imposed an administrative penalty of NT\$300,000 on each party in accordance with the first section of Article 41(1) of the Fair Trade Law.

i-Geeker Technology Co., Ltd.

1205th Commissioners' Meeting (2014)

Case: i-Geeker Technology was complained for its violation of the Fair Trade Law by restricting distributors' business activities

Key Word(s): Leather case, vertical restriction, market power

Reference: Fair Trade Commission Decision of December 10, 2014 (the 1205th Commissioners' Meeting)

Industry: Wholesale of Other Specialized Wholesale Not Elsewhere Classified (4699)

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

Summary:

1. i-Geeker Technology Co., Ltd. (hereinafter referred to as i-Geeker Technology) was the general agent for the ICARER leather cases. On Dec. 3, 2013, i-Geeker Technology sent an email to all of its first-level distributors requesting them to inform online sellers of the regulation that sellers' actual purchases of the ICARER leather cases were required before sales advertisements could be posted on the Internet. i-Geeker even directly contacted online seller Ai Ke Li Enterprise Co., who failed to comply with the aforesaid regulation, replaced the first-level distributor that supplied it the products, and had its online sales announcement removed. The conduct of i-Geeker was in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

i-Geeker admitted that its trading relations with the first-level distributors were outright sales. The second-level distributors (such as online sellers) were actually the counterparts of the first-level distributors and did not have direct business relations with i-Geeker. Because it did not want to have distributors at various levels to avoid the risk of stagnant sales by collecting payments from consumers in advance with no products in stock that results in over-sales and inability to deliver or to deliver flawed products, and in turn gave rise to consumer disputes, i-Geeker therefore announced its

adoption of the measure of “controlling the numbers of new products advertised online,” including requiring second-level distributors who had no direct business relations with the company to have in stock at least one leather case of each color before they could advertise online. At the same time, i-Geeker also removed the online sales announcement of second-level distributors who failed to comply with the regulation and at the same time replaced the first-level distributors that supplied them the products.

3. Grounds for disposition

(1) i-Geeker sent the email to inform its first-level distributors who had direct business relations with the company of its decision to “control the numbers of new products advertised online” and at the same time request them to apply the controlling measure on second-level distributors to whom they supplied. According to i-Geeker’s estimation, the company accounted for only 8.8% of the share of the genuine leather case market. If the synthetic leather case market was also included, the company’s market share would be even smaller. Furthermore, there were close to ten brands of genuine leather cases and numerous synthetic leather cases available in the market. Downstream businesses could easily switch to new trading counterparts and did not have to count on i-Geeker as their sole source of products. For this reason, it was difficult to conclude that the vertical restriction i-Geeker imposed on its first-level distributors could restrain market competition in violation of Article 19(vi) of the Fair Trade Law.

(2) i-Geeker replaced the first-level distributors supplying to second-level distributors who did not comply with the company’s regulation. This vertical restriction was imposed through first-level distributors on online sellers who did not have director business relations with the company. However, it was similar to vertical restrictions imposed on first-level distributors and therefore could be interpreted in a broader sense to include these online sellers as the counterparts specified in Article 19(vi) of the Fair Trade Law to extend the types of conduct subject to the regulation therein. Under such circumstances, it was difficult to conclude that the vertical restriction imposed by i-Geeker on Ai Ke Li Enterprise Co. would give rise to any

competition restraint. Therefore, i-Geeker's conduct did not violate any law.

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

6.2 Judicial Case

He An Co., Ltd.

Supreme Administrative Court (2014)

Case: Supreme Administrative Court overruled the appeal of administrative litigation by He An regarding its violation of the Fair Trade Law

Key Word(s): Medicine procurement, bidding with unreasonably low price, Escitalopram

Reference: Supreme Administrative Court Judgment (2014) Cai Tzu No. 1683

Industry: Wholesale of Pharmaceutical and Medical Goods (4571)

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

Summary:

1. To push other suppliers out of competition, the appellant He An Co., Ltd. offered to sell the 10mg Lexapro tablets (hereinafter referred to as the medicine in question) produced by Lundbeck for one NT dollar (same currency applies hereinafter) per piece, which was far lower than the company's purchasing cost, in a bid. After concluding that such an unjustifiable practice to make trading counterparts to do business with the company alone was likely to lead to competition restrictions or impede fair competition in violation of Article 19(iii) of the Fair Trade Law, the FTC cited the first section of Article 41 of the same law and issued Disposition Kung Ch'u Tzu No. 100163 to order the appellant to immediately cease the unlawful act after receiving the disposition and also impose an administrative fine of 3 million on the company. Finding the decision unacceptable, the appellant filed an appeal but it was rejected. Then the appellant resorted to administrative litigation and Taipei High Administrative Court revoked the appeal rejection and the original sanction via Taipei High Administrative Court Judgment (2012) Su Tzu No. 780. The FTC found the ruling unacceptable and appealed. The Supreme Administrative Court discarded the

ruling via Supreme Administrative Court Judgment (2014) Pan Tzu No. 31 and remanded the case to the original court. Taipei High Administrative Court rejected the appellant's appeal; the appellant found it unacceptable and filed the appeal in question. The Supreme Administrative Court overruled the appeal via its Judgment (2014) Cai Tzu No. 1683 and finalized the case.

2. In 2005, the Appellant became the exclusive agent in the country for the medicine in question. The main ingredient was Escitalopram which cured depression. Meanwhile, East Bamboo Co., Ltd. (hereinafter referred to as East Bamboo), the third party involved, also started in 2008 to sell the first generic depression tablet under the name of the aforesaid main ingredient in the country. In the same year, East Bamboo won the qualification for price competition in Kaohsiung Medical University Hospital's procurement project and was notified by the procurement unit of the hospital to engage in price competition with the appellant on Sep. 16, 2008. East Bamboo offered 11 dollars per tablet but the appellant offered one dollar and was awarded the procurement project. The appellant confessed that its purchasing cost per tablet at the time of bidding was 12 dollars and it had offered one dollar per tablet, far lower than the purchasing cost, in order to maintain the original market status of the medicine in question. In other words, knowing that it would lose money (11 dollars per tablet), the company made the offer against the common logic of a profit-seeking business always working to obtain the biggest profit. The unjustifiable bidding practice of offering an unreasonably price was intended to eliminate East Bamboo's opportunity to enter the market of medicine for domestic medical centers. It could lead to competition restrictions or impede competition. Taipei High Administrative Court therefore rejected the appellant's appeal and clearly stated the reasons in the grounds of decision. The justification for the appeal was that the said decision had been in violation of related regulations. However, the Supreme Administrative Court reviewed the appeal and concluded that the appeal brief contained no concrete description of inapplicable regulations, inappropriate application of regulations or any of the circumstances specified in of Article 243(2) of the Administrative Litigation Act. As it was difficult to see how the decision had been in violation of any

regulation, the Supreme Administrative Court therefore considered the appeal illegitimate and overruled the appeal via Judgment (2014) Cai Tzu No. 1683. The case was thus finalized.

Appendix:

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

Summarized by Chen, Yi-Syuan; Supervised by Ren, Han-Ying

Chapter 7

False, Untrue and Misleading Advertisement

7.1 Decisions

Top Greats Biotech Co. Ltd. & Fujicome Biotech Marketing Co. Ltd.

1104th Commissioners' Meeting (2013)

Case: Top Greats Biotech Co. Ltd. and Fujicome Biotech Marketing Co. Ltd.
violated the Fair Trade Law for conducting false and untrue advertising

Key Word(s): Award-winning record, false advertising

Reference: Fair Trade Commission Decision of January 2, 2013 (the 1104th
Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 101191

Industry: Other Food Manufacturing Not Elsewhere Classified (0899),
Wholesale of Other Food (4549)

Relevant Law(s): Article 21(1)(2) of the Fair Trade Law

Summary:

1. The FTC received complaints that Fujicome Biotech Marketing Co. Ltd. (hereinafter referred to as Fujicome Biotech Marketing) claimed on the packaging of its "Energizing Honey Ginseng Drink" and the "Health Code Rose and Four-Herb Drink" that the manufacturer was the "Winner of the National Quality Assurance Golden Award" while the actual winner of the award was not the manufacturer of the product, Top Greats Biotech Co., Ltd. (hereinafter referred to as Top Greats Biotech). Therefore, it was likely that the conduct would mislead people into believing the products were made by an award-winning business.
2. Findings of the FTC after investigation:

Top Greats Biotech Co., Ltd. did win the Third National Quality Assurance Golden Award organized by the Industry Commerce Economy Trade Science & Technology Development Association (hereinafter referred to as the ICET) for its “Pearl Collagen Protein Rock Sugar Cubilose”, “Healthcare and Nourishing Food Products”, and “Ginseng and Caterpillar Fungus Chicken Essence” in 2004. Later, in 2008 and 2009, Top Greats Biotech used the picture of the trophy on the packaging of its “Energizing Honey Ginseng Drink” and the “Health Code Rose and Four-Herb Drink”, claiming itself as the “Winner of the National Quality Assurance Golden Award” and gave the products to its affiliate enterprise Fujicome Biotech Marketing to sell as the exclusive agent.

3. Grounds for disposition:

(1) For the general public or concerned parties, the labeling on the aforesaid products gave the impression that the two products had won the National Quality Assurance Golden Award. Top Greats Biotech could only uphold the claim by saying the two products in question were part of the “Healthcare and Nourishing Food Products” that had won the Third National Quality Assurance Golden Award. In that case, the award-winning statement on the packaging of the two products would not involve in false, untrue or misleading representation. However, Both Top Greats and the ICET were unable to clarify what the “Healthcare and Nourishing Food Products” included and the definition of “Healthcare and Nourishing Food Products” was vague and unclear. It was difficult to ascertain which products belonged to such a category. Nevertheless, it was reasonable to conclude that the category covered by the award won in 2004 could not have been meant to include a product Top Greats Biotech released in 2010.

(2) The award-winning record of an enterprise or its products often can indicate the efforts of the enterprise and the affirmation it has received. It would become an important a factor when trading counterparts evaluate the products of such an enterprise and make their transaction decisions. Therefore, all enterprises have the obligation to make truthful representations when using their award-winning record to attract consumers. The claim made by Top Greats Biotech had no valid support and

the conduct was in violation of Article 21(1) of the Fair Trade Law. Fujicome Biotech Marketing was an affiliate of Top Greats Biotech. The representative of each company was a board member or manager of the other. Both enterprises apparently participated in the management decision-making process and actual operation of each other. Fujicome Biotech Marketing was aware that the labeling on the two products in question was a false, untrue or misleading representation, yet it still went on to sell the products. The conduct was in violation of Article 21(2) of the Fair Trade Law and the FTC therefore imposed an administrative fine of NT\$200,000 on each company.

Appendix:

Top Greats Biotech Co. Ltd.'s Uniform Invoice Number: 86956550

Fujicome Biotech Marketing Co. Ltd.'s Uniform Invoice Number: 22277445

Summarized by: Hsu, Tzung-Yu; Supervised by: Chi, Hsueh-Li

PChome Online Inc. & Auto Care Parts Co., Ltd.

1105th Commissioners' Meeting (2013)

Case: PChome Online Inc. and Auto Care Parts Co., Ltd. violated the Fair Trade Law by posting advertisement of "US-made AJ PII Vegetal Fuel-saving Tablets"

Key Word(s): False advertising, fuel-saving tablet

Reference: Fair Trade Commission Decision of January 9, 2013 (the 1105th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 101199

Industry: Retail Sale via Mail Order Houses or via Internet(4871)

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

Summary:

1. The FTC saw the online advertisement posted by PChome Online Inc. (hereinafter referred to as PChome Online) and Auto Care Parts Co., Ltd. (hereinafter referred to as Auto Care) on the PChome Shopping website for the “US-made AJ PII Vegetal Fuel-saving Tablets” claiming that “with the price of one liter of gasoline, your car can run an extra 30-100KM.” False advertising was suspected and the FTC initiated an investigation.

2. Findings of the FTC after investigation:

Auto Care presented test reports from the Refining and Manufacturing Research Institute (hereinafter referred to as the RMRI) of China Petroleum Corporation, the National Motor Vehicle Inspection Center (hereinafter referred to as the NMVIC) of China and the Automotive Research Association of India to support the claim in the advertisement. However, according to the Bureau of Standards, Metrology and Inspection of the Ministry of Economic Affairs, the test reports from the RMRI and the Automotive Research Association of India were unable to prove the claimed performance of the product in question. Although the test report from the NMVIC of China did indicate decrease in fuel consumption, the name of the product tested by the NMVIC of China was different from that of the product in question and Auto Care was unable to provide concrete evidence that the two products contained the same component. In other words, the claim in the advertisement did not have any support.

3. Grounds for disposition:

Both PChome Online and Auto Care were unable to provide objective test reports or evidence to prove the representation in the said advertisement was true. Yet the advertisement could easily mislead people into believing that using the said product could have the fuel-saving performance as claimed in the advertisement and increase fuel mileage. The advertisement was a false, untrue and misleading representation in violation of Article 21(1) of the Fair Trade Law. Acting according to the first section of Article 41(1) of the same law, the FTC imposed an administrative fine of

NT\$80,000 on each of the two companies.

Appendix:

PChome Online Inc.'s Uniform Invoice Number: 16606102

Auto Care Parts Co., Ltd.'s Uniform Invoice Number: 28328744

Summarized by: Yu, Yi-Fong; Supervised by: Yang, Hsiu-Yun

Hong Zhu Construction Co., Ltd.

1107th Commissioners' Meeting (2013)

Case: Hong Zhu Construction Co., Ltd. and Han Tian Advertising Co., Ltd. violated the Fair Trade Law for posting false and untrue advertisements for “Exploration 21” housing project

Key Word(s): Real estate advertisement, power generation capacity

Reference: Fair Trade Commission Decision of January 23, 2013 (the 1107th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102005

Industry: Real Estate Development Activities (6700)

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

Summary:

1. The FTC received complaints that an advertisement for the “Exploration 21” housing project had claimed that the wind power generators installed for this project would have the capacity to generate “ $2\text{KW} \times 1/\text{Hour} = 2\text{KW}/\text{Hour}$, $2\text{KW} \times 24/\text{Hour} = 8\text{KW}/\text{Day}$, $48\text{KW} \times 30/\text{Day} = 1,440\text{KW}/\text{Month}$, $1,440\text{KW} \times 12/\text{Month} = 17,280\text{KW}/\text{Year}$, $17,280\text{KW}/\text{Year} \times 2(\text{generators}) = 34,560\text{KW}/\text{Year}$.” However, the fact was the wind power generators were still unable to achieve the estimates when the complaints were filed. In addition, the common facilities advertised, including the

“pool room and basketball shooting room,” “multi-function recreation room,” “KTV,” “movie theater” and “lobby” were still inaccessible, and the actual design and arrangement of the lobby were also inconsistent with what had been shown in the said advertisement. It was false advertising. Furthermore, the advertisement had also carried the wording of “the two 2KW wind power generators to be used for this housing project will generate up to 34,560KW/Year; for example, the 100 40W lights installed in Basement 1 will use up 40W x 100 x 24hours x 30 days x 12months = 34,560KW and the annual electricity bill will be 34,560KW x NT\$2.85 = NT\$98,496 and the wind power generators will help the residents save NT\$98,496 each year.” The FTC therefore started an investigation into these matters.

2. Findings of the FTC after investigation:

The FTC requested the informer to provide further details and related evidences. Besides, Hong Zhu Construction Co., Ltd. and Han Tian Advertising Co., Ltd. were requested to provide their statements and reason to the FTC.

3. Grounds for disposition:

(1) The advertisement in question gave consumers the impression that the two 2KW wind power generators installed for the said housing project could generate up to 34,560KW of electricity and save NT\$98,496 on their electricity bills each year. However, wind power generation involves unpredictable factors, such as the objective environment and the size of the wind field. Consequently, it would be impossible to expect the two wind power generators at issue to generate power in their full capacities 24 hours a day and 365 days a year to produce the maximum of 34,560KW each year. In other words, the goal claimed in the advertisement about the power generation capacity would be impossible to achieve. This was substantiated by the statements from Hong Zhu Construction Co., Ltd. and Han Tian Advertising Co., Ltd. and their inability to provide objective and concrete evidences or test reports. Moreover, since the calculation of the amount of power that could be saved was based on the above unrealistic expectation of power to be generated, the claim of saving up to NT\$98,496 therefore lacked support and was impossible to achieve. Hence, the representation in the said advertisement was false, untrue and misleading and was in

violation of Article 21 of the Fair Trade Law. Acting according to the first section of Article 41 of the same law, the FTC therefore imposed an administrative fine of NT\$200,000 on Hong Zhu Construction Co., Ltd. and NT\$100,000 on Han Tian Advertising Co., Ltd.

(2) As for the other complaint about the common facilities, namely the “pool room and basketball shooting room,” “multi-function recreation room,” “KTV” and “movie theater” remained inaccessible and the advertisement therefore being false, the informer did not provide further details. However, the result of the FTC’s investigation revealed that the said facilities were not open because the management committee of the said housing project had not yet completed the acceptance inspection but they were finally open to the residents on September 8, 2012 and there were photos to serve as the proof. Hence, the FTC considered the complaint had been mainly a dispute over contract performance to which the Fair Trade Law did not apply.

(3) The informer also complained that the use and arrangement of the “lobby” was inconsistent with what had been indicated in the said advertisement. However, as real estate transactions involved massive amounts of capital, the design and arrangement of the lobby could not be regarded an important factor to be considered in real estate transactions. In most condominiums, there is usually a counter for the superintendent or security guard to stay and equipment required for management such as monitoring cameras, etc. These are normally accepted by the general public as reasonable. Therefore, it was difficult to consider that the advertisement had led to wrong perceptions and decisions of the trading counterparts just because the installation of the said equipment was slightly different from the actual design and arrangement and what had been shown in the advertisement. Under such circumstances, the Fair Trade Law was also inapplicable in this complaint.

Appendix:

Hong Zhu Construction Co., Ltd.’s Uniform Invoice Number: 28923053

Han Tian Advertising Co., Ltd.’s Uniform Invoice Number: 25008556

Adelaide Co., Ltd.

1111th Commissioners' Meeting (2013)

Case: Adelaide Co., Ltd. violated the Fair Trade Law by posting false and untrue advertisements in newspapers

Key Word(s): Business closure, lease expiring

Reference: Fair Trade Commission Decision of February 20, 2013 (the 1111th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102014

Industry: Retail Sale of Home Furnishings in Specialized Stores (4743)

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

Summary:

1. The FTC received a written complaint from an individual about a bedding factory posting “closing business, lease expiring” advertisements in newspapers for at least a year. The informers thought this could constitute false advertising.

2. Findings of the FTC after investigation:

Adelaide Co., Ltd. (Hereinafter referred to as Adelaide Co.) posted on July 5, 2012 an advertisement that included the wording of “Lowest prices ever from July 5 to 8; business closure due to lease expiration, your final chance,” giving the public the impression that the final special sale would last only 3 days because the business was closing down due to lease expiration. However, the investigation showed that Adelaide Co. continued to post the same advertisement on July 7, 17, 23 and 25, August 17, and September 5 and 14 in 2012. The special sale never ended on July 8, 2012 as advertised. Adelaide Co. expressed that the lease for the Chongde Road outlet had been signed for the period from 2009 to July 20, 2012, but the investigation revealed that the company extended the lease for another 30 days (from July 21 to August 19) after the lease officially expired on July 20, 2012 and extended it again on August 16 for another 30 days (from August 20 to September 18). As a matter of fact, the business closure never happened.

3. Grounds for disposition:

“Business closure” is generally understood as a business stopping the provision of products or services. The advertisements posted by Adelaide Co. contained the wording of “business closure”, with specific dates and the number of days remaining provided in the advertisement too. Compared to the advertising term emphasizing only “business closure,” the advertisements stressed the final count down to the day of business closure to urge interested consumers to make a quick move. In reality, however, the company kept extending the closure deadline and this was inconsistent with the aforesaid general understanding. The difference had exceeded what the public could accept. The conduct was likely to create wrong perceptions or decisions among the public in violation of Article 21(1) of the Fair Trade Law. The FTC therefore imposed on Adelaide Co. an administrative fine of NT\$50,000.

Appendix:

Adelaide Co., Ltd.’s Uniform Invoice Number: 89920183

Summarized by: Chen, Chien-Yu; Supervised by: Chen, Chun-Ting

Luxgen Motor Co.

1112nd Commissioners’ Meeting (2013)

Case: Luxgen Motor Co. violated the Fair Trade Law for posting false and untrue advertisements for its automobile Luxgen 7 MPV

Key Word(s): Auto, passenger-cargo van

Reference: Fair Trade Commission Decision of February 27, 2013 (the 1112nd Commissioners’ Meeting); Disposition Kung Ch’u Tzu No. 102029

Industry: Retail Sale of Automobiles in Specialized Stores (4841)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. The FTC received complaints from private individuals alleging that they had received notices, dated April, 2012, from Yulon Motors recalling their Luxgen 7 MVPs to have the back crossbar/bumper installed as was required by the law for small passenger-cargo vans and also to have the third row seats moved to the position in accordance with the original design. However, when purchasing the vehicle from Luxgen Motor Co., Ltd. (hereinafter referred to as Luxgen Motors), a subsidiary of Yulon Motors, and the complainants had not been told that the vehicle was a passenger-cargo van. Besides, the vehicle had not been equipped with the back crossbar/bumper that it should have no matter in the advertisements, flyers, catalog, on Luxgen Motors' company website, or when the vehicle was handed over. In addition, according to the interior space shown in the catalog, the third row seats were foldable to create cargo space. However, according to the law, the position of the third row seats should have been 20 centimeters further forward and there should have been a cross hanging rod over the area between the trunk space and the third row seats. This meant the space of the third row seats would be reduced and the seats would not be foldable any longer. Therefore, false advertising was involved in this case.

2. Findings of the FTC after investigation:

(1) The vehicle in question was a product that Luxgen Motors had developed on its own under its brand name, manufactured by Yulon Motors, and sold by Luxgen Motors to the five distributors. The distributors were Luxgen Motors Taipei, Luxgen Motors Taoyuan, Luxgen Motors Taichung, Luxgen Motors Tainan, and Luxgen Motors Kaohsiung (all of which hereinafter referred to as Luxgen distributors) who then marketed the vehicle.

(2) The investigation showed that the advertising committee formed by the Luxgen distributors had been responsible for the design and content of the flyer and catalog for the sale of the said vehicle. The said distributors had also paid for the expenses required for advertisement production and marketing. Meanwhile, the vehicles were

displayed at the distributorships and consumers signed the purchasing contracts with the distributors who profited from such transactions. Hence, the Luxgen distributors undoubtedly were responsible for the advertising.

(3) Another finding revealed that Luxgen Motors managed and maintained its own website and the wording of “Exclusive agent: Luxgen Motors” was indicated in every catalog it offered. Meanwhile, it was stipulated in the distribution contract signed between Luxgen Motors and the Luxgen distributors that Luxgen Motors was responsible for the overall planning and management of “product” marketing and promotion, including but not limited to design, production and distribution of advertisements and marketing materials, design and execution of advertising and promotion projects and activities, as well as design of advertisements on the websites and through the Internet, electronic or remote-oriented measures and corresponding maintenance. In fact, Luxgen Motors did admit that it was responsible for the market positioning and marketing strategy for the said vehicle and it also reserved the right for its managers to intervene directly. With all the above combined, it was obvious that Luxgen Motors played a dominant role in decision of the contents and production of the said advertisements. It could gain more profit when the sales increased. Therefore, Luxgen was considered the advertiser in this case.

(4) According to Articles 3 and 87 of the Regulations Governing Road Traffic Safety, a small passenger-cargo van is one that weighs less than 3.5 tons or the total number of seats is less than 9, the cargo space behind the last row of fixed seats measures at least 1 cubic meter, and the space for passengers and that for cargo has to be divided with a fixed partition, while metal rails must be installed on the widows of the cargo space.

(5) The photos shown in the flyers and catalog for the Luxgen 7 MPV model had been taken with the crossbar/protection bar either removed or concealed and the third row seats adjusted. The same photos were also posted on Luxgen Motors’ website. Such advertising gave consumers the impression that the vehicle needed no crossbars/protection bars, the space of the third row seats was as shown in the photos, and all these features complied with the Regulations Governing Road Traffic Safety. However, the investigation revealed that the automobile in question had been

registered with the Ministry of Transportation and Communications (MOTC) as a passenger-cargo van. According to the MOTC, the interior of the vehicle as shown in the photos did not have the partition and metal rails and this did not comply with MOTC's regulations on the specifications and equipment of small passenger-cargo vans. At the same time, if the actual space for goods in the back was less than 1 cubic meter, it would also be incompliant with the MOTC's regulations for such vehicles. The investigation also showed that the interior arrangement of the vehicle could endanger the safety of passengers.

(6) Meanwhile, the catalog for the vehicle in question contained the wording of "the only 'Easy Flex' design among vehicles of the same class, allowing convenient folding of the third row seats to create flexible, spacious and even room for goods..." Furthermore, a photo of two bicycles placed in the space after the third row seats were folded was shown in the said catalog. This gave consumers the impression that the third row seats could be used for passengers or completely folded to create the space for two bicycles. However, the result of the FTC investigation also revealed that after the vehicle in question had been recalled and modified, the third row seats had been restored to the condition originally designed and they could no longer be folded all the way to the recess area to create the even space for goods as shown in the photos.

3. Grounds for disposition:

Luxgen Motors and Luxgen distributors had the advertising photos for the vehicle in question taken with the crossbar/protection bar either removed or concealed, the third row seats adjusted, Besides, it claimed that "Easy Flex" was incorporated in the folding design of the third row seats with a picture showing 2 bicycles placed in the vehicle behind the folded third row seats in its advertisements. Consequently, it was a false, untrue and misleading representation with regard to the content of the product in violation of Article 21(1) of the Fair Trade Law. Acting according to the first section of Article 41(1) of the same law, the FTC imposed an administrative fine of NT\$800,000 on Luxgen Motors, NT\$300,000 on each of the Luxgen distributors, namely Luxgen Motors Taipei, Luxgen Motors Taoyuan, Luxgen Motors Taichung,

Luxgen Motors Tainan, and Luxgen Motors Kaohsiung, NT\$1.5 million in total.

Appendix:

Luxgen Motors' Uniform Invoice Number: 28435456

Luxgen Motors Taipei's Uniform Invoice Number: 24367766

Luxgen Motors Taoyuan's Uniform Invoice Number: 24367365

Luxgen Motors Taichung's Uniform Invoice Number: 24367490

Luxgen Motors Tainan's Uniform Invoice Number: 24368955

Luxgen Motors Kaohsiung's Uniform Invoice Number: 29014572

Summarized by Lin,Chia-Te; Supervised by Chi,Hsueh-Li

Skechers Inc.

1114th Commissioners' Meeting (2013)

Case: Skechers Inc. violated the Fair Trade Law by posting false and untrue advertisement for its Shape-ups/ Tone-ups series

Key Word(s): Body-shaping, calorie-burning, effect of exercise

Reference: Fair Trade Commission Decision of March 13, 2013 (the 1114th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102026

Industry: Wholesale of Footwear (4553)

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

Summary:

1. US sports shoes maker Skechers Inc. (hereinafter referred to as Skechers) hired celebrities to endorse and promote its products, but the claims it presented lacked the support of scientific evidence. Consumers filed a joint lawsuit against Skechers Inc. and the US Federal Trade Commission began to investigate the suspected false

advertising. The FTC therefore initiated an ex officio investigation on the advertisements by local Skechers.

2. Findings of the FTC after investigation:

Skechers claimed on its company website that the “Shape-ups/Tone-ups series...can double the effect of exercise, help burn more calories” and “Skechers Shape-ups/Tone-ups series...consume more calories.”

3. Grounds for disposition:

The said advertisements from Skechers gave the public the impression that consumers could double the effect of their exercise and burn more calories simply by wearing sport shoes of the company’s Shape-ups or Tone-ups series. The company provided 16 research reports to support the above claim, yet only two of these reports had been conducted with their focus on the Shape-ups series. Moreover, Dr. Tishya A. L. Wren concluded in her research report “Children’s Hospital Study: Testing of Skechers Shape-ups Shoes” that testees wearing shoes with an irregular arch in the sole normally shifted their balance from one leg to the other in order to maintain a more stable posture and therefore generated more muscle activities. Meanwhile, in the research report “The Effect of Shoe Sole Shapes on Muscle Activity Amount and Patterns” by Associate Professor Yanagiya Toshio et al., the conclusion was that, compared to conventional flat sole shoes, the instability of arched sole shoes allowed the leg muscles of testees wearing Shape-ups to have more activities when walking. It was never mentioned in either of the above two research reports that wearing the said series could double the effect of exercise or burn more calories. As for the remaining 14 studies, in fact they had been conducted on MBT shoes. Only few of them indicated that the MBT models could help strengthen leg muscles, while some mentioned the increase of the metabolism rate and some other indicated alleviation of pressure in the lower back to improve stooping. However, nothing was said about wearing MBT shoes could double the effect of exercise or burn more calories. Consequently, Skechers was unable to provide any theories or clinical test results to support its claim and therefore it had to be considered groundless. The wording was a

false, untrue and misleading representation with regard to the quality and use of product in violation of Article 21(1) of the Fair Trade Law. Acting according to the first section of Article 41(1) of the same law, the FTC imposed on the company an administrative fine of NT\$200,000.

Appendix:

Skechers Inc.'s Uniform Invoice Number: 80543239

Summarized by Hsu, Tzung-Yu; Supervised by Chi, Hsueh-Li

Toug Ying Industrial Co., Ltd.

1118th Commissioners' Meeting (2013)

Case: Tong Ying Industrial Co., Ltd. violated the Fair Trade Law for posting false and untrue advertisements for the Aerosoles products

Key Word(s): False advertisement, source of products

Reference: Fair Trade Commission Decision of April 10, 2013 (the 1118th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102043

Industry: Wholesale of Clothing and Clothing Accessories (4552)

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

Summary:

1. The Aerosoles products manufactured by Tong Ying Industrial Co. Ltd. (hereinafter referred to as TYI) had nothing to do with US-based Aerosoles but TYI posted in its advertisements the wording of "Aerosoles 2012 diversified culture x Asian fashion having created the American brand name Aerosoles," "currently an agent for Aerosoles," and "Aerosoles from the American brand name established in 1987" to mislead consumers into believing the bags and wallets manufactured by TYI

came from the US or were related to the American brand Aerosoles. The conduct was suspected in violation of Article 21 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) On its company website, Facebook, the Payeasy online shopping site, and the 123 job bank website, as well as in flyers and advertisements put up by the company, TYI posted the wording of “Aerosoles - a true American brand name established in 1987,” “the royal family members and celebrities’ favorites over the years and available items in department stores and shopping malls in New York, London, Athens, Italy, Shanghai, and Hong Kong,” “currently an agent for Aerosoles,” “born in 1987,” “diversified culture x Asian fashion having created the American brand name Aerosoles,” “Aerosoles - an American brand name established in 1987,” and “with more than 20 years of experience creating shoes...”

(2) However, FTC’s investigation revealed that TYI only registered the Aerosoles trademark in Taiwan and the company was neither related to nor an agent for US-based Aerogroup International LLC. The US-based company never registered or sold its Aerosoles products overseas. In fact, shoes were never one of TYI’s sales items and no royal family members or celebrities had ever used its products.

3. Grounds for disposition:

To market its Aerosoles products, TYI posted on its company website and in flyers and advertisements the wording of “Aerosoles - a true American brand name established in 1987,” “the royal family members and celebrities’ favorites over the years and available items in department stores and shopping malls in New York, London, Athens, Italy, Shanghai, and Hong Kong,” “currently an agent for Aerosoles,” “born in 1987,” “diversified culture x Asian fashion having created the American brand name Aerosoles,” “Aerosoles - an American brand name established in 1987,” and “with more than 20 years of experience creating shoes...” However, TYI was neither a distributor nor an agent for the Aerosoles products whose trademark had been registered in the US by Aerogroup International LLC. TYI had never registered its Aerosoles trademark in any other country such as Taiwan or

marketed its Aerosoles products overseas. As a matter of fact, TYI had not even sold shoes and there was no evidence of any royal family members or celebrities using its products. Therefore, it was fair to conclude that TYI made false and untrue representation in its advertisements that could mislead consumers into having wrong perceptions about the quality and content of the company's products. The conduct was in violation of Article 21(1) of the Fair Trade Law. Acting according to the first section of Article 41(1) of the same law, the FTC ordered the company to cease its unlawful act and also imposed on it an administrative fine of NT\$400,000.

Appendix:

Toug Ying Industrial Co., Ltd.'s Uniform Invoice Number: 97238091

Summarized by Cheng, Shih-Yu; Supervised by Lai, Mei-Hua

Vigan Construction Co., Ltd.

1129th Commissioners' Meeting (2013)

Case: Vigan Construction Co., Ltd. violated the Fair Trade Law by posting false and untrue advertisement for its "Love with Sky River" housing project

Key Word(s): Real estate advertisement, last chance

Reference: Fair Trade Commission Decision of June 26, 2013 (the 1129th Commissioners' Meeting); Kung Ch'u Tzu Disposition No. 102086

Industry: Real Estate Development Activities (6700)

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

Summary:

- When marketing its "Love with Sky River" housing project, Vigan Construction

Co., Ltd. (hereinafter referred to as the offender) posted advertisements in newspaper claiming “3 final units for first time home buyers, your last chance” which gave the impression that the housing project had been selling very well and only a limited number of units were left. It was meant to increase the interest of consumers in checking out the units so that they would make their purchase decisions in haste. To find out whether the claim of sales was true or if it had been a dishonest marketing approach by the builder or marketer, the FTC initiated an ex officio investigation.

2. Findings of the FTC after investigation:

The said advertisements were posted between March 9 and 24, 2013. The investigation showed that there were 9 units left when the offender posted its first advertisement on March 9. Apparently, it was inconsistent with the claim of “3 final units for first time home buyers, your last chance.” The offender contested that the claim had been referring to its plan that 3 units were reserved for people buying homes for the first time and not that only 3 units had been left in its project. In addition, it argued that negotiations for the other 6 units had been in progress. However, there was not any offer letter or deposit paid for the said 6 units. The only thing the offender could prove was that a party interested in its units had reserved one (D2) of the 6 units and eventually signed the contract with the offender on March 9. Even if the statement by the offender had been true, there were still another 5 units available. Moreover, when the offender presented its statement at the FTC on May 24, there were still 7 units unsold.

3. Grounds for disposition:

Despite the claim of “3 final units for first time home buyers” in the advertisements posted by the offender, there were still 7 units unsold when the offender presented its statement at the FTC on May 24, 2013. Obviously, the claim had been inconsistent with the fact and the understanding of consumers after seeing the advertisements. This inconsistency could have easily led to wrong perceptions of potential buyers and increased the interest of consumers in checking out the units and they could have made their decisions in haste. The offender’s false, untrue and

misleading representation with regard to the quantity of product and the resulted unfair competition against its competitors had violated Article 21(1) of the Fair Trade Law. Acting according to the first section of Article 41(1) of the same law, the FTC ordered the company to cease its unlawful act and also imposed on it an administrative fine of NT\$100,000.

Appendix:

Vigan Construction Co., Ltd.'s Uniform Invoice Number: 12751060

Summarized by Wu, Jia-Lin; Supervised by Chen, Chun-Ting

Heyford International Ltd.

1131st Commissioners' Meeting (2013)

Case: Heyford International Ltd. violated the Fair Trade Law for posting false concert stage arrangement for “2NE1 Global Tour New Revolution Concert”

Key Word(s): False advertising, concert, advertiser

Reference: Fair Trade Commission Decision of July 10, 2013 (the 1131st Commissioners' Meeting); Disposition Kung Ch'u Tzu No.102106

Industry: Other Personal Services Activities Not Elsewhere Classified(9690)

Relevant Law(s): Paragraph 3 of Article 21 of the Fair Trade Law and Paragraph 1 of the same article applicable mutatis mutandis

Summary:

1. The FTC received complaints from private citizens that Heyford International Ltd. (hereinafter referred to as Heyford International) began at 10:58 in the morning of October 28 to sell tickets for the “2NE1 Global Tour New Evolution Concert”

(hereinafter referred to as 2NE1) to be held at Taipei Arena on November 16, 2012. The layout of the venue put up at ticketing outlets and the one posted on Facebook indicated the stage extended all the way to Rock and Roll C and D Sections, but as a matter of fact the stage did not reach C and D Sections and the locations of A and B Sections were also different when the concert actually took place. The content of the advertisement was obviously false.

2. Findings of the FTC after investigation:

Heyford International commissioned Top Increasing Technology Co., Ltd. was to build the 2NE1 concert stage according to the design provided by the Korean performing group. At the same time, Heyford International signed a contract with ERA Communications Co., Ltd. (hereinafter referred to as ERA Communications) to have ERA Communications in charge of ticketing for the concert. Heyford International contested that the inconsistency between the posted stage arrangement and the actual design had been the result of the last-minute adjustments made after the performing group's arrival four days before the concert in order to meet fire regulations. However, the FTC's investigation revealed that the tickets were sold between October 28 and November 16, 2012 but Heyford International put forth a request to Taipei Rapid Transport Corporation (hereinafter referred to as TRTC) on November 8, 2012 for the adjustment of the distance between the main stage and the Rock and Roll Sections according to the technical plans provided by TRTC. Therefore, Heyford International had been aware of the stage arrangement change in advance.

3. Grounds for disposition:

(1) The prices of the concert tickets for different sections are normally determined in accordance with the distance from the stage and the viewing angle of the seats, and the distance is often an important consideration for consumers when the decisions of purchasing tickets is made. Therefore, advertisers have the obligation to provide such information in the said advertisements honestly so that consumers can make decisions accordingly.

(2) The first concert venue layout posted by Heyford International on October 26, 2012 showed the stage reaching Rock and Roll A and B Sections. On October 28, 2012, a second layout was posted on Facebook and it was emphasized that the 2NE1 concert stage had been extended to Rock and Roll C and D Sections (the schematic appeared smaller because it was drawn with computer software). The two layouts gave the impression that the stage would reach Rock and Roll A and B Sections and even C and D Sections. However, on the day of the concert, the stage was at least seven meters from A and B Sections. In other words, the first layout posted was already significantly different from the actual condition, yet Heyford International again emphasized the stage had been extended to C and D Sections although the computer-drawn schematic was too small to show this clearly. The first posting was already likely to mislead consumers and Heyford International also admitted the mistake of claiming the stage had been extended to C and D Sections and released a statement of apology on Facebook on November 23. Nevertheless, as the advertiser, Heyford International never revised the advertisements during the advertising period to inform consumers of the difference. As a result, the information in the advertisements was inconsistent with the actual condition and the difference was difficult for the general public or concerned people to accept. It could lead to wrong perceptions or decisions and thus 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 was applicable mutatis mutandis. The FTC therefore imposed on the company an administrative fine of NT\$300,000.

Appendix:

Heyford International Ltd.'s Uniform Invoice Number: 24321143

Summarized by Lin, Yen-Kuang; Supervised by Yang, Hsiu-Yun

Taiwan Mobile Co., Ltd.

1133rd Commissioners' Meeting (2013)

Case: Taiwan Mobile violated the Fair Trade Law by posting false advertisement of “free intra-network calls”

Key Word(s): Misleading, free intra-network calls

Reference: Fair Trade Commission Decision of July 24, 2013 (the 1133rd Commissioners' Meeting); Disposition Kung Ch'u Tzu 102105

Industry: Telecommunications (6100)

Relevant Law(s): Paragraph 3 of Article 21 of the Fair Trade Law and Paragraph 1 of the same article applicable mutatis mutandis

Summary:

1. A complainant filed with the FTC a complaint accusing Taiwan Mobile Co., Ltd. (hereinafter referred to as Taiwan Mobile) of claiming to provide “free intra-network calls.” However, after signing up for the “699 Super-saving + wireless connection 699” plan in February 2013, he found out that Taiwan Mobile in fact offered only 2,500 minutes of “free intra-network calls” and the exceeded amount of time would be charged. In the advertisement, the restriction was in very small print while the special offer was in relatively large print. Therefore, the complainant believed it was false advertising.

2. Findings of the FTC after investigation:

Between December 15, 2012 and March 15, 2013, Taiwan Mobile posted an advertisement in the “myfone Digital SC Shopping Guide.” Next to a red circle (about 1.6cm in diameter) at the top of the page were white characters (each about 0.4x0.4 to 0.5x0.5cm in size) stating that “free intra-network calls” and the wording of “sign up for a designated plan to enjoy free intra-network calls (2-year contract) or use our wireless connection service.” In the meantime, below the said wording was a blue dot (about 0.7cm in diameter) and the promoted contract plans of “special intra-network call offer 401+wireless connection 699,” “super-saving 699+mobile

connection 699,” and “free intra-network calls” printed in white characters (about 0.2x0.2cm).

3. Grounds for disposition:

(1) The advertisement gave the public the impression that under the terms of the contract phone plans, subscribers could enjoy “free intra-network calls.” Although the “thoughtful reminder” at the bottom carried the wording of “the free intra-network voice calls are limited to 2,500min/month, the amount of time exceeding 2,500 minutes each month will be charged according to the 401/699 intra-network call rate,” the text totaled to 19 lines with 0.1cm space between every two lines and each character measured merely about 0.1x0.1cm in size. On top of that, the restriction explanation appeared only in line 3, line 4 and line 6. Most people would find it difficult to read and were thus unaware of the restriction. Meanwhile, since other telecom services did not put any restriction on their free intra-network call offers and the offer of “free intra-network calls “ in the said advertisement was repeatedly displayed in larger print (respectively in 0.2x0.2, 0.4x0.4 and 0.5x0.5cm), under such circumstances, it would not occur to consumers that there would be a restriction. Therefore, the advertisement was likely to mislead consumers into believing that there was no restriction on free intra-network calls and the conduct was thus also a practice of unfair competition for other businesses that offered free intra-network calls without restrictions. Consequently, the FTC concluded that it was a misleading representation.

(2) Taiwan Mobile contested that subscribers signing up for the plan had to fill out the plan agreement and the “content and restriction of the special offer” in Field No. 4 said clearly that “free intra-network calls are limited to 2,500 minutes per month and the exceeded amount of time will be charged according to the voice call rate chosen by the subscriber.” However, Taiwan Mobile printed out 1.62 million copies of the advertisement and more than tens of thousands of people signed up for the plans in question. The incentive that attracted consumers to sign up was obviously quite strong. In the perception of the general public, representations or other contents of advertisements for commercial products or services had to be consistent with facts;

otherwise, their rights and interests were thus jeopardized. At the same time, the effect of the said false advertisement was a practice of unfair competition for competitors who put up advertisements in accordance with their regulations. Therefore, providing supplementary explanations or taking remedial measures after the contracts were signed did not change the liability incurred from the false advertising before the contracts were signed. Taiwan Mobile could not use such explanations or remedial measures taken as an excuse for the exemption of its liability. Therefore, the FTC acted according to the first section of Article 41(1) of the Fair Trade Law and imposed on Taiwan Mobile an administrative fine of NT\$200,000.

Appendix:

Taiwan Mobile Co., Ltd.'s Uniform Invoice Number: 97176270

Summarized by Chen, Chien-Yu; Supervised by Chi, Hsueh-Li

Hua Rong Construction Development Co., Ltd.

1136th Commissioners' Meeting (2013)

Case: Hua Rong Construction violated the Fair Trade Law by posting false advertisement for "Shen Geng No. 3" housing project

Key Word(s): Housing project advertisement, illegal construction, balcony outward extension

Reference: Fair Trade Commission Decision of August 14, 2013 (the 1136th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102132

Industry: Real Estate Development Activities(6700)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. A complainant filed on October 16, 2011 with the FTC and stated that when he paid a deposit for the C5 unit of the “Shen Geng No. 3” housing project constructed by Hua Rong Construction Development Co., Ltd. (hereinafter referred to as Hua Rong Construction), Hua Rong Construction did not explain the dotted lines marking the bathroom areas and some other interior space in the floor plans of certain units. When the unit was handed over on January 15, 2013, the complainant checked the building use license and realized that the space outside the dotted lines was originally meant to be for balconies yet the company had changed it into interior space for bathrooms without permission from the competent authority. In other words, it was illegal construction. The complainant therefore filed the written complaint accusing Hua Rong Construction of false advertising in violation of Article 21 of the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) The FTC’s investigation indicated that Hua Rong Construction had designed and produced the said advertisement as well as printed out advertising brochures, floor plans and flyers distributed to consumers at the reception center. Another finding of the investigation showed that Hua Rong Construction had also made an online advertisement with the same content and posted it on the website housetube.tw. The FTC therefore concluded that Hua Rong was the advertiser in this case.

(2) Hua Rong Construction marked certain interior space with dotted lines to indicate the bed room or bathroom areas in the brochure, the floor plans posted in the online advertisement and the floor plans put up at the reception center. It gave consumers the impression that the dotted line areas were part of interior space to be used for bedrooms or bathrooms. However, according to the competent authority in Tainan City Government, the areas marked with dotted lines in the floor plans posted on online and put up at the reception center had been indicated as balconies in the building use license application. Hua Rong Construction had changed the design and turned the balconies into interior space for bedrooms or other interior space without

the permission of the competent authority after acquiring the building use license. In other words, using the dotted line areas as interior space was inconsistent with the purposes stated in the building use license. It was illegal construction by extending the balconies outward. Meanwhile, Hua Rong Construction admitted that the illegally construction resulted from the “second engineering” could be subject to compulsory dismantling by the competent authority if the competent authority was informed.

(3) The text and images provided in home advertisements and the interior layout displayed have a significant effect on consumers’ purchasing decisions. The amount of usable interior space is often a key factor in such decisions. The overall content of the advertisement in question gave the public the impression that the dotted line areas were interior space and could be legally used for corresponding purposes (such as bedrooms or bathrooms). If consumers had known that use of the dotted line areas as interior space was inconsistent with the purposes indicated in the building use license and the structures thus put up could be subject to compulsory dismantling, they would not have made the purchasing decisions. Therefore, the false representation in the advertisement was likely to lead to consumers’ misconceptions about the use and content of the object in question and wrong decisions. Hence, it was a false, untrue and misleading representation in violation of Article 21(1) of the Fair Trade Law.

3. Grounds for disposition:

(1) Hua Rong Construction marked the space original intended for balconies as the interior space for bedrooms and bathrooms in the brochure distributed and the floor plans put up at the reception center and the online advertisement. It was a false, untrue and misleading representation with regard to content of product in violation of Article 21 (1) of the Fair Trade Law.

(2) After assessing the motive and purpose behind Hua Rong Construction’s illegal conduct, expected unlawful gains, the level of damage incurred to trading order and the duration of such damage, the profit obtained, the scale, management condition and market status of the company, whether the company had been corrected or warned by the competent authority for similar practices, the types, number of times and intervals of past violations and penalties received, remorse and attitude of

cooperation in the investigation, and other factors, the FTC acted according to the first section of Article 41(1) of the Fair Trade Law and imposed an administrative fine of NT\$500,000 on Hua Rong Construction. Meanwhile, since the advertisement at issue had been discontinued, there was no need to order the company to cease its unlawful act.

Appendix:

Hua Rong Construction Development Co., Ltd.'s Uniform Invoice Number:
89207953

Summarized by Wen, Che-Chia; Supervised by Wu, Ting-Hung

Pa Star Technology Co.

1163rd Commissioners' Meeting (2014)

Case: Pa Star Technology Co. violated the Fair Trade Law by posting false advertisements for ZANWA refrigerators on several shopping websites

Key Word(s): False advertisement, online shopping mall, auction, environmental product, number one brand

Reference: Fair Trade Commission Decision of February 19, 2014 (the 1163rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.103018

Industry: Other Retail Sale in Non-specialized Stores (4719)

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

Summary:

1. The FTC received complaints from individuals that Pa Star Technology Co. (hereinafter referred to as "Pa Star") posted false advertisements on various websites (14 websites in total including GOHAPPY, MOMO, PChome shop street, PChome

online shopping, Ruten, PostMall, TreeMall, Udn shopping, Yahoo online shopping mall, Yahoo shopping center, books.com, U-mall, web66.com, and Korlea) and claimed that its ZANWA refrigerators were “applauded by international environmental protection organizations as a double green eco-friendly product,” “the number one eco-friendly and energy-saving brand,” and given the “ Taiwan Excellent Manufacturer Award.”

2. Findings of the FTC after investigation:

The FTC requested explanations from Pa Star, the above shopping websites and auction websites, and various sellers regarding who was the supplier of the product at issue, who were involved in the advertisement designers, whether or not the advertisement in this case was examined, who decided the terms and conditions of the transactions, and profit distribution. A number of shopping websites (including GOHAPPY, MOMO, PChome online shopping, TreeMall, Udn shopping, Yahoo shopping center, books.com, and U-mall) indicated that Pa Star was not only responsible for supplying the products, but also for the designing and uploading the advertisement. The aforementioned advertisement and products were provided by Pa Star after it signed agreements with the website operators, and Pa Star shares profits from the sales of the product with the website operators. The remaining websites, including PostMall, PChome shop street, Ruten, web88.com, and Yahoo online shopping mall, stated that what they did was merely the provision of their platforms for Pa Star to post its advertisement, increase its sales opportunities, and receive the profits from the sales. The remaining websites did not take part in designing the advertisement and do not share the profit from sales of the product.

3. Grounds of disposition:

(1) The advertisement in this case was prepared and provided by Pa Star, while the Korlea webpage was directly operated by Pa Star. The wording that ZANWA refrigerators were “applauded by international environmental protection organizations as a double green eco-friendly product” in the advertisement was quoted from a news report of Chinese media, but the factory in the report was not the factory Pa Star

commissioned in China to manufacture the product at issue. Concerning the words “given the Taiwan Excellent Manufacturer Award,” Pa Star did indeed receive the award in May 2011, but its products selected for the award did not include the product in question. Moreover, the product in question was imported from China starting in May 2013 and therefore has no relation to the award received in 2011 at all. As for the wording “the number one eco-friendly and energy-saving brand,” Pa Star was unable to provide any evidence to prove that the content is true. Based upon the above evidences, there was no question that Pa Star violated Article 21(1) of the Fair Trade Law by posting false advertisement on various websites.

(2) The abovementioned shopping websites (8 websites including GOHAPPY) were all operated under the company name, traded with customers and directly gained profits from sales, and are thus liable for the violation of Article 21 of the Fair Trade Law. However, considering that the advertisements posted on their websites were provided by Pa Star, the websites merely provided their platforms for the product suppliers to sell their products according to their agreements, as well as the advertisement designer was Pa Star, they cannot be held accountable for the false advertisement and the FTC did not impose any penalty on them. However, the FTC did send a warning letter urging the websites to pay attention to the correctness of information when using other sources for their advertisements. As for the remaining auction websites and sellers (5 sites including PostMall), the evidences showed that they merely provided their platforms for Pa Star to post the advertisement, they did not take part in designing the advertisement and did not share profits from the sales, and were therefore not responsible for the advertisement in question.

(3) After considering Pa Star’s motive, severity of violation, scale of business, and past violations, the FTC imposed an administrative penalty of NT\$300,000 in accordance with the first section of Article 41(1) of the Fair Trade Law.

Appendix:

Pa Star Technology Co., Ltd.’s Uniform Invoice Number: 13171842

Avon Cosmetics Taiwan Ltd.

1173rd Commissioners' Meeting (2014)

Case: Avon Cosmetics Taiwan Ltd. violated the Fair Trade Law by posting a false advertisement for its water purifier

Key Word(s): Water purifier, NSF, WQA

Reference: Fair Trade Commission Decision of April 30, 2014 (the 1173rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.103054

Industry: Direct Selling Establishments (4872)

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

Summary:

1. When Avon Cosmetics Taiwan Ltd. (hereinafter referred to as "Avon") began selling its water purifier "Avon Waters" on October 1, 2012, it claimed on its website that the product "passed 3 important standard certifications of the NSF – Standard No.42 (texture quality), Standard No.53 (hygiene quality), and Standard No.55 (ultraviolet sterilization)," and used the certification mark NSF along with a document with the wording "NSF/ANSI 42,53,55 Approved PMD 03/24/10." In addition, advertisements for "Avon Waters" on various media continuously stated that "Avon Waters not only received the WQA (US Water Quality Association) Gold Seal Mark and international certifications of the NSF (US National Sanitation Foundation)," "but also passed 167 tests of the WQA and 3 important standard certifications of the NSF," and used the certification mark NSF in advertisements.

2. The product "Avon Waters" was produced by Avon's company in Korea. Test reports used by Avon to claim that the product passed NSF/ANSI No.42, No.53 and No.55 water quality standards were in fact test reports stating that WQA tests comply with NSF/ANSI No.42, No.53 and No.55 water quality standards. Further, Avon did not pass any NSF certification. Hence, Avon's continuously statements on its website and advertisements that its product "passed WQA and NSF certifications" and using the certification mark NSF is clearly a false representation. This false representation

could easily result in the wrong perception and decision among consumers. Avon's statements that "Avon Waters" passed NSF certifications, using the certification mark NSF and using documents with the wording "NSF/ANSI 42,53,55 Approved PMD 03/24/10" on its website and in advertisements was therefore a false and misleading representation in violation of Article 21 of the Fair Trade Law. The FTC therefore imposed on Avon an administrative fine of NT\$1 million.

Appendix:

Avon Cosmetics Taiwan Ltd.'s Uniform Invoice Number: 11826470

Summarized by Wang, Horng-Shiuan; Supervised by Chi, Hsueh-Li

New Vision Co., Ltd.

1174th Commissioners' Meeting (2014)

Case: New Vision Co., Ltd. violated the Fair Trade Law by concealing important trading information when recruiting franchisees for "HealthCom Medical Supply" stores

Key Word(s): License chain, start-up chain, security deposit, payback period

Reference: Fair Trade Commission Decision of May 7, 2014 (the 1174th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.103058

Industry: Manufacture of Other Medical Instruments and Supplies (3329)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. The complainant stated that when he browsed the "Invitation to Join the Chain of HealthCom Medical Supply Stores" section of the official website of New Vision Co., Ltd. (hereinafter referred to as the "Company"), the section's contents included a

franchise fee of NT\$300,000, security deposit of NT\$900,000, contract period of 3 years, and claiming “average payback period of 6 to 8 months.” The complainant further negotiated with the Company on the terms of becoming a franchisee of the Company under the abovementioned contents, and signed a franchise agreement for the Banciao Yadong HealthCom Medical Supply Store. After operating the said store for 1 year, the complainant only gained a profit of roughly NT\$76,000, which is clearly lower than the “average payback period of 6 to 8 months for the franchise fee of NT\$300,000.” The FTC thus initiated an investigation to find if the Company violated the Fair Trade Law.

2. Findings of the FTC after investigation:

(1) The profit information offered by the Company in the said section of its official website was based the advertisement on the profits of Yadong, Shuanghe and Wanfang stores in January 2012, which had an average net profit after tax of roughly NT\$300,000. Therefore, the Company estimated that a store should gain a profit of NT\$210,000 in 7 months. However, the monthly profits of the abovementioned stores were not a fixed amount, and some months see profit while others see loss. Hence, only using the profits of some stores in January 2011 was not a sound basis for calculating the payback period.

(2) Although the Company argued that the advertisement referred to “on average 6 to 8 months will pay back NT\$100 thousand of the franchise fee per year.” However, there were no remarks on the website or any other franchise documents regarding the payback amount, and the Company was unable to prove that the payback amount was the customary practice for franchisers. As a result, the FTC found that the payback amount for “on average 6 to 8 months” in the advertisement was indeed disputable.

3. Grounds of disposition:

(1) The Company began recruiting franchisees for HealthCom Medical Supply Store in February 2012 using the advertisement in question, the advertisement was indeed posted on the “Invitation to Join the Chain of HealthCom Medical Supply Stores” section of its official website before the FTC received the complaint, and the

complainant became a franchisee operating the Yadong Store of HealthCom Medical Supply Store in March 14, 2012 after seeing the advertisement. Contents of the advertisement included a franchise fee of NT\$300,000, security deposit of NT\$900,000, contract period of 3 years, and the statement that “average payback period of 6 to 8 months,” which aimed to attract trading counterparts to become franchisees. Hence, the advertisement fit the description of an advertisement referred to in the Fair Trade Law. The Company admitted that it made and posted the advertisement and is thus the party responsible for the advertisement.

(2) The payback period is an important factor used by potential franchisees in assessing the risk involved and conducting cost-benefit analysis. It is in fact the key to whether or not they become a franchisee. Hence, franchisers provide information on the expected payback period in their advertisements for franchisees to gain the perception that they will be able to regain their investment within a specific period of time. This information is capable of affecting the trading decision of potential franchisees, and franchisers should thus use objective data as the basis for calculating the payback period, as well as provide the basis in the advertisement to avoid misleading representation.

(3) The Company had set up 7 HealthCom Medical Supply Stores by the end of 2011. Calculating based on its annual financial statements, the average net profit after tax for each store was under NT\$100,000. The net profit after tax for its Wanfang store in 2011 also did not reach NT\$100,000 showing that there are indeed stores unable to gain back NT\$100,000 of its franchise fee each year. According to Article 5 of the franchise agreement, 40% of the net profit would go to the Company and 60% would belong to the complainant. Calculating based on the net profit after tax of the Yadong store in 2011, the expected profit of the complainant was also lower than NT\$100,000. In other words, there was no solid basis supporting the Company’s claims and the degree of deviation was hard to accept by most people. Hence, the FTC determined that the Company intentionally misled parties interested in joining the franchise using false, untrue and misleading representations of service contents, and violated Article 21 of the Fair Trade Law. The FTC thus imposed upon the Company an administrative fine of NT\$200,000.

Appendix:

New Vision Co.'s Uniform Invoice Number: 27995183

Summarized by Lin, Hsiao-Hung; Supervised by Lin, Gin-Lan

Kwong Lung Enterprise Co., Ltd.

1178th Commissioners' Meeting (2014)

Case: Kwong Lung Enterprise Co., Ltd. violated the Fair Trade Law by posting a false advertisement claiming that it was the “exclusive manufacturing of feather bedding and pillows for department store brands”

Key Word(s): False advertisement, feather bedding and pillows, exclusive

Reference: Fair Trade Commission Decision of June 4, 2014 (the 1178th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.103066

Industry: Retail Sale of Home Furnishings in Specialized Stores (4743)

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

Summary:

1. The FTC received complaints from another company stating that Kwong Lung Enterprise Co., Ltd. (hereinafter referred to as the “Company”) posted a false advertisement claiming that it was the “exclusive manufacturer of feather bedding and pillows for department store brands”.

2. Findings of the FTC after investigation:

The Company’s advertisement claimed that it was the “exclusive manufacturer of feather bedding and pillows for department store brands”. However, the complainant provided evidences showing that Royal Co., Ltd. (hereinafter referred to as “Royal”)

also had shops in department stores around the country, along with its factory registration with the Ministry of Economic Affairs, feather purchase invoice, proof of delivery of feather bedding and pillows, as well as photos of the production process. These materials proved that Royal was a manufacturer of feather bedding and pillows whose products were sold in department stores around the country. Hence, the Company's advertisement was a false, untrue or misleading representation as regulated by Article 21 of the Fair Trade Law.

3. Grounds for disposition:

Although the Company argued that it was the only manufacturer of feather bedding and pillows for department store brands because of its complete production process from selecting and importing raw materials, washing, classification, sterilization, testing, nano-processing, fabric cutting, producing comforter shell, filling, to sales, and that Royal couldn't be considered a manufacturer because it only purchased and processed feathers for filling the comforter shell. The FTC found that feathers processed by Royal were filled in comforter shells and made into feather blankets. Although Royal did not process raw materials, one couldn't claim that Royal was not a bedding and pillow manufacturer. Based on the professional opinion offered by the Ministry of Economic Affairs, factories that only fill blankets with feathers still fall under the scope of "blanket manufacturing" in the made-up textile articles manufacturing industry and thus the Company's argument was not acceptable. The FTC therefore determined that the Company's advertisement contained false, untrue and misleading representations in violation of Article 21(1) of the Fair Trade Law, and imposed an administrative fine of NT\$200,000.

Appendix:

Kwong Lung Enterprise Co., Ltd.'s Uniform Invoice Number: 33111800

Summarized by Su,Min-Huang; Supervised by Yang,Hsiu-Yun

Yuelao International Information Network Co., Ltd.

1178th Commissioners' Meeting (2014)

Case: Yuelao International Information Network Co., Ltd. violated the Fair Trade Law by posting a comparative advertisement on its website

Key Word(s): Comparative advertising, matchmaking institute

Reference: Fair Trade Commission Decision of June 4, 2014 (the 1178th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.103071

Industry: Other Personal Service Activities Not Elsewhere Classified (9690)

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

Summary:

1. The FTC received complaints from individuals stating that Yuelao International Information Network Co., Ltd. (hereinafter referred to as the "Company") violated the Fair Trade Law by posting a comparative advertisement on its website claiming to have "the biggest number of members" but not providing any evidences. The Company also made a false representation in the comparative advertisement that its competitors do not offer a "seven day refund window" and "refund mechanisms," and therefore was suspected of violating Article 24 of the Fair Trade Law by attempting to produce an impression of the unfair comparison results.

2. Findings of the FTC after investigation:

Regarding the Company's claim that it had "the biggest number of members" on its website, this statement gave the general public the impression that the Company was the biggest among all matchmaking institutes. Although the Company stated that it had 310 thousand members registered on its website, far more than any of its competitors, the bottom of the comparative advertisement in question did not specify that "the biggest number of members" referred to the number of members registered online. In the comparison chart, the items "membership fee," "refund mechanism," and "seven day refund window" were intended for members that paid the membership fee. Hence, the impression consumers had when seeing the Company's statement of

having “the biggest number of members” would be the number of people who signed contracts with the Company, paid the membership fee, eligible to participate in its events, and enjoy the 7 day refund window and refund mechanism. However, the FTC found that the Company did not have the biggest number of members who paid the membership fee and enjoy matchmaking services among all competitors. The Company’s statement was therefore a false, untrue and misleading representation in violation of Article 21(3) applicable mutatis mutandis under Article 21(1) of the Fair Trade Law.

3. Grounds for disposition:

The Company marked the “seven day refund window” and “refund mechanisms” of its competitors with an “X” in the advertisement, but the FTC found that most of the Company’s competitors had a refund window and refund mechanism. Hence, the Company’s conduct was a false or misleading representation that resulted in unfair comparison results. The unfair conduct was capable of affecting trading order in the market and was in violation Article 24 of the Fair Trade Law. The FTC therefore imposed an administrative fine of NT\$200,000 on the Company.

Appendix:

Yuelao International Information Network Co., Ltd.’s Uniform Invoice Number:
53089355

Summarized by Wu, Jia-Lin; Supervised by Chen, Jen-Ying

Shiyun Motor Co.

1181st Commissioners' Meeting (2014)

Case: Shiyun Motor Co. violated the Fair Trade Law by posting a false and untrue advertisement for its used cars

Key Word(s): Used car, false advertisement

Reference: Fair Trade Commission Decision of June 25, 2014 (the 1181st Commissioners' Meeting); Disposition Kung Ch'u Tzu No.103075

Industry: Retail Sale of Second-hand Goods in Specialized Stores (4853)

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

Summary:

1. The FTC received complaints that Shiyun Motor Co. (hereinafter referred to as the “Company”) posted a false advertisement on 8891.com, a platform for selling used cars, in which the price quoted for a 2006 Proton Gen2 was not its actual price.

2. Findings of the FTC after investigation:

The Company posted information and a photo of the used car on 8891.com, and specified “price: NT\$100,000” next to the photo without adding any further information or restrictions to the price. The Company posted on the website the transaction records of the 2006 Proton Gen2 as “sold” at the “price: NT\$100,000.” However, the Company told the FTC that the price on the website was only the down payment, and that the actual price was NT\$300,000 which clearly inconsistent with the advertisement.

3. Grounds of disposition:

(1) The advertisement in contention gave people the impression that the price of a 2006 Proton Gen2 was NT\$100,000 and that the sale price was also NT\$100,000. However, the Company indicated that the price on the website was only the down payment, and the actual price must be totaled with the loan amount specified at the bottom of the webpage “all prices must add an additional NT\$200,000 loan paid in 20

installments with zero interest rate.” Hence, the actual sale price was NT\$300,000 and an additional discount was given when the transaction was made and the final price was NT\$250,000. The price listed on the website and sale price were both inconsistent with the actual price and constituted false advertisement.

(2) The Company argued that the prices on 8891.com were only the “sale price” and not the “actual price,” the financing plan was specified on the webpage, and consumers could learn the actual price from the website or by calling any of the Company’s sales representative, etc. However, the price listed on the webpage was an important piece of information that would definitely influence consumers’ purchase decision. Furthermore, the sale price listed next to the picture of the product without any further information or restrictions generally referred to the final sale price. Hence, if the price listed on the website in this case was only the down payment, then the Company was obligated to make consumers fully aware of this fact. When examining the entire advertisement, the Company’s webpage on 8891.com had scrolling text that reads “zero interest loans of NT\$100,000~400,000 were available based on the type of car, actual price negotiated on site,” and at the bottom of the webpage in smaller font reads “all prices must add an additional NT\$200,000 loan paid in 20 installments with zero interest rate.” The text was hard to be detected and could only be interpreted as the Company also provides preferential loans. In addition, it was hard to put together that the actual price was the sum of the sale price, which was only the down payment, and loan amount. Based on the above, the contents of the website were a misleading representation that created unfair competition with competitors on the used car market. The price listed by the Company was a false, untrue or misleading representation in violation of Article 21(1) of the Fair Trade Law, and the FTC therefore imposed an administrative fine of NT\$200,000 in accordance with Article 41(1) of the same law.

Appendix:

Shiyun Motor Co.’s Uniform Invoice Number: 25243623

Skinfood Co., Ltd.

1184th Commissioners' Meeting (2014)

Case: Skinfood Co., Ltd. violated the Fair Trade Law by posting a false advertisement and failing to fully disclose franchising information

Key Word(s): False advertising, franchise, cosmetics

Reference: Fair Trade Commission Decision of July 16, 2014 (the 1184th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.103093

Industry: Retail Sale of Cosmetics in Specialized Stores (4752)

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

Summary:

1. The FTC received complaints from individuals stating that Skinfood Co., Ltd. (hereinafter referred to as the “Company”) posted an false advertisement for “Skinfood Stores.” The advertisement claimed that “Taipei City Hanzhong Store, Taoyuan Zhongzheng Store, Zhongli Station Store, Hsinchu Datong Store, Taichung Sanmin Store, Tainan Beimen Store, Kaohsiung Xinjuejiang Store, Pingtung Fengjia Store...etc. had gained stable profits for at least 3 years, especially in business districts with severe competition, and the average monthly revenue of Skinfood stores had maintained at NT\$1~2.5 million.” Furthermore, the complainant also asserted that the Company did not provide important franchising information before the franchise contract was signed.

2. Findings of the FTC after investigation:

(1) The Company stated that the average monthly revenue of all franchisees mentioned in the advertisement were indeed in the range NT\$1~2.5 million in the first 3 years. The Company estimated the revenue of each franchisee based on the sales listed in their computer and reached the above number after the deduction of rent, personnel expense, and overhead expense. The Company then used this figure to claim that all 8 stores made a profit while they were in business, and their average monthly revenue was in the range NT\$1~2.5 million in the first 3 years.

(2) The Company stated that it provided the franchise agreement, “information required to disclose that the franchise headquarters of Skinfood Co., Ltd.” and “directions for Skinfood store management” to trading counterparts within a reasonable period before the trading counterpart became its franchisee. After examining the materials, the FTC found that they did not include an important piece of trading information “total number of franchisees in all counties (cities), and ratio of franchise agreements terminated in the previous year.”

3. Grounds of disposition:

(1) The franchise advertisement in question gave the public the impression that all stores of the Company in the business districts that were mentioned were profitable for at least 3 years, and that their average monthly revenue before and during the advertisement was at least NT\$1 million. Companies provided information on their profitability, such as “revenue,” in advertisements for parties to analyze the operating risk, return on investment, payback period, and growth of the franchise so that their potential franchisees could have basic information for evaluation and determine correctly whether or not to join a franchise. Revenue and profit varied with location, business operations, and overhead cost of each store. The Company stated in its advertisement that specific franchisees had revenues reaching a certain amount and had been profitable for at least 3 years. These figures should therefore be based on objective statistics and might not be fabricated based upon nothing. The FTC investigated the revenue of the 8 stores listed in the advertisement in the duration of the advertisement from July 2010 to July 2012, and found that only 4 of the stores had an average monthly revenue of NT\$1 million or above before 2009; only 3 of the stores had an average monthly revenue of NT\$1 million or above in 2010; only 2 of the stores had an average monthly revenue of NT\$1 million or above in 2011; and only 1 of the stores had an average monthly revenue of NT\$1 million or above in 2012. As a result, most of the stores were already unable to maintain stable profits with average monthly revenue in the range NT\$1~2.5 million when the advertisement was posted, and the claim was a false, untrue and misleading representation. Although the Company revised contents of the advertisement in June 2013, deleting “Taoyuan

Zhongzheng Store and Pingtung Fengjia Store” and “have gained stable profits for at least 3 years,” and revising the wording to “Skinfood stores have maintained an average monthly revenue of NT\$1~1.6 million,” only 1 store fit the description in 2012 and the advertisement continues to be false.

(2) The “total number of franchisees in all counties (cities), and ratio of franchise agreements terminated in the previous year” is an important piece of trading information inaccessible by trading counterparts unless disclosed by the franchiser. It is also important to the evaluation of the franchise’s future growth, degree of intra-brand competition, and brand stability. The Company had the upper hand in this asymmetric information but in fact did not disclose important information in this case. The conduct made its trading counterparts unable to accurately assess the risk of joining the franchise and was obviously unfair to trading counterparts. The conduct was therefore in violation of Article 24 of the Fair Trade Law.

(3) The advertisement in question had been used for roughly 2 years, during which the company recruited at least 6 franchisees. Therefore, the Company did not fully disclose important franchising information for roughly 2 years. Up to the end of May 2014, at least 10 franchisees had been recruited and each franchisee paid a franchise fee of NT\$400,000. However, this was the Company’s first violation and the Company was cooperative during the investigation. Acting in accordance with the first section of Article 41(1) of the Fair Trade Law, the FTC thus imposed a total administrative fine of NT\$300,000 on the Company, including NT\$200,000 for violating the part of Article 21(3) applicable mutatis mutandis under Article 21(1), and NT\$100,000 for violating Article 24 of the same law.

Appendix:

Skinfood Co., Ltd.’s Uniform Invoice Number: 80117376

Summarized by Lin, Pin-Yu; Supervised by Chiou, Shwu-Fen

Proudly Construction Co., Ltd.

1194th Commissioners' Meeting (2014)

Case: Proudly Construction violated the Fair Trade Law for its “Li Chi Xiang Xie” housing project advertisements

Key Word(s): Real estate advertisement, open space

Reference: Fair Trade Commission Decision of September 24, 2014 (the 1194th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 103113

Industry: Real Estate Development Activities (6700)

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

Summary:

1. Proudly Construction Co., Ltd. (hereinafter referred to as Proudly Construction) posted an advertisement for its “Li Chi Xiang Xie” housing project. The schematic for the layout of the entire first floor area included pictures of a basketball court and a playground. However, a written reply dated on Jan. 17, 2014 from the Public Works Department of New Taipei City Government indicated that if the pictures in a housing project advertisement involved “unauthorized changes made to the open space (to build a basketball court and outdoor playground), it would constitute a violation of Article 73 of the Building Act. As the content of the said advertisement would give consumers the impression that the basketball court and the playground were public facilities in the community, Proudly Construction was suspected of violating Article 21 of the Fair Trade Law.

2. The schematic for the layout of the entire first floor area in the said advertisement revealed that a basketball court and a playground were available despite that the space for these facilities were marked as open space in the approved floor plan. New Taipei City Government confirmed that the areas where the basketball court and the playground were located in the advertisement had been approved as open space. Changing the open space into a basketball court and a

playground would require application for permission according to related regulations. Proudly Construction, however, never filed such an application before or after acquiring the building use permit. The company contested that the basketball court and the playground had not been built to become permanent facilities. There were no barriers to stop people from entering and using the facilities, and the fences around the basketball court would not be locked. Therefore, Proudly Construction asserted, the installation of the basketball court and the playground had not altered the use of this open space. In addition, Proudly Construction emphasized the mechanical equipment in the basketball court and the playground was an environmental improvement for the building and thus there was no need to apply for permission for building use changes. Such facilities could be installed as long as they could pass related inspections. Nonetheless, according to the Public Works Department of New Taipei City Government, when environmental improvements made to statutory open lots in a building site involved changes to the open space and such changes did not meet the regulations for exemption of application for building use change permission from the competent authority in a special municipality or county/city, an application for permission in accordance with the Building Act and the Regulations for Defining and Changing Buildings Classified Use would be required. Moreover, after conducting an onsite inspection, the Public Works Department of New Taipei City Government concluded that the use of open space for the basketball court and the playground was in violation of Article 73 of the Building Act and Proudly Construction had to restore it to the original condition. In other words, the use of open space for the basketball court and the playground indicated in the advertisement was in violation of the Building Act and sanctions could be imposed according to related regulations. Therefore, Proudly Construction's contestation was invalid. The basketball court and the playground shown in the schematic in the advertisement not only were inconsistent with the approved floor plan but also could mislead consumers to believe that such facilities were actually available. The difference from reality was far greater than what the general public could accept. It could lead consumers to wrong perceptions and decisions, and the result would be unfair competition. Therefore, the FTC decided that the advertisement offered by Proudly Construction

was a false, untrue and misleading representation in violation of Article 21(1) of the Fair Trade Law and imposed an administrative fine of NT\$500,000 on the company according to Article 41 of the same law.

Appendix:

Proudly Construction Co., Ltd.'s Uniform Invoice Number: 27611047

Summarized by Wu, Jia-Lin; Supervised by Chen, Jen-Ying

Eastern Home Shopping & Leisure, Li Jie International and Fubon Multimedia Technology

1196th Commissioners' Meeting (2014)

Case: Eastern Home Shopping & Leisure, Li Jie International and Fubon Multimedia Technology violated the Fair Trade Law for false advertising

Key Word(s): False advertising, paint, mold-preventing and bacteria-fighting

Reference: Fair Trade Commission Decision of October 8, 2014 (the 1196th Commissioners' Meeting); Dispositions Kung Ch'u Tzu No. 103109 and No.103110

Industry: Retail Sale via Mail Order Houses or via Internet (4871)

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

Summary:

1. The FTC received complaints asserting that:

(1) A commercial of "7792 water-proofing, anti-cracking and wall mold-preventing photocatalyst paint" broadcasted on ET Mall TV Shopping channel, Eastern Home Shopping & Leisure Co., Ltd., and Li Jie International Enterprise Co.

claiming the product could prevent mold and fight bacteria. When applied on toilet paper, the toilet paper would stay completely dry. The product only needed to be painted on one side of the wall to be water-proofing on both sides. It could also fill up cracks and the elasticity would keep it from breaking. False and untrue advertising was suspected.

(2) A commercial broadcasted on MOMO Shopping channel for a “Mei Lai Yin Qu 3-in-one water-proofing and mold-removing wall-repairing agent,” Fubon Multimedia Technology Co., Ltd. and Li Jie International Enterprise Co. claimed the product had the effects of removing mold and fighting bacteria with a 99.96% performance rate. When applied on toilet paper, the toilet paper would stay completely dry. The product only needed to be painted on one side of the wall to be water-proofing on both sides. It could also fill up cracks and the elasticity would keep it from breaking. False and untrue advertising was suspected.

2. Despite the slight wording difference, the two commercials were both intended to claim that “7792 water-proofing, anti-cracking and wall mold-preventing photocatalyst paint” and “Mei Lai Yin Qu 3-in-one water-proofing and mold-removing wall-repairing agent” could prevent mold and fight bacteria. When applied on toilet paper, the toilet paper would remain completely dry whereas application of the products on one side of the wall could have the effect of water-proofing on both sides. Moreover, it had been claimed that both products could fill up cracks and their elasticity would keep them from breaking. The commercials gave consumers the impression that they indeed had the effects as advertised. However, according to the professional opinion offered by the Bureau of Standards, Metrology and Inspection of the Ministry of Economic Affairs, the JIS Z2801: 2000 test method used on the said products as indicated in the test reports from Super Laboratory Co., Ltd. was not appropriate for the assessment of the bacteria-fighting performance or mold-prevention performance of photocatalyst bacteria-fighting products. In addition, the test reports did not comply with the regulations for the JIS Z2801, namely, 2000 test method. Therefore, the test results could not be accepted to support the claims posted in the said commercials. Meanwhile, the data provided in

the test reports from Super Laboratory Co., Ltd. could only illustrate that the samples tested had a certain level of capacity to resist breaking and to stretch and transform. Without further evidences, they could not serve as the proof of the effects claimed in the commercials.

3. Furthermore, the material used in Li Jie International Enterprise Co.'s demonstration in the commercials, was paper napkins, rather than toilet paper as advertised. At the same time, the truth was the paper napkins, the cross-sections and other props had been prepared before the commercials were shot because the effects would take certain amount of time to achieve. As the commercials did not reveal this, viewers could never find out what really happened. With all the above considered collectively, Eastern Home Shopping & Leisure Co., Ltd., Li Jie International Enterprise Co., and Fubon Multimedia Technology Co., Ltd. were, besides the evidence mentioned earlier, unable to provide any other objective and concrete evidence or test reports to support the claims in the commercials. In other words, the claims in the commercials had no basis and constituted false, untrue and misleading representations in violation of Article 21(1) of the Fair Trade Law. Therefore, the FTC cited the first section of Article 41(1) of the Fair Trade Law and imposed an administrative fine of NT\$80,000 on Eastern Home Shopping & Leisure Co., Ltd., NT\$50,000 on Fubon Multimedia Technology Co., Ltd., and NT\$100,000 on Li Jie International Enterprise Co.

Appendix:

Eastern Home Shopping & Leisure Co., Ltd.'s Uniform Invoice Number: 22456427

Fubon Multimedia Technology Co., Ltd. 's Uniform Invoice Number: 27365925

Li Jie International Enterprise Co.'s Uniform Invoice Number: 10527860

Summarized by Ho, Yen-Jun; Supervised by Yang, Hsiu-Yun

Yulon Nissan Motor Co., Ltd.

1202nd Commissioners' Meeting (2014)

Case: Yulon Nissan Motor violated the Fair Trade Law by posting false advertisements for Nissan Sentra

Key Word(s): Nissan Sentra, most powerful in history

Reference: Fair Trade Commission Decision of November 19, 2014 (the 1202nd Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 103126

Industry: Manufacture of Motor Vehicles (3010)

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

Summary:

1. The FTC was informed by private citizens that Yulon Nissan Motor Co., Ltd. (hereinafter referred to as "Nissan Taiwan") might have engaged in false advertising by claiming on its website (<http://www.nissan.com.tw>) that "Super Sentra" was the most powerful mid-to-large size sedan in history. Statements such as "the most powerful," the "No. 1," the "best" and so on posted by a business for its own product or service could be divided into the description of objective facts and the expression of subjective perception. If there were no items or data compared, the wording of "the most powerful" in history could only be regarded as the company's expression of subjective perception or expectation. Since no objective facts or data were put forth to support the appeal or comparison, it was unlikely to cause misunderstandings for consumers. However, if such an advertisement included items or data compared to give consumers the impression that the wording of "the most powerful in history" was the appeal, reasonable or complete data for the purpose of comparison had to be disclosed, or a report from an objective and impartial third party would be needed to support the claim. Otherwise, it was likely that such wording would be considered as false, untrue or misleading.

2. The FTC's investigation revealed that next to the claim of "Which one is the

most powerful mid-to-large size sedan? Super Sentra is the most powerful large size sedan in history!” on Nissan Taiwan’s website, there were descriptions about the appearance, interior space, comfort, fuel consumption and power of the Super Sentra model as well as its related figures. The company contested that when the advertisement was under planning, only four domestically-made sedans of the same class ranging between NT\$650,000 and NT\$750,000 were compared. The comparison did not cover imported or other domestically-made 1.8L sedans. Nevertheless, Nissan Taiwan did not fully disclose the important information about the cars this advertisement compared. It was thus a misleading representation with regard to the quality of product in violation of Article 21(1) of the Fair Trade Law. Therefore, the FTC applied the first section of Article 41(1) of the same law and imposed an administrative fine of NT\$200,000 on the company.

Appendix:

Yulon Nissan Motor Co., Ltd.’s Uniform Invoice Number: 80032530

Summarized by Wang, Horng-Shiuan; Supervised by Chi,Hsueh-Li

Ming Jie Construction Co.

1206th Commissioners’ Meeting (2014)

Case: Ming Jie Construction violated the Fair Trade Law for posting false advertisements for its “Shou Yao” housing project

Key Word(s): Industrial zone, name of enterprise, Urban Planning Law

Reference: Fair Trade Commission Decision of December 17, 2014 (the 1206th Commissioners’ Meeting); Disposition Kung Ch'u Tzu No. 103148

Industry: Real Estate Development Activities (6700)

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

Summary:

1. In Aug. 2014, Yunlin County Government suspected Ming Jie Construction Co., Ltd. (hereinafter referred to as Ming Jie Construction), a company operating in the county, had violated Article 21 of the Fair Trade Law when marketing its “Shou Yao” housing project and therefore transferred the case to the FTC for an investigation to be launched. When visiting the website indicated in the document from Yunlin County Government, the FTC discovered that Lian Lian Fa Construction Co., Ltd. (hereinafter referred to as Lian Lian Fa Construction) had posted an advertisement for the housing project in question on housetube.tw and the claim of “villas under construction,” a terminology for regular residential units, were shown in the advertisement. Living room, bedroom and kitchen schematics for regular residential units were also shown in the same advertisement. However, the FTC’s investigation revealed that the project was located in an area classified as “Type B industrial zone.” In other words, the advertisement had been posted under the name of another enterprise and the buildings in an industrial zone were being marketed as regular residential units. It was false advertising.

2. Findings of the FTC after investigation:

Ming Jie Construction had provided the entire funds for the project and designed the advertisement. Therefore, the company had the right to review, approve and finalize the advertisement. The company had paid housetube.com to post the advertisement at issue under the name of Lian Lian Fa Construction, but the truth was Lian Lian Fa Construction had never authorize Ming Jie Construction to use its name in the advertisement, never participated in the financing for the project or planning for the advertisement, and never expected to be given a share of the profit from the sales of those units. In the meantime, according to Yunlin County Government’s professional opinion, the project in question was located in a Type B industrial zone and the buildings could only be used by service industries or be used as offices. If buyer used these buildings that had only been approved to be for offices or commercial facilities as private homes, they would be subject to Article 79 of the

Urban Planning Act.

3. Grounds for disposition:

(1) The advertisement was posted on housetube.tw under the name of Lian Lian Fa Construction and consumers would therefore have the perception that the units were built and marketed by Lian Lian Fa Construction. Ming Jie Construction later admitted that it had designed the advertisement alone, paid to have it posted on the website, and had never acquired the authorization to use Lian Lian Fa Construction' company name. The use of another enterprise's name in the advertisement by Ming Jie Construction was a false, untrue and misleading representation with regard to the quality of the product in violation of Article 21(1) of the Fair Trade Law.

(2) In the said advertisement, Ming Jie Construction used the wording of "villas under construction," "discovering the happy home of your dream," "the neoclassic magnificent home of the modern day, like a neoclassic castle, spacious, easy and relaxing," "family men and flower-loving ladies want to be home everyday. The comfortable, user-friendly and bright spacious layout makes it the home of my dream," "with the artistic and scholarly lifestyle here; children will begin to develop unique auras and calibers in the humanistic environment" while pictures of the living room, bedrooms and kitchen that a residential home would have were also provided to give consumers the impression that they could buy a unit and use it as a home as indicated. From the overall connotation of the advertisement, consumers would not be able to know the units could not be used as residences. In this respect, Ming Jie Construction had also violated Article 21(1) of the Fair Trade Law for posting an advertisement that the contents were inconsistent with the facts.

(3) After assessing the motive of Ming Jie Construction's unlawful conduct, the level of its influence on trading order in the market, the duration of the illegal activity, the company's attitude after the violation, the company's use of another enterprise's name and the fact that the units could not be used for private homes since they were in a Type B industrial zone, the FTC concluded that the conduct had created a critical impact on competition order in the market and the interests of consumers. Therefore, the FTC applied the first section of Article 41(1) of the Fair Trade Law and imposed

an administrative fine of NT\$1.5 million on the company.

Appendix:

Ming Jie Construction Co.'s Uniform Invoice Number: 27580353

Summarized by Chen, Wei-Fan; Supervised by Lai, Mei-Hua

Cite Publishing Ltd.

1208th Commissioners' Meeting (2014)

Case: Cite Publishing violated the Fair Trade Law by posting false TV audience ratings

Key Word(s): Audience rating, competitor, comparative advertisement

Reference: Fair Trade Commission Decision of December 31, 2014 (the 1208th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 103146

Industry: Publishing of Journals and Periodicals (5812)

Relevant Law(s): Paragraph 3 of Article 21(1) of the Fair Trade Law and Paragraph 1 of the same article applicable mutatis mutandis

Summary:

1. Between April and May 2014, Cite Publishing Ltd. (hereinafter referred to as Cite Publishing) sent electronic DM (EDM) to members of its Designer program and interior designers. The EDM contained program schedules as well as the wording of "a 2-year-old program competing with a 7-year-old program; three channels as good as four channels--Designer winning the highest audience rating every week" and "a 2-year-old program competing with a 7-year-old program; three channels as good as four channels--Designer winning the highest audience rating in three consecutive

weeks.” There was also a comparison table displaying the audience ratings of Designer and similar programs operated by Cite Publishing’s competitors. Use of false audience rating figures was suspected and it could constitute false advertising.

2. Findings of the FTC after investigation:

The comparison table in the program schedule EDM from Cite Publishing showed the audience ratings of Designer and similar programs operated by its competitors. It was indicated in the EDM that the figures were based on the result of an audience rating survey conducted on “viewers between 30 and 49 years of age.” There was also the claim that the “aggregate of the audience ratings of Designer on three channels was higher than that of Happiness on four channels,” “surpassing Happy Space in average audience rating,” “Designer winning the highest audience rating every week,” and “Designer winning the highest audience rating in three consecutive weeks.” The above statements gave consumers the erroneous impression that the aggregate of audience ratings and average audience rating of Designer were No. 1 each week and No. 1 for three weeks consecutively. The investigation, however, revealed that the “viewers between 30 and 49 years of age” indicated in the comparison table was in fact “viewers between 35 and 49 years of age,” or “viewers between 35 to 54 years of age,” and Cite Publishing also admitted that the age group indicated had been a typographical error. Consequently, the audience ratings established in accordance with the result of survey on “viewers between 30 and 49 years of age” could not support the aforesaid claim in the advertisement.

3. Grounds for disposition:

In addition to providing referential data for program producers and broadcasters to improve their service for viewers, results of TV audience rating surveys could facilitate program suppliers to make more effective commercial allocation and investment. Announcement of TV audience ratings could help publicize TV programs. Therefore, when using audience ratings to market and promote programs, businesses had the obligation to disclose important information properly and could not make false, untrue or misleading representations. Otherwise, they might cause

trading counterparts to have wrong perceptions and make incorrect transaction decisions. This could harm the interests of trading counterparts and competitors. In other words, Cite Publishing had failed to fulfill its obligation of disclosing facts as an advertiser when sending out the program schedule EDM. The conduct of Cite Publishing at issue was likely to lead to wrong perceptions for the general public and in turn make its competitors to lose their customers. It was in violation of Article 21 (3) of the Fair Trade Law and Paragraph 1 of the same article was applicable mutatis mutandis. Hence, the FTC applied the first section of Article 41(1) of the same law and imposed an administrative fine of NT\$200,000 on the company.

Appendix:

Cite Publishing Ltd.'s Uniform Invoice Number: 97125343

Summarized by Lai, Chien-Sheng; Supervised by Chi, Hsueh-Li

7.2 Judicial Case

Nissan Taiwan

Taipei High Administrative Court (2013)

Case: Taipei High Administrative Court overruled the administrative litigation filed by Nissan Taiwan over the FTC's decision

Key Word(s): Automaker, false advertising, administrative fine

Reference: Taipei High Administrative Court Judgment (2013) Su Tzu No. 387

Industry: Manufacture of Motor Vehicles (3010)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. The Fair Trade Commission (hereinafter referred to as the FTC) received complaints that the advertisements posted by Nissan Taiwan (the plaintiff) and its Kaohsiung-Pingtung region distributor Yu Chang Motor Co., Ltd. for the “Rogue” SUV indicated that the vehicle was equipped with 6 supplemental restraint systems (SRS) but failed to disclose the operating restrictions regarding the airbag for the front seat passenger. After investigation, the FTC concluded that the conduct was a misleading representation with regard to content of product in violation of Article 21(1) of the Fair Trade Law and sanctioned Nissan Taiwan in accordance with the first section of Article 41(1) of the same law. Nissan Taiwan found the Executive Yuan’s Petition Decision Yuan Tai Su Tzu No. 1020121306 dated January 10, 2013 unacceptable and filed an administrative litigation. The Taipei High Administrative Court announced its Judgment (2013) Su Tzu No. 387 that “the appeal is overruled and the plaintiff is responsible for the litigation expenses.”

2. As set forth in Article 21(1) of the Fair Trade Law, “No enterprise shall make or use false or misleading representations or symbol as to price, quantity, quality,

content, production process, production date, valid period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, or place of processing on goods or in advertisements, or in any other way making known to the public.” The term “false” means the representation or symbol is inconsistent with the fact and the general public or concerned parties find the difference difficult to accept and wrong perceptions or decisions can result from such difference. The term “misleading” means whether the representation or symbol is consistent with the fact, it is likely to cause the general public or concerned parties to have wrong perceptions or make wrong decisions. Meanwhile, it is also specified in the first section of Article 41(1) that “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 impose upon such an enterprise an administrative fine of not less than fifty thousand nor more than twenty-five million New Taiwan Dollars.”

3. Passive safety equipment in automobiles is closely related to car safety and therefore an important factor to consider when consumers making decision of purchase. As the enterprise in question did not disclose the operating restrictions of the passive safety equipment in the automobile, consumers would only take for granted that the 6 SRS airbags would all function normally and effectively. This was very different from the fact that some of the airbags could shutdown automatically from the beginning and would not provide protection when a dangerous collision occurred. The FTC’s original decision to impose the administrative fine of NT\$750,000 had been reached after taking into account the factors listed in Article 36 of the Enforcement Rules of Fair Trade Law. Therefore, the FTC, the defendant in this case, had considered all the factors to be considered and exercised its discretionary power within the statutory range of discretion. There was neither violation of the principle of proportionality nor abuse of discretionary power by the FTC.

4. With all the above factors considered, all the statements presented by Nissan

Taiwan in its appeal were apparently invalid. The FTC's conclusion that the company's failure to disclose in the advertisements the operating restrictions of the airbag in front of the front seat passenger side was a misleading representation with regard to content of product in violation of Article 21(1) and the FTC's decision made according to the first section of Article 41(1) to order Nissan Taiwan to immediately cease its unlawful act after receiving the disposition and also impose on it an administrative fine of NT\$750,000 were by all means in compliance with related regulations. The Taipei High Administrative Court affirmed the decision made by the FTC and therefore overruled the appeal.

Appendix:

Nissan Taiwan's Uniform Invoice Number: 80032530

Summarized by Lai,Chia-Ching; Supervised by Ren,Han-Ying

Chapter 8

Damages to Business Reputation

Tai Tuo International Industrial Co.

Supreme Administrative Court (2014)

Case: The Supreme Administrative Court overruled the appeal by Tai Tuo International Industrial Co. over the FTC's decision

Key Word(s): Fireproofing material, business reputation

Reference: Supreme Administrative Court Judgment (2014) Pan Tzu No.131

Industry: Retail Sale of Other New Goods in Specialized Stores (4853)

Relevant Law(s): Article 22 of the Fair Trade Law

Summary:

1. Gredmann Taiwan Ltd. (hereinafter referred to as the "Complainant") complained to the FTC that Tai Tuo International Industrial Co. (hereinafter referred to as the "Appellant") sent letters to its clients Huang Hsiang Construction Corp., Cardinal Tien Hospital, and the construction company of Tainan Landmark shopping center buildings in July 2009 and December 2010. The letter alleged that the sprayed fireproofing material MonokoteMK-6/HY produced by Grace Construction Products Ltd. and sold by the Complainant contained cancer causing substances and combustible materials not reaching Grade 3 Incombustibility, and that the accelerating agent used in coordination was toxic. The letter attempted to mislead clients into believing that the fireproofing material was hazardous and was a combustible low quality product at the same time. It was aimed to unfairly cause trading counterparts of the Complainant to trade with the Appellant. The conduct damaged the Complainant's business reputation, and the FTC concluded after investigation that the Appellant disseminated false accusations with the purpose of having unfair competition with its competitors and violated Article 22 of the Fair Trade Law. The

FTC therefore imposed an administrative fine of NT\$600,000 in Disposition Kung Ch'u Tzu No.101079. The Appellant found the Judgment unacceptable and appealed. The Appellant's appeal was overruled and the Appellant filed an administrative litigation, which was overruled by the original court. The Appellant thus filed the appeal in this case.

2. The Appellant was a distributor of the fireproofing material TYPE300 manufactured by Berlin Co., Ltd. and licensed by Isolatek International. The Complainant was also in the business of distributing fireproofing materials and its company registration information supports this fact. Hence, the FTC concluded that the Appellant and Complainant were competitors in the same market. The letter sent by the Appellant was directed to the clients of the Complainant, and its contents alleged that the fireproofing materials sold by the Complainant were hazardous to the human health and building safety. The letter also recommended that recipients choose the fireproofing material TYPE300 developed by Isolatek International and sold by the Appellant, or use the fireproofing material CAFCO manufactured by Isolatek International in the United States. The Appellant's conduct was sufficient to damage the trading counterparts' trust in the business reputation of its competitor. The FTC therefore concluded that the Appellant disseminated false accusations that damaged the business reputation of others with the purpose of unfair competition and violated Article 22 of the Fair Trade Law.

3. The FTC found that Grace Construction Products Ltd. sent a letter to the Appellant on October 15, 2010 demanding that the Appellant immediately cease the dissemination of false information on the fireproofing material MonokoteMK-6/HY. However, the Appellant did not restrain itself at all and continued to disseminate false accusations to mislead its competitor's clients into believing that the fireproofing material was hazardous and a combustible low quality product. The conduct severely damaged the Complainant's business reputation and violated business ethics and market competition. Therefore, the FTC had grounds to believe that the Appellant's conduct had damaged the business reputation of the Complainant and violated Article

22 of the Fair Trade Law. Based on the above, none of the Appellant's allegations were accepted by the original court and the original disposition was maintained. According to the Supreme Administrative Court, the reasons presented by the Appellant were unacceptable at all. The Appellant's accusation that the original court's Judgment was inappropriate had to be discarded.

Appendix:

Tai Tuo International Industrial Co.'s Uniform Invoice Number: 84913753

Summarized by Lai,Chia-Ching; Supervised by Ren,Han-Ying

Chapter 9

Improper Multi-level or Obviously Unfair Conducts

Taiwan Good Co.

1127th Commissioners' Meeting (2013)

Case: Multilevel sales business Taiwan Good Co. violated the Fair Trade Law by deducting bonus without justification when participants returned products upon contract termination

Key Word(s): Multilevel marketing, withdrawal and return of products

Reference: Fair Trade Commission Decision of June 5, 2013 (the 1127th Commissioners' meeting); Disposition Kung Ch'u Tzu No. 102080

Industry: Direct Selling Establishments (4872)

Relevant Law(s): Article 23-2(2) and Article 23-4 of the Fair Trade Law and Article 5(1) of the Supervisory Regulations Governing Multilevel Sales

Summary:

1. The FTC received a complaint from an individual stating that he had joined Taiwan Good Co. on June 26, 2012 through the introduction of a friend, signed the participation application, and paid NT\$52,500 (including NT\$2,500 for tax) according to the regulation set forth in Incentive Scheme of Taiwan Good Co. However, the situation began to appear different from what he had expected and therefore he informed Taiwan Good Co. of his decision to terminate the contract in November 2012. The company deducted NT\$24,000 for his bonuses and his up-line's recommendation bonuses, and NT\$2,500 for tax. In the end, he only retrieved NT\$ 26,000 from Taiwan Good Co. and thought the conduct of Taiwan Good Co. was in violation of the Fair Trade law.

2. Grounds for disposition:

(1) According to the Incentive Scheme of Taiwan Good Co., a “Profit 2” status individual who introduced or helped a person (or company) to become an “introducer” in another county/city would be rewarded NT\$15,000, whereas an individual introducing or helping a person (or company) to become a “level 1” would be rewarded NT\$6,000 and a “level 1” individual helping a person (or company) to become a “level 2” would also be rewarded NT\$6,000 while the “introducer” would be rewarded NT\$3,000. Another finding indicated that a “Profit 1” status distributor could recruit 1,000 to 1,500 subscribers in his or her jurisdiction. Each subscriber paid NT\$6,000 a year and the distributor could get NT\$200 and the introducer could get NT\$700. Their up-line “level 1” and its up-line (level 2) could get NT\$50 each. By implementing the above Incentive Scheme, Taiwan Good Co. met the definition of a multilevel sales business set forth in Article 8 of the Fair Trade Law.

(2) According to the Incentive Scheme of Taiwan Good Co., parties intending to become a participant had to pay NT\$52,500 (including NT\$2,500 for tax). When participants terminated the contract, the company, depending on the situation, would deduct from the returnable amount the bonuses already given and a system management fee, whereas for those who had not turned in the invoices would also had the corresponding business tax and two other expenses subtracted. However, the fact revealed by the FTC investigation showed that the said bonuses also included those given to the withdrawer’s upline and downlines. The system management fee was the cost of the set-top box that was supposed to be free of charge in the beginning, making the deduction not a statutorily required item. Moreover, as Taiwan Good Co. could have presented related data to the tax office to apply for return of the tax already paid for the returned products, it could not deduct the amount for business tax simply because a withdrawing participant did not turn in the corresponding purchase invoices.

(3) Taiwan Good Co. implemented the Incentive Scheme but failed to file with the FTC before starting its multilevel sales operations. In addition, it deducted justifiable amounts when participants withdrew and returned products. The above acts were respectively in violation of Article 23-2(2) of the Fair Trade Law and Article 5(1) of

the Supervisory Regulations Governing Multilevel Sales enacted in accordance with Article 23-4 of the same law. The FTC imposed an administrative fine of NT\$ 100,000 for its violation of Article 23-2(2) of the Fair Trade Law and ordered the company to cease its unlawful act and also imposed on it an administrative of NT\$ 50,000 for its violation of Article 5(1) of the Supervisory Regulations Governing Multilevel Sales. The fines totaled to NT\$150,000 (Taiwan Good Co. stopped its multilevel sales business and the FTC therefore did not order it to file its multilevel sales operations with the FTC).

Appendix:

Taiwan Good Co.'s Uniform Invoice Number: 53548035

Summarized by Huang, Li-Ming; Supervised by Lai, Mei-Hua

Jung Shin International Enterprise Co., Ltd.

1136th Commissioners' Meeting (2013)

Case: Jung Shin International violated the Fair Trade Law while engaging in multi-level marketing practices

Key Word(s): Multi-level marketing, business inspection, written contract

Reference: Fair Trade Commission Decision of August 14, 2013 (the 1136th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102115

Industry: Direct Selling Establishments (4872)

Relevant Law(s): Articles 7(1), 12(1), 16(2), 18 and 22(1) of the Supervisory Regulations Governing Multilevel Sales

Summary:

1. Jung Shin International Enterprise Co., Ltd. (hereinafter referred to as Jung Shin

International) filed its change of multi-level marketing system on January 14, 2013 with the FTC. The FTC requested the company to explain the connection between setting the unit price at NT\$49,000 and the marketed items. Jung Shin International replied that the unit price of NT\$49,000 was the selling price of each “individual ash urn compartment at Chia Yun Memorial Tower” and the “Longevity Village antibacterial energy water machine.” For members, each compartment was NT\$49,000 and each water machine was NT\$24,500 (two machines per purchase making the total to NT\$49,000). However, the prices Jung Shin had previously filed with the FTC were respectively NT\$45,000 and NT\$47,500. The difference could constitute a violation of multi-level marketing regulations. The FTC therefore initiated an ex officio investigation.

2. Findings of the FTC after investigation:

When conducting business inspections at the main office of Jung Shin International, the FTC’s staff members found that the written contracts signed between the company and its participants did not include multi-level marketing regulations required by the law, defect liability provisions and definition of breaches of contract by its participants. The company had also failed to obtain the written consent of the legal representatives of people with limited capacity for civil conduct recruited. At the same time, the main office also did not keep records of types, quantities and amounts of marketed items or services, payment of rewards and commissions, and types and quantities of products returned by its participants and the total amount of rebates disbursed. Another finding indicated that Taipei City Government had approved on May 10, 2013 Jung Shin International’s change of company location to Taipei City, yet the address registered remained in Tainan City. Apparently, the company had violated a number of multi-level marketing regulations.

3. Grounds for disposition:

(1) The prices of each “individual ash urn compartment at Chia Yun Memorial Tower” and each “Longevity Village antibacterial energy water machine” Jung Shin International originally filed with the FTC were respectively NT\$45,000 and

NT\$47,500 The investigation conducted by the FTC, however, revealed that the prices was changed to NT\$49,000 each. Meanwhile, the company location Jung Shin International filed with the FTC was in Tainan City, yet Taipei City Government had approved the change of company location to Taipei City on May 10, 2013. In other words, Jung Shin had failed to file with the FTC its change of company location and product prices within the statutorily required period in violation of Article 7 (1) of the Supervisory Regulations Governing Multilevel Sales.

(2) Moreover, the business investigation conducted by the FTC also revealed that the contracts signed between Jung Shin and its participants did not carry multi-level marketing regulations and defect liability provisions as required by the law. The company also did not obtain the written consent of the legal representatives of people with limited capacity for civil conduct the company recruited and the participant contracts did not contain definition of breaches of contract by participants and corresponding handling measures. At the same time, the main office did not keep legally required written information. All the above were respectively in violation of Articles 12(1), 16(2), 18, and 22(1) of the Supervisory Regulations Governing Multilevel Sales.

(3) After assessing the motive behind Jung Shin International's unlawful acts, the level of impact of the unlawful acts on trading order, the duration of the unlawful acts, and the company's attitude afterwards, the FTC acted according to Article 42 (3) and the first section of Article 41(1) of the Fair Trade Law and sanctioned the company by imposing 300,000 on the Jun Shin International and ordered it to immediately cease its unlawful acts, the FTC also demanded the company to sign with its participants written contracts carrying statutorily required information within 60 days after receiving the disposition and submit the proof to the FTC for reference.

Appendix:

Jung Shin International Enterprise Co., Ltd.'s Uniform Invoice Number: 24215142

Summarized by Chen, Wei-Fan; Supervised by Lai, Mei-Hua

Docome Life Co, Ltd.

1157th Commissioners' Meeting (2013)

Case: Docome Life violated the Fair Trade Law while engaging in multi-level marketing practices

Key Word(s): Multi-level marketing, business inspection

Reference: Fair Trade Commission Decision of January 8, 2014 (the 1157th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102212

Industry: Direct Selling Establishments (4872)

Relevant Law(s): Article 22 of the Supervisory Regulations Governing Multilevel Sales

Summary:

1. The FTC performed a business inspection at the main office of a multi-level marketing business, Docome Life Co., Ltd. (hereinafter referred to as Docome Life) on April 3, 2013. The FTC found that the company did not keep any records of monthly business development from January 2012 to March 2013 in its main office. The conduct was in violation of Article 22 of the Supervisory Regulations Governing Multilevel Sales.

2. Findings of the FTC after investigation:

The business inspection conducted by the FTC revealed that Docome Life also did not keep at its main office member distributor applications and contracts, information on return of products by participants, and the total rebates disbursed between January 2012 and March 2013. The information was to be recorded on a monthly basis as required by the law. The company made corrections and submitted the records for January to April 2012 on April 16, 2013. As for the partial records for May 2012 to March 2013, Docome Life claimed that the company stopped its multi-level marketing business in May 2012 and therefore could not provide such information. However, the FTC's Disposition Kung Ch'u Tzu No. 101162 dated November 8, 2012, Docome Life's business revenue statement and income tax statement (Form

401) for the period from May 2012 to June 24 2013, and Taipei City Government Department of Health Bei-Shi-Yi-Hu-Zi Sanction Decision No. 10233964301 dated June 24, 2013 and Bei-Shi-Yi-Hu-Zi Sanction Decision No. 10233983903 dated July 24 the same year all indicated that Docome Life was still engaging in its multi-level marketing operations during that period. Apparently, that the company did not operate its multi-level marketing business after May 2012 was a false excuse.

3. Grounds for disposition:

(1) When conducting the business inspection on Docome Life, the FTC found that Docome Life did not keep at its main office member distributor applications and contracts, information on return of products by participants, and the total rebates disbursed between January 2012 and March 2013. According to the law, the information was to be recorded on a monthly basis. .

(2) Docome Life provided the statutorily required documents for January to April 2012 but claimed that the company stopped its multi-level marketing business in May and therefore could not provide the information for May 2012 to Mach 2013. However, the investigation made by the FTC proved that the company was still engaging in its multi-level marketing business after May 2012. Therefore, its failure to keep such information at its main office as required by the law was obvious.

(3) Based on the above reasons, the FTC concluded that Docome Life, a multi-level marketing business, had violated Article 22 of the Supervisory Regulations Governing Multilevel Sales enacted in accordance with Article 23-4 of the Fair Trade Law for failing to keep at its main office records of business development on a monthly basis and therefore imposed on the company an administrative fine of NT\$200,000.

Appendix:

Docome Life Co., Ltd.'s Uniform Invoice Number: 24287139

Summarized by Lin, Yen-Kuang; Supervised by Yang, Hsiu-Yun

Chapter 10

Other Deceptive or Obviously Unfair Conducts

Single & Double Dining Co., Ltd.

1106th Commissioners' Meeting (2013)

Case: Single & Double Dining Co., Ltd. violated the Fair Trade Law by failing to fully disclose important franchising information

Key Word(s): Franchise, trading information, regular expenses, training and guidance, percentage of contracts terminated

Reference: Fair Trade Commission Decision of January 16, 2013 (the 1106th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102011

Industry: Nonalcoholic Beverage Services via Shops (5621)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC received a written complaint accusing Single & and Double Dining Co., Ltd. (hereinafter referred to as Single & Double) of violating Article 24 of the Fair Trade Law for not fully disclosing important franchising information before complainer signed the contract in Sep. 2010.

2. Findings of the FTC after investigation:

The FTC reviewed the website, direct marketing materials and franchise contract of Single & and Double. It found out that, during the reasonable period before signature of contract with a trading counterpart, the company never fully disclosed the information regarding the supply and capital equipment items, the regular expenses for supply or raw materials (items and estimates), the contents of its trademark right and the validity period of the trademark use, the concrete contents

and approaches of the training and guidance to be provided (such as contents of the courses and whether practical training was included), the percentages of contract cancellation and termination in the previous year, as well as the information about remodeling, the list of providers of supply or raw materials, and the items and quantities to be purchased. The finding made it difficult for the FTC to believe that Single & Double did comply with the regulations set forth in Subparagraphs 1 to 4, 6 and 7 of Point 3 of the Fair Trade Commission Disposal Directions (Guidelines) on the Business Practice of Franchisers.

3. Grounds for disposition:

(1) The abovementioned important franchising information is closely related to the amount of capital to be invested, profit rate, use of trademark, brand growth and stability, training and guidance needed, market fluctuations, expected business performance of franchisee, related restrictions and agreement, level of ease of withdrawal, and management risks of any franchise businesses. These are important concerns of parties interested in joining a franchise and what they may rely on to decide whether they will join a franchise or which franchise to choose. However, the information asymmetry between a franchisor and its trading counterparts (parties interested in joining the franchise) is usually quite high. In comparison, the franchisor has the information advantage and it is difficult for parties interested in joining the franchise to obtain complete trading information by simply asking the franchisor for information. Therefore, franchisors have the responsibility to disclose the abovementioned information in writing to balance the information asymmetry status of both sides before signing any contract. In addition, besides the franchise fee and rights fees, a party interested in joining a franchise also needs to pay for the equipment, raw materials, supply, and remodeling. The amount of capital to be invested is not small at all. Furthermore, once the investment is made, the capital cannot be used elsewhere. Meanwhile, exclusion is involved in almost any establishment of franchise relationships. Once the contract is signed, the franchisee will not be able to become part of any other franchise that is a competitor providing similar products or services.

(2) Even with its information advantages, Single & Double never fully disclosed the abovementioned trading information during the franchisee recruitment process. The conduct made the trading counterpart unable to assess the transaction accurately. It was obviously unfair for the trading counterpart or any potential trading counterpart. It would also lead to the loss of business opportunity for competitors and such conduct was therefore able to affect the trading order of the franchise market in violation of Article 24 of the Fair Trade Law. However, during the investigation, Single & Double did make necessary corrections and provide the contents of the training courses, the trademark registration certificate, and details of its supply orders. The FTC examined the documents and confirmed that the company had made the rectification and began to fully disclose the trademark right contents and validity period, contents and approaches of training and guidance, the list of providers of supply and raw materials, and the items to be purchased and their prices. For this reason, despite the company's violation of Article 24, the FTC ordered Single & Double to cease the unlawful acts but only imposed on it an administrative fine of NT\$50,000.

Appendix:

Single & Double Dining Co., Ltd.'s Uniform Invoice Number: 28691455

Summarized by: Yang, Chung-Lin; Supervised by: Hung, Shui-Hsing

MicroBio Co., Ltd.

1108th Commissioners' Meeting (2013)

Case: MicroBio Co., Ltd. violated the Fair Trade Law by conducting comparative advertising

Key Word(s): Qi-nourishing ginseng, comparative advertising

Reference: Fair Trade Commission Decision of January 30, 2013 (the 1108th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102015

Industry: Retail Sales in Non-specialized Stores with Food, Beverages or Tobacco Predominating (4711)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC received a written complaint from Standard Foods Corporation (hereinafter referred to as Standard Foods) about the violation of the Fair Trade Law by MicroBio Co., Ltd. (hereinafter referred to as the offender). Standard Foods had obtained the Health Foods Certification Label from the Department of Health (hereinafter referred to as the DOH) for its “Qi-nourishing Ginseng” product that enjoyed a large market share compared to similar products. Since the product had been certified as a health food, it was unlikely to be high in sugar. However, in a TV commercial for its “Li Shi Zhen Sijunzi Tonic Drink”, the offender used Standard Foods’ Qi-nourishing Ginseng” product for comparison by stacking 12 sugar cubes into the number 12 on the packaging of Standard Foods’ “Qi-nourishing” product, claiming that “buying such a health tonic equals to buying a bunch of sugar” while there was also a narration asking “Can diabetics drink this?” It was an insinuation that Standard Foods’ “Qi-nourishing Ginseng” product was excessively high in sugar. At the same time, the offender also put up at various outlets signs and posters saying that “buying health tonics equals to buying a bunch of sugar,” “Be aware of the sugar trap in ginseng drinks!” Set by the side of the “Li Shi Zhen Sijunzi Tonic Drink” products, however, was a sign saying “complying with DOH regulations.” The practice misled the public into believing that the sugar in Standard Foods’ “Qi-nourishing Ginseng”

product was too high in sugar and Standard Foods probably did not comply with the regulations of the DOH. It was in violation of Article 24 of the Fair Trade Law.

2. The offender put the wording of “buying healthy tonics equals to buying a bunch of sugar” in its advertisement. The brand name “Quaker” was covered up but the name of the product “Qi-nourishing Ginseng” or “Qi-revitalizing Ginseng” could still be identified. A close look at the product being compared, the packaging and size, the colors, the picture of a ginseng root with a single tassel, the proportion of the ginseng on the packaging, and the size and proportion of the Chinese characters of the name of product were all extremely similar to those of the packaging of Standard Foods’ “Qi-nourishing Ginseng” product. Meanwhile, according to Nielsen’s market 2011 survey, Quaker’s ginseng series had the biggest market share. The data from the FTC’s industrial data management system also showed that Standard Foods’ Chinese herbal nutritional supplementation drinks were the most successful in the market. Therefore, the commercial was indeed intended to make consumers associate the product being compared with was Quaker’s “Qi-nourishing Ginseng” product.

3. The TV commercial, the signs and posters put up at sales outlets, and advertisements in magazines all contained the wording of “buying health tonics equals to buying a bunch of sugar” and “be aware of the sugar trap in ginseng drinks” was applied in contrast with the offender’s “the only sugar-free ginseng tonic in the market, and the making of Li Shi Zhen Sijunzi Tonic Drink complies with DOH regulations.” The commercial gave the general public the impression that the sugar content of each box of Quaker’s Qi-nourishing Ginseng” products equaled to 12 cubes of sugar. They were too high in sugar and consumers ought to switch to the offender’s Li Shi Zhen Sijunzi Tonic Drink which was the only sugar-free tonic drink in the market and whose making complied with health regulations. The offender maintained that the data applied in the commercial had been taken from an article titled “The Terror behind Sugared Beverages - The Secrets That You haven’t Been Told” published in the Common Health Magazine. However, the FTC reviewed the article and found out that it was only a report on the harm to health from drinking

beverages containing too much sugar and was not about ginseng drinks at all. The FTC also inspected the lab report from Oneness Biotech Co., Ltd. provided by the offender and a news release from the office of Taipei City Councilor A. Both were related to the sugar content in all ginseng drinks and not related to the excessive sugar content of any ginseng drink from any specific manufacturer as insinuated in the commercial.

4. The DOH assured that it had never ratified any health foods containing refined sugar of more than 200 kilocalories. Consequently, it was impossible that the sugar content of Quaker's Qi-nourishing ginseng product could be excessive. The DOH further commented that, in principle, the intake of refined sugar for diabetics should not exceed 10% of the total calorific ingestion. The question as to whether diabetics could consume ginseng drinks depends upon the total sugar intake suggested. It was not decided by the type of sugar at all. In addition, the conclusion of the DOH's seminar on the "Regulations for Management of the Refined Sugar Level in Health Foods" suggested that no more than 25 grams of refined sugar should be added in health foods. Meanwhile, the test report from SGS indicated that each 60ml bottle of Quaker's "Qi-nourishing Ginseng" drink contained about 5.6 grams of sugar and was under the sugar content limit according to the aforesaid principle. There was therefore no excessive amount of sugar to harm health. The pictures in the TV commercial and magazines and on the signs and posters put up at sales outlets were for sugar content comparison. In addition, the green oblong object with a ginseng picture on the packaging that said "Qi-nourishing Ginseng" or "Qi-revitalizing Ginseng" was apparently Quaker's product. The false representation and insinuation of Quaker's Qi-nourishing Ginseng product being overly high in sugar would mislead consumers to believe the product did contain too much sugar and therefore was incompliant with DOH regulations and bad for health was an unfair comparison in violation of Article 24 of the Fair Trade Law. Therefore, the FTC imposed an administrative fine of NT\$500,000 on MicroBio Co.

Appendix:

MicroBio Co., Ltd.'s Uniform Invoice Number: 70555349

Summarized by: Chen, Jen-Ying; Supervised by: Chen, Chun-Ting

Dr. Jiang's Zero Pollution Shop

1119th Commissioners' Meeting (2013)

Case: International Functional Foods Co., Ltd. violated the Fair Trade Law
during its franchisee recruitment for Dr. Jiang's Zero Pollution Shop

Key Word(s): Franchise, trading information, trademark right content, contract
termination percentage

Reference: Fair Trade Commission Decision of April 17, 2013 (the 1119th
Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102049

Industry: Sale of Fishery Products in Specialized Stores (4723)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. International Functional Foods Co., Ltd. (hereinafter referred to as IFF) offered franchise fee discounts when it launched a recruiting promotion during the Taipei Venture Franchise Exhibition in February 2012 but failed to provide important franchise information before the contract was signed. The conduct was in violation of Article 24 of the Fair Trade Law and complaints were filed with the FTC.

2. Findings of the FTC after investigation:

Before signing the franchise contract with its trading counterparts, the written documents, including franchise description, contract, letter of intent, reservation letter, learning passport and company product description, that IFF provided and the

franchisee recruitment web pages on the company's website never fully disclosed any information with regard to the content of its trademark right, the validity period of the trademark right, and the percentage of contract cancellation and termination in the previous year. The conduct of IFF was therefore not in compliant with Subparagraphs 3 and 6 of Paragraph 2 of Point 1 of the Fair Trade Commission Disposal Directions (Guidelines) on the Business Practices of Franchisers.

3. Grounds for disposition:

(1) The abovementioned franchise information was closely associated with the use of trademark, potential brand growth, brand stability, expected market changes, management risks, and so on, that were the concerns of people interested in joining the franchise. In other words, potential franchisees needed the said information to assess whether they would sign the franchise contract or instead choose a different franchiser. Due to the high information asymmetry that normally exists between franchisers and their trading counterparts, potential franchisees, franchisers have an information advantage over their trading counterparts. Potential franchisees often find it difficult to obtain full trading information simply by asking orally. Therefore, franchisers are required to disclose to potential franchisees the aforesaid information in writing before the contract is signed by both parties in order to balance the information status of both sides. Besides the franchise fee and licensing fee, a party interested in joining a franchise also has to pay for machines and equipments, raw materials, products, and even remodeling of the shop space. The investment is usually not small and the funds invested cannot be transferred for other purposes. Moreover, exclusiveness also exists after a franchise contract is signed. In this case, once an interested party signed the contract with the offender, other franchisers who offered similar products or services lost the opportunity to do business with the said party.

(2) Being the party with the advantageous status of information, IFF did not fully disclose the aforesaid information in writing during the franchisee recruitment process. The conduct barred its trading counterparts from making the correct transaction decision and was obviously unfair to the trading counterparts or other unspecific potential trading counterparts, while at the same time the company also

deprived its market competitors of the opportunity to establish contracts with such trading counterparts. The conduct was able to affect the trading order of the franchise market in violation of Article 24 of the Fair Trade Law. After reviewing the regulations set forth in Article 36 of the Enforcement Rules of Fair Trade Law, the FTC ordered IFF to cease its unlawful act and at the same time imposed on it an administrative fine of NT\$50,000.

Appendix:

International Functional Foods Co., Ltd.'s Uniform Invoice Number: 53093870

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

Shang Xing Bird Shop

1120th Commissioners' Meeting (2013)

Case: Shang Xing Bird Shop violated the Fair Trade Law for sending patent infringement warning letters without justification

Key Word(s): Hamster cage, online platform, online seller, warning letter

Reference: Fair Trade Commission Decision of April 24, 2013 (the 1120th Commissioners' meeting); Disposition Kung Ch'u Tzu No. 102051

Industry: Other Plastic Products Manufacturing (2209)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC received from Wan Ping Pet Co., Ltd (hereinafter referred to as Wang Ping Co.) a written complaint stating that the turning wheels in hamster cages had been a basic accessories for over a decade and Wang Ping Co. had imported them for more than ten years. However, Shang Xing Bird Shop had sent emails respectively on

August 15 and 18, 2012 to warn online sellers Cool Bi Pet Supplies, Angel Cat Pet Shop and A Fei Pet Supplies that the wheels installed in hamster cages offered by Wang Ping Co. had infringed its patent. Shang Xing Bird Shop also requested the warning letter recipients to help identify the source and supplier of the products in question and take the products off their shelves. Wang Ping Co. thought the offender had violated the Fair Trade Law by sending the warning letters without any confirmation on the said patent infringement and therefore filed the complaint with the FTC.

2. Findings of the FTC after investigation:

(1) Shang Xing Bird Shop applied for a patent for its “turning wheel structure for pet cages” on November 21, 2008 and was granted Invention Patent No. I347829 on September 1, 2011. The patent was valid until November 20, 2028.

(2) On August 15, 2012, Shang Xing Bird Shop sent emails to online sellers Cool Bi Pet Supplies, A Fei Pet Supplies, Home of Cats and Dogs, Le Bao Supplies, and the contents were as follows:

(i) stated that Shang Xing Bird Shop was a pet supply wholesaler with a number of patents on pet cages and accessories;

(ii) pointed out that the hamster cages the email recipients were selling on online platforms, with their product numbers, were not its products but the turning wheels inside had been invented by Shang Xing Bird Shop who had the patent license on the wheel structure of the cage;

(iii) requested the email recipients to help identify the source of the said products and their supplier and to take the said products off their shelves on the very same day;

(iv) reminded the sellers in the note at the end of the email to remove the same products being sold on other online platforms because Shang Xing Bird Shop would check the following day and directly request such platforms to remove the items if there were any.

(3) Shang Xing Bird Shop sent on August 18, 2011 an email with the same content to Angel Cat Pet Shop, another online seller on August 15, 2012.

3. Grounds for disposition:

(1) Without providing any concrete evidence of the said patent infringement, the offender Shang Xing Bird Shop sent emails to online sellers, requesting them to identify their upstream supplier and to remove the hamster cages off their shelves. According to the concepts commonly accepted by the general public, the emails sent by Shang Xing Bird Shop could easily make the recipients, the trading counterparts of the informer, Cool Bi Pet Supplies, A Fei Pet Supplies and others; believe the informer had infringed the said patent of the offender. Therefore, the emails had to be considered warning letters.

(2) The offender admitted that its accusation of patent infringement stated in the emails had not been confirmed by any court, nor had it sent the object suspected of patent infringement to any professional institution for appraisal and acquired the appraisal report or notified in writing the manufacturer, importer or agent suspected of the said infringement to request for severance of business connection with the infringer, before or at the same time it sent the emails. Furthermore, the content of the warning letters did not comply with Point 4 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.” As there was no appraisal report attached or any statement of the concrete fact of the patent infringement for the recipients to make a reasonable assessment, the sending of the warning letters could not be considered justifiable exercise of rights according to the Patent Act.

(3) The invention patent held by the offender for the “wheel structure for pet cages” which was merely an accessory for pet cages. However, without providing any concrete evidence of patent infringement, the offender hastily claimed that the hamster cages were not its products and its quick conclusion on the infringement of its patent therefore was simply based upon the pictures posted on the Internet by online sellers. It was difficult not to consider the conduct “abuse of rights.” Moreover, online sellers Cool Bi Pet Supplies, Angel Cat Pet Shop, A Fei Pet Supplies, and others did take the products in question off their shelves to avoid being involved with any right infringement disputes. These trading counterparts of the informer obviously

became suspicious and frightened as a result of the warning letters sent by Shang Xing Bird Shop. Hence, the FTC concluded that the conduct of the offender 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(1) of the same law, the FTC ordered the offender to cease its unlawful act and also imposed on it an administrative fine of NT\$50,000.

Appendix:

Shang Xing Bird Shop's Uniform Invoice Number: 97864255

Summarized by Lin, Hsiao-Hung; Supervised by Lin, Gin-Lan

Hwe-Hon Enterprise Co., Ltd. & 3 other companies

1125th Commissioners' Meeting (2013)

Case: Hwe-Hon Enterprise Co., Ltd. and 3 other companies violated the Fair Trade Law by engaging in obviously unfair conduct in selling school edition films

Key Word(s): Abuse of market power, exclusive license, school edition film

Reference: Fair Trade Commission Decision of May 29, 2013 (the 1125th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102098, No.102099, and No.102100

Industry: Motion Picture and Video Distribution (5913)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. GFA Co., Ltd. (hereinafter referred to as the informer) won the bids for the "2011 Video-audio Material Procurement Project" put up by the municipal libraries of New Taipei City and Kaohsiung City in August 2011. After negotiating the licensing

and purchases with Hwe-Hon Enterprise Co., Ltd., Wisdom Win Distributor Co., VideoDB Enterprise Inc., and Proview Entertainment Inc., the above-mentioned four companies raised their supply prices to full rates instead of giving a 30% discount as normally practiced, and asked for full cash payment for this deal. Their intention was to make the informer profitless and withdraw from the video-audio material governmental procurement market. The conduct was a restriction on market competition or impediment to fair competition and was in violation of the Fair Trade Law.

2. Grounds for disposition:

(1) The offenders had the exclusive license for certain school edition films and there was no other legitimate channel to acquire for such licensed films. In other words, the demand for such films could only be satisfied by the offenders. Therefore, compared to other agents, downstream distributors, the informer, or other related businesses, the offenders definitely dominance position in that product market. According to the New Taipei City Library, the public procurements for library video-audio materials were often specification tenders. Under the scheme of specification tender, a list of the films needed by the buyer was announced before bidding was held with the purpose of facilitating interested parties to assess whether to participate in the bidding and prepare the films for the tender. Therefore, the specification of films and agents, as well as the purchasing prices were closely associated with a bidder's competitiveness. In other words, the competitiveness of a bidder was highly dependent on film agents. Normally, the offenders gave a 10% to 30% discount when supplying other film agents or downstream distributors. Before the incident in question, the informer had done only a few transactions with the offenders. According to the informer's past dealing experiences with the offender, a 25% to 30% discount each time had been given and payment by checks had also been accepted even though the transaction amount had never been large. However, despite the larger quantities and amounts of the two procurement projects from the city libraries, the offenders would not give any discount and at the same time demanded that the payment be made in cash. This was obviously inconsistent with the offenders'

transaction pattern in the past and could not be deemed as normal and reasonable business conduct. Meanwhile, after supplying the materials for the two library procurement projects, the offenders resumed their practice of giving the informer a 25% to 30% discount on sporadic and small orders or offering a certain promissory amount to be deducted in further orders. Hence, the conduct of rising the supplying requirements by not giving any discount and demanding cash payment by the offenders in this procurement case could not be considered a normal and reasonable business practice.

(2) The investigation conducted by the FTC revealed that the bidders for the two library procurement projects had not been limited to agents for school edition films. The offenders abused their market power and impose the conditions of no discount and cash payment under the pretense that the informer was not a film agent, there wasn't any non-agent parties had ever participated in bidding, and the tenders with offers were below market prices. There wasn't any other channel to acquire the licensing films in question, thus the offenders took advantage of the relatively disadvantageous position of the informer and changed the transaction conditions normally applied in the past after the informer won the said tenders. The conduct could intimidate the informer and other potential competitors and make them withdraw from similar bidding competitions for fear of retaliation from the offenders or the lack of price incentives or profit. In consequence, fair competition in the market would be jeopardized and the function of price competition would be weakened. Therefore, culpability in business ethics undoubtedly existed in this case. It was obviously unfair conduct as described in Article 24 of the Fair Trade Law.

(3) The offenders were highly involved in the competition of video-audio material procurement market put up by libraries. The two procurement projects in question were high in total values. As the supply from the offenders constituted a high or considerable percentage in each of the said two procurement projects, their conduct was able to affect the trading order of the market of procurement projects put up by libraries and was in violation of Article 24 of the Fair Trade Law.

Appendix:

Hwe-Hon Enterprise Co., Ltd.'s Uniform Invoice Number: 86735023

Wisdom Win Distributor Co.'s Uniform Invoice Number: 12993790

VideoDB Enterprise Inc.'s Uniform Invoice Number: 16315414

Proview Entertainment Inc.'s Uniform Invoice Number: 86867895

Summarized by Lin Kuo, An-Chi; Supervised by Chiou, Shwu-Fen

Tong Hui Construction Co., Ltd.

1134th Commissioners' Meeting (2013)

Case: Tong Hui Construction Co., Ltd. violated Article 24 of the Fair Trade Law for not providing the lists of unit proportions to the buyers when marketing presale houses

Key Word(s): Presale house, list of unit proportions

Reference: Fair Trade Commission Decision of July 31, 2013 (the 1134th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102114

Industry: Real Estate Development Activities(6700)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC received complaints from 3 informers stating that Tong Hui Construction Co., Ltd. (hereinafter referred to as Tong Hui Co.) did not provide buyers with the lists of unit proportions when selling its presale houses. Also, the list was nowhere to be seen at the location where the presale homes were sold.

2. Findings of the FTC after investigation:
Tong Hui Co. and its sales agent stated that when selling the presale houses, the

lists of unit proportions had been placed on the counter and accessible to potential buyers on the sales site. Meanwhile, each sales clerk had also carried a copy to show to potential house buyers and explained the size of the unit they were interested in. Besides, if any buyer asked for a copy, one taken from the counter would have been given. However, the FTC had inquired other buyers who had visited the presale site and all of them denied that Tong Hui Co. or its sales clerk had provided the said list to them for the purpose of inspection.

3. Grounds for disposition:

(1) Since the ownership of a presale home is not yet registered, interested parties are unable to acquire related information from a land administration office. Moreover, the area size of the main building, affiliated structures and the common property, and the percentage of the common property held by each unit owner (ownership and percentage) are taken into consideration when calculating the area size and value of the real estate to be transacted. The lists of unit proportions provides important information for house buyers to understand the area held by each unit, assess whether the distribution is fair, and examine if the area size told by the seller's sales clerks and indicated in the contract is correct. It is important trading information in the sale of presale houses and has a significant effect on potential buyers' decision making. When builders and developers fail to provide this important trading information, the conduct is considered deception to potential buyers and likely to affect trading order in violation of Article 24 of the Fair Trade Law.

(2) The 3 informers all concurred that Tong Hui Co. had never showed them lists of unit proportions held by individual unit owners and the said lists had been nowhere to be seen at the selling location. Tong Hui Co. alleged that the said lists had been placed on the counter and each sales clerk had carried a copy to show to potential buyers. However, the offender was unable to provide any evidence, such as signatures of buyers to confirm they had inspected the lists, to support its allegation. On top of this, another house buyer also expressed that Tong Hui Co. had not provide the list to him for inspection.

(3) When selling presale houses, Tong Hui Co. never provided buyers the lists of

unit proportions and the said lists was never displayed at the location where the homes were sold. It was impossible for buyers to understand the area size of the main building, affiliated structures and common property and the percentage of the common property held by each unit owner, to find out whether the area distribution was fair, or to confirm if the area size of the unit they purchased was correct. All these had a significant effect on the decision of potential buyers. The conduct obviously constituted unfair competition to competitors who would show such lists as statutorily required. It was deceptive conduct able to affect trading order as specified in Article 24 of the Fair Trade Law. Hence, the FTC concluded that Tong Hui Co. had violated Article 24 of the Fair Trade Law and thus an administrative fine of NT\$500,000 was imposed on Tong Hui Co.

Appendix:

Tong Hui Construction Co., Ltd.'s Uniform Invoice Number: 27963823

Summarized by Yang, Chung-Lin; Supervised by Hung, Shui-Hsing

Samsung Electronics Ltd., OpenTide Ltd. and Suntory International Ltd.

1146th Commissioners' Meeting (2013)

Case: Samsung and 2 other companies violated Article 24 of the Fair Trade Law for concealing their identity and pretending to be private citizens and making deceptive comparisons of products from other enterprises online

Key Word(s): Word of mouth, stake, blog writer

Reference: Fair Trade Commission Decision of October 31, 2013 (the 1146 Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102184

Industry: Telephones and Cellular Phones Manufacturing (2721)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The members of the Economics Committee of the Congress raised the question at the 6th Meeting of the 3rd Session of the 8th Legislators that “recently, a foreign telecommunications business hired a group of non-professionals through a Hong Kong public relations company to post articles online under the name of sharing their experiences with products from domestic manufacturers. Such practice involved false advertisements to attack domestic manufacturers who were competitors of the said foreign telecommunications product maker could the current Fair Trade Law be applied to stop such new online marketing practices? The Fair Trade Commission ought to investigate such new marketing practices and sanction the business in question and the Hong Kong public relations company which offered its help to the business.” The FTC therefore initiated an ex officio investigation after looking into the case and its related information, including different websites and “the Journalist” magazine.

2. Findings of the FTC after investigation:

The FTC’s investigation revealed that between 2007 and 2012, during which period Samsung and OpenTide Taiwan renewed the contract every year, and the two companies would consult and determine the number of statements to be released to the public. According to the actual rate of accomplishment and execution, OpenTide Taiwan would report to Samsung the overall operations, results of handling of critical issues, major topics of the week, number of statements released, achievements in Viral management, outlines of positive and negative responses, the operation plan for the following week on weekly and monthly bases for Samsung to be updated on the developments, as well as actions to be taken in response to marketing crises. The approaches included hiring a large number of bloggers and appointing company employees to post comments on the website Mobile 01 and other online discussion platforms to help market Samsung’s products. The comments included those on new product test results, to neutralize negative information about Samsung’s products, to compare products from competitors by pointing out their imperfections, and to heat

up related discussion. The blog writers were required to publish a certain number of articles to boost the visibilities of the targeted product. Sales & Profit International Co. was once commissioned to take charge of such operations shortly in 2012.

3. Grounds for disposition:

(1) According to their habits of use of online information for shopping reference, blog readers are likely to trust the experience of other consumers when shopping for certain products. Under such circumstances, whether such blog writers are hired by businesses or they have a stake in the business, their articles will definitely have an effect on the perception of online readers about the products they recommended or those from competitors that they compare and thus affect the purchase decisions of these readers. In this particular case, the comments were posted by bloggers, and thus consumers usually would not associate them with any business entity and the reliability of the comments was therefore increased. Likewise, competitors could not rule out the possibility that such comments did come from consumers. Consequently, competitors in the market had no choice but to respect the freedom of speech of online users to avoid offending consumers and choose not to retort. At the same time, unable to prove that the comments were linked to a competing business, they could not resort to administrative or judicial measures as they usually did in normal disputes arising from business competition. Therefore, the inappropriate marketing practice in this case constituted deceptive conduct likely to affect trading order and in violation of Article 24 of the Fair Trade Law.

(2) After assessing the business revenues obtained by Samsung and 2 other companies involved through the unlawful act, the motive, the management condition of these companies, their market status, number of violations in the past, remorse and attitude of cooperation throughout the investigation, the FTC, acted according to the first section of Article 41(1), ordered Samsung and the relevant entities to immediately cease their unlawful act, and imposed administrative fines of 10 million NTD on Samsung, 3 million NTD on OpenTide Taiwan, and 50,000 NTD on Sales & Profit International Co.

Appendix:

Samsung Electronics Ltd.'s Uniform Invoice Number: 84899112

OpenTide Ltd.'s Uniform Invoice Number: 28681442

Suntory International Ltd.'s Uniform Invoice Number: 24477118

Summarized by Chen, Jen-Ying; Supervised by Chi, Hsueh-Li

Mei Chi Cheng Enterprise Co., Ltd.

1149th Commissioners' Meeting (2013)

Case: Mei Chi Cheng Enterprise violated the Fair Trade Law during its "Good Morning Mei Chi Cheng" franchisee recruitment process

Key Word(s): Franchise, important franchise information, trademark right

Reference: Fair Trade Commission Decision of November 13, 2013 (the 1149th Commissioners' Meeting); Disposition Kung Ch'u Tzu 102193

Industry: Restaurants (5610)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC received complaints stating that when recruiting franchisees for the "Good Morning Mei Chi Cheng" breakfast store chain, Mei Chi Cheng Enterprise Co., Ltd. (hereinafter referred to Mei Chi Cheng Enterprise) did not provide important franchise information before the contract was signed and the conduct was in violation of Article 24 of the Fair Trade Law.

2. Findings of the FTC after investigation:

The FTC examined the franchise brochure, contract, business equipment supply

agreement and payment plan, business equipment list, list materials supplied the first time, list of franchisees in each county and city and total number in the country, contract termination ratio chart, list of training courses provided by Mei Chi Cheng Enterprise before the contract was signed, as well as the franchise information on the company's website. Apparently, Mei Chi Cheng Enterprise did not fully disclose the content of trademark right, its validity period, range of use licensed and restrictions, and the addresses of other franchisees. Therefore, the FTC concluded that Mei Chi Cheng Enterprise had failed to meet the regulations set forth in Subparagraphs 3 and 6, Paragraph 2, Point 3 of the Fair Trade Commission Disposal Directions (Policy Statements) on the Business Practices of Franchisers.

3. Grounds for disposition:

(1) Licensing by a franchiser should include description of the content and validity duration of trademark right, range of use licensed and restrictions. These form the basis of the right to use the trademark and have an effect on the sustainability of the franchise brand, its management and the interest of trading counterparts in joining the franchise. The franchiser may exercise the right to exclude others from using the trademark while trading counterparts are required to pay a corresponding price. Meanwhile, the addresses of other franchisees are important information for parties interested in joining the franchise to understand the level of intra-brand competition in the market, make decisions of whether to join the franchise, and evaluate and choose appropriate locations to set up their operations. However, information asymmetry exists between a franchiser and a potential franchisee. The franchiser has advantages over the potential franchisee in access to related trading information. The potential franchisee is unlikely to obtain full and complete trading information by asking orally. Therefore, franchisers have the obligation to disclose such information in writing to potential franchisees to ensure information symmetry. Although Mei Chi Cheng Enterprise did not collect franchise and trademark licensing fees, parties interested in joining the franchise were still required to pay for machine equipment, materials, products and remodeling of the shop space. The amount invested was not small and could no longer be used for other purposes. Moreover, once a potential franchisee signed the contract with Mei Chi Cheng Enterprise, other competitors

providing similar products or services would lose their opportunity to do business with the potential franchisee.

(2) Mei Chi Cheng Enterprise took advantage of information asymmetry and did not fully disclose the aforesaid information in writing during the recruitment process. The conduct obstructed trading counterparts from making correct trading judgments. It not only was obviously unfair to trading counterparts and unspecific potential trading counterparts, but also caused other competitors to lose their opportunity to do business with such trading counterparts. It was likely to affect the trading order of the franchise business market in violation of Article 24 of the Fair Trade Law. Acting according to Article 36 of the Enforcement Rules of Fair Trade Law, the FTC ordered Mei Chi Cheng Enterprise to cease its unlawful act and also imposed on the company an administrative fine of NT\$250,000.

Appendix:

Mei Chi Cheng Enterprise Co., Ltd.'s Uniform Invoice Number: 86744304

Summarized by Lin, Cheng-Yu; Supervised by Hung, Shui-Hsing

Kingyo International Co., Ltd.

1153rd Commissioners' Meeting (2013)

Case: Kingyo International violated the Fair Trade Law for failing to disclose full and complete franchise information

Key Word(s): Franchise, important franchise information, ratio of contract cancellation or termination

Reference: Fair Trade Commission Decision on December 11, 2013 (the 1153rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 102208

Industry: Nonalcoholic Beverage Services via Shops (5621)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. A complainant wrote a letter to the FTC alleging that Kingyo International Co., Ltd. (hereinafter referred to as Kingyo International) failing to provide important franchise information and also requesting franchisees to purchase products that were not necessary for business operation. The complainant believed the above conduct was in violation of Article 24 of the Fair Trade Law and therefore filed a complaint with the FTC.

2. Findings of the FTC after investigation:

Kingyo International contested that before the contract was signed, it had provided the trading counterpart with the business operation information of each store, the franchisee manual, details of needed equipment and utensils, remodeling and the identity system, the material price lists, the list of items to be supplied the first time, trademark registration certificate, training items and course list, as well as copies of franchise contracts (the contract signed between the two parties on January 30, 2012 and the 2012 version of franchise contract). After examining the aforesaid documents, the FTC concluded that Kingyo International had not fully disclosed important franchise information of the expenses required before and during business operation, including contract cancellation and termination statistics, conditions on provision of remodeling work, items and quantities of products and materials to be purchased, and criteria of penalties for breaches of contract. The conduct was obviously unfair and likely to affect trading order in the franchise market and shall be considered as in violation of Article 24 of the Fair Trade Law.

3. Grounds for disposition:

(1) Important franchise information includes the amount of capital needed, the size of investment, rate of profitability, brand growth, market scale changes, level of ease of withdrawal from the franchise and management risks, as well as quality of remodeling engineering. These are all matters of concern to a potential franchisee. However, due to information asymmetry between two parties, a franchiser has advantages over a potential franchisee with respect to access to related information.

The latter is unable to fully obtain such information simply by asking orally. For this reason, before signing the contract, a franchiser has the obligation to disclose such information in writing to ensure information symmetry. In this particular case, despite that the complainant had store management experience and was familiar with the products and materials needed, as well as prices and expenses to be paid each month, it had no idea about the costs, items and specifications of capital equipment and remodeling work, contract cancellation and termination statistics, the items and quantities of products and ingredients to be purchased, as well as the criteria of penalties for breaches of contract. Therefore, Kingyo International had to be held liable for failing to disclose such important franchise information.

(2) Kingyo International collected franchise fees, guarantees, licensing fees, and advertising and marketing expenses from franchisees who also had to pay for machine equipment, materials, products and remodeling of shop space. The amount a franchisee had to invest was not small and it could not be used for other purposes. Once a potential franchisee signed a contract with Kingyo International, other competitors who provided similar products or services would lose their opportunity to establish business relations with the potential franchisee. For this reason, Kingyo International's failure to fully disclose the afore said trading information during the recruitment process by taking advantage of information asymmetry and thus obstructing trading counterparts from making correct trading decisions was obviously unfair to the trading counterparts and unspecific trading counterparts while the conduct also deprived competitor of the opportunity to establish business relations with such trading counterparts. The conduct could affect the trading order of the franchise market and was in violation of Article 24 of the Fair Trade Law. In addition to ordering the company to cease its unlawful act, the FTC also imposed an administrative fine of NT\$500,000 on the company.

Appendix:

Kingyo International Co., Ltd.'s Uniform Invoice Number: 53273520

Yi Chi Construction Co., Ltd.

1183rd Commissioners' Meeting (2014)

Case: Yi Chi Construction Co., Ltd.violated the Fair Trade Law in sales of the presale houses of “Yue Wan – You Yue Area”

Key Word(s): Presale house, down payment, deposit, contract

Reference: Fair Trade Commission Decision of July 9, 2014 (the 1183rd Commissioners' Meeting) ; Disposition Kung Ch'u Tzu No.103088

Industry: Real Estate Development Activities (6700)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. Yi Chi Construction Co., Ltd. (hereinafter referred to as the “Company”) was suspected of violating Article 24 of the Fair Trade Law by demanding buyers to make a deposit before providing the contract for review when selling presale houses of “Yue Wan – You Yue Area.”

2. Findings of the FTC after investigation:

The Company explained that its trading process with potential buyers was as follows “introduction to the environment and product → buyer verifies the unit → inquiry about terms of payment and related affairs →deposit→5 to 7 day contract review period → the buyer signs the contract if the buyer agrees upon the terms or the deposit is fully refunded.” The Company admitted that it required a deposit before providing the contract for potential buyers to review. The statements of the complainant, the persons involved, and potential buyers provide sufficient evidences that prove the Company did require a deposit before it provided the contract for them to review. This improper restriction that prevented buyers from reviewing the contract had not yet led to any individual trading disputes (or incidents). Although the Company claimed that a sample of the contract was displayed in the lobby of the sales location for the public to browse at will, it later indicated that it would the contract to buyers for review at the sales location before a deposit was made.

However, the FTC found that the complainant, persons involved, and 9 buyers all stated that they did not see the contract displayed at the sales location, and this situation couldn't be considered free for buyers to review. Only 2 buyers stated that the Company provided the contract for them to review at the sales location, and it thus couldn't be determined as a consistent trading pattern of the Company in this case.

3. Grounds of disposition:

(1) Presale houses are considerably “highly priced” compared with other consumer products. Since presale houses are not yet completed, the ownership of presale houses are not registered, and buyers have access to very limited information of the houses when signing purchase contracts with sellers. Under these circumstances, the construction company clearly has an advantage in terms of information. Moreover, the purchase contract is unilaterally drawn up by the construction company, and its contents are the most appropriate way of disclosing the truth about the house and the rights and obligations of both parties. Hence, in the trading process of presale houses, construction companies shall fully disclose information to buyers so that they can evaluate whether or not make the transaction and to balance the position of the two parties entering into the contract. If the information is made available to buyers only after they make a deposit, the buyers will already be in a disadvantaged position when they gain the information, and it certainly will affect their rights and interests. A company’s use of information asymmetry in the trading process is an improper means of competition that severely violates business ethics and effective competition.

(2) The Company required buyers first making a deposit before it provided them with the contract for review during the sales of presale houses, putting buyers at a disadvantaged position in terms of trading information and under the risk of forfeiting their deposit or being forced to perform the contract. This conduct caused buyers to make decisions without fully disclosed information. The fact that the Company used its advantage from information asymmetry was clearly unfair to buyers and violated the business ethic of effective competition. The conduct also created a situation of unfair competition with its competitors that provided the contract in advance for

buyers to freely review, and was a clearly unfair conduct capable of damaging trading order in the market. Hence, the FTC concluded that the Company violated Article 24 of the Fair Trade Law and imposed on the Company an administrative fine of NT\$600,000.

Appendix:

Yi Chi Construction Co., Ltd.'s Uniform Invoice Number: 28547760

Summarized by Lin, Cheng-Yu; Supervised by Hung, Shui-Hsing

Skinfood Co., Ltd.

1184th Commissioners' Meeting (2014)

Case: Skinfood Co., Ltd. violated the Fair Trade Law by posting a false advertisement and failing to fully disclose franchising information

Key Word(s): False advertising, franchise, cosmetics

Reference: Fair Trade Commission Decision of July 16, 2014 (the 1184th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.103093

Industry: Retail Sale of Cosmetics in Specialized Stores (4752)

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

Summary:

1. The FTC received complaints from individuals stating that Skinfood Co., Ltd. (hereinafter referred to as the "Company") posted an false advertisement for "Skinfood Stores." The advertisement claimed that "Taipei City Hanzhong Store, Taoyuan Zhongzheng Store, Zhongli Station Store, Hsinchu Datong Store, Taichung Sanmin Store, Tainan Beimen Store, Kaohsiung Xinjuejiang Store, Pingtung Fengjia Store...etc. had gained stable profits for at least 3 years, especially in business

districts with severe competition, and the average monthly revenue of Skinfood stores had maintained at NT\$1~2.5 million.” Furthermore, the complainant also asserted that the Company did not provide important franchising information before the franchise contract was signed.

2. Findings of the FTC after investigation:

(1) The Company stated that the average monthly revenue of all franchisees mentioned in the advertisement were indeed in the range NT\$1~2.5 million in the first 3 years. The Company estimated the revenue of each franchisee based on the sales listed in their computer and reached the above number after the deduction of rent, personnel expense, and overhead expense. The Company then used this figure to claim that all 8 stores made a profit while they were in business, and their average monthly revenue was in the range NT\$1~2.5 million in the first 3 years.

(2) The Company stated that it provided the franchise agreement, “information required to disclose by that the franchise headquarters of Skinfood Co., Ltd.” and “directions for Skinfood store management” to trading counterparts within a reasonable period before the trading counterpart became its franchisee. After examining the materials, the FTC found that they did not include an important piece of trading information “total number of franchisees in all counties (cities), and ratio of franchise agreements terminated in the previous year.”

3. Grounds of disposition:

(1) The franchise advertisement in question gave the public the impression that all stores of the Company in the business districts that were mentioned were profitable for at least 3 years, and that their average monthly revenue before and during the advertisement was at least NT\$1 million. Companies provided information on their profitability, such as “revenue,” in advertisements for parties to analyze the operating risk, return on investment, payback period, and growth of the franchise so that their potential franchisees could have basic information for evaluation and determine correctly whether or not to join a franchise. Revenue and profit varied with location, business operations, and overhead cost of each store. The Company stated in its

advertisement that specific franchisees had revenues reaching a certain amount and had been profitable for at least 3 years. These figures should therefore be based on objective statistics and might not be fabricated based upon nothing. The FTC investigated the revenue of the 8 stores listed in the advertisement in the duration of the advertisement from July 2010 to July 2012, and found that only 4 of the stores had an average monthly revenue of NT\$1 million or above before 2009; only 3 of the stores had an average monthly revenue of NT\$1 million or above in 2010; only 2 of the stores had an average monthly revenue of NT\$1 million or above in 2011; and only 1 of the stores had an average monthly revenue of NT\$1 million or above in 2012. As a result, most of the stores were already unable to maintain stable profits with average monthly revenue in the range NT\$1~2.5 million when the advertisement was posted, and the claim was a false, untrue and misleading representation. Although the Company revised contents of the advertisement in June 2013, deleting “Taoyuan Zhongzheng Store and Pingtung Fengjia Store” and “have gained stable profits for at least 3 years,” and revising the wording to “Skinfood stores have maintained an average monthly revenue of NT\$1~1.6 million,” only 1 store fit the description in 2012 and the advertisement continues to be false.

(2) The “total number of franchisees in all counties (cities), and ratio of franchise agreements terminated in the previous year” is an important piece of trading information inaccessible by trading counterparts unless disclosed by the franchiser. It is also important to the evaluation of the franchise’s future growth, degree of intra-brand competition, and brand stability. The Company had the upper hand in this asymmetric information but in fact did not disclose important information in this case. The conduct made its trading counterparts unable to accurately assess the risk of joining the franchise and was obviously unfair to trading counterparts. The conduct was therefore in violation of Article 24 of the Fair Trade Law.

(3) The advertisement in question had been used for roughly 2 years, during which the company recruited at least 6 franchisees. Therefore, the Company did not fully disclose important franchising information for roughly 2 years. Up to the end of May 2014, at least 10 franchisees had been recruited and each franchisee paid a franchise fee of NT\$400,000. However, this was the Company’s first violation and the

Company was cooperative during the investigation. Acting in accordance with the first section of Article 41(1) of the Fair Trade Law, the FTC thus imposed a total administrative fine of NT\$300,000 on the Company, including NT\$200,000 for violating the part of Article 21(3) applicable mutatis mutandis under Article 21(1), and NT\$100,000 for violating Article 24 of the same law.

Appendix:

Skinfood Co., Ltd.'s Uniform Invoice Number: 80117376

Summarized by Lin, Pin-Yu; Supervised by Chiou, Shwu-Fen

Trustwin Tech Co., Ltd.

1184th Commissioners' Meeting (2014)

Case: Trustwin Tech was complained for violating the Fair Trade Law by unjustifiably sending warning letters

Key Word(s): Warning letter, patent right

Reference: Fair Trade Commission Decision of July 16, 2014 (the 1184th Commissioners' Meeting)

Industry: Manufacture of Other Communications Equipment (2729)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC received a complaint from InVue Security Products Taiwan (hereinafter referred to as the informer) stating that on Oct. 25, 2013 Trustwin Tech Co., Ltd. (hereinafter referred to as the Trustwin Tech) sent to Far Eastone Telecommunications Co., Ltd. (hereinafter referred to as Far Eastone), a vendor to which the informer supplied, an email claiming it had discovered at Far Eastone's

retail outlets products manufactured and sold without the Trustwin Tech's authorization. The Trustwin Tech not only made the accusation of right infringement to a trading counterpart of the informer without notifying the informer at the same time and obtaining confirmation of the alleged infringement by an objective and impartial appraising agency, but also urged the said trading counterpart of the informer to remove the products from its shelf with the purpose of obstructing the informer from competing in the market without any justification. Subsequently, Kuan Yu International Patent and Trademark Office sent a patent infringement warning letter (hereinafter referred to as the warning letter) to Far Eastone on Dec. 5 of the same year at the request of the Trustwin Tech. The warning letter made Far Eastone begin to doubt whether the informer's products had really infringed the patent right of the Trustwin Tech. Therefore, the Trustwin Tech's conduct was in violation of Article 24 of the Fair Trade Law.

2. Findings of the FTC after investigation:

The FTC's investigation revealed that the Trustwin Tech was indeed the assignee of the M427637 utility patent. At the same time, the Trustwin Tech did send an email and a warning letter to Far Eastone, a trading counterpart of the informer, respectively on Oct. 25, 2013 and Dec. 5, 2013. However, according to the email and the warning letter, the accused infringer was Far Eastone. In other words, the email and the warning letter were not sent to accuse "another" enterprise of infringing the company's copyright, trademark right or patent right. Therefore, the email and the warning letter could not be considered warning letters as defined 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". Meanwhile, the email pointed out that Trustwin Tech was the assignee of the M427637 utility patent and the company had found out that InVue Security Products Taiwan had manufactured and marketed certain products without its authorization. Therefore, the company requested Far Eastone to stop selling the products in question and negotiate with it to for proper solutions. Such content was an assertion of a patent assignee's rights. The email had clearly stated the

content and coverage of the patent right, and the facts of right infringement involved in this case. As for the warning letter sent to Far Eastone on Dec. 5, 2013, in addition to the provision of the patent name and number, it included attachments in relation to the content and coverage of the patent and the corresponding right infringement appraisal report. In other words, the content and coverage of the patent and the facts of infringement were all specified in the letter. Another finding of the investigation showed that both parties had engaged in a patent dispute over some products sold to Far Eastone in 2012. Because of that right infringement dispute, the Trustwin Tech expected the informer to take defensive measures. Therefore, what the Trustwin Tech did on Oct. 25, 2013 and Dec. 5, 2013 were conducted after it had gone through the preliminary procedures necessary for confirmation of right infringement. Moreover, in addition to Far Eastone, the informer's trading counterparts also included other telecommunications businesses and cell phone producers, but the Trustwin Tech only sent the email and warning letter to Far Eastone while Far Eastone, after receiving the email and the warning letter, never removed the products in question from its shelf or stop selling them. Instead, it sought clarification from the informer and continued to do business with the informer.

3. Concluding that the existing evidences were inadequate to decide what the Trustwin Tech had done constitutes obviously unfair conduct that was likely to affect trading order, the FTC therefore found it difficult to consider that the Trustwin Tech had violated Article 24 of the Fair Trade Law.

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

Hi-Life International Co., Ltd.

1188th Commissioners' Meeting (2014)

Case: Hi-Life International violated the Fair Trade Law during its franchisee recruitment

Key Word(s): Franchise, important information, trademark right

Reference: Fair Trade Commission Decision of August 13, 2014 (the 1188th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 103101

Industry: Retail Sale in Non-specialized Stores with Food, Beverages or Tobacco Predominating (4711)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. A private citizen complained that he had signed a franchise contract with Hi-Life International Co., Ltd. (hereinafter referred to as Hi-Life International) but Hi-Life International had not provided important franchise information prior to contract signature. The conduct was in violation of Article 24 of the Fair Trade Law and the FTC therefore initiated an ex officio investigation.

2. Findings of the FTC after investigation:

The FTC's investigation indicated that before contract signature Hi-Life International had provided the party interested in joining the franchise the applicant information form, draft franchise contract, franchise contract, franchise overview, franchise disclosure documents, management proposal, franchiser's disclosure statement, shop choice statement, franchisee training manual, Ministry of Economic Affairs website for information on the company and branch offices, and description of shop remodeling work required but failed to fully disclose important franchise information such as the content and validity period of trademark right, the total number of franchisees of the same franchise system in all counties/cities, and the ratios of contract cancellation and termination in the preceding year.

3. Grounds for disposition:

(1) The content and validity period of trademark right is the basis of a franchiser's authorization for others to use its business symbols (such as brand name and logo). They may also be applied to assert exclusion, determine whether a franchisee can continue its operation, and affect the willingness of trading counterparts to join the franchise. Since a trading counterpart is required to pay a certain amount of funds to join the franchise, such information therefore is important in an interested party's decision of whether to join the franchise or choose a different franchiser. Meanwhile, the total number of franchisees of the same franchise system in all counties/cities and the ratios of contract cancellation and termination in the preceding year are also important information based on which parties intended to join the franchise can assess the scale, business performance, growth potential, franchisee survival rate, management risks of the franchise system. However, information asymmetry between a franchiser and its trading counterparts (parties intending to join the franchise) is high. In comparison, a franchiser has the upper edge and a party intending to join the franchise finds it hard to fully acquire trading information by asking. For this reason, a franchiser has the obligation to fully disclose such information in writing to a party intending to join the franchise before contract signature in order to balance the information status of both sides. Therefore, the FTC concluded that the action of Hi-Life International, being the side with information edges, to take advantage of the information asymmetry and not fully disclose the important information in its possession before contract signature was the obviously unfair conduct defined in Article 24 of the Fair Trade Law.

(2) Hi-Life International first requested parties intending to join its franchise to pay a contract performance bond ranging from NT\$100,000 to NT\$200,000 upon signature of the preliminary contract. Then, when signing the franchise contract, such parties were still required to pay a franchises fee between few thousand to hundreds of thousands of NT dollars. At the same time, they also needed to pay for the remodeling expenses. The amount to be invested was by no means small and could not be transferred for other purposes. Once the franchise contract was signed, the franchisee lost the opportunity to work with other competitors that provided the same

product or service. Hence, being the side with information edges, Hi-Life International's failure to fully disclose the aforesaid trading information in writing before contract signature could obstruct the trading counterpart from making the correct transaction decision. The interests of the latter would therefore be jeopardized. The practice was obviously unfair to the trading counterpart and also deprived competitors of business opportunities. The result was unfair competition being able to affect the trading order in the chain store franchise market and was in violation of Article 24 of the Fair Trade Law.

Appendix:

Hi-Life International Co., Ltd.'s Uniform Invoice Number: 23285582

Summarized by Lin, Cheng-Yu; Supervised by Hung, Shui-Hsing

Chang Xing Long Packaging Co., Ltd.

1189th Commissioners' Meeting (2014)

Case: Chang Xing Long Packaging violated the Fair Trade Law for sending patent infringement legal attest letters without justification

Key Word(s): Display paperboard box, warning letter, technical report

Reference: Fair Trade Commission Decision of August 20, 2014 (the 1189th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 103102

Industry: Manufacture of Containers of Paper and Paperboard (1520)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. Fu Guo International Co., Ltd. (hereinafter referred to as Fu Guo International) started to purchase display paperboard boxes from Chen Yi Container Co., Ltd.

(hereinafter referred to as Chen Yi) sometime in Sep. 2013. On the same day, Chang Xing Long Packaging Co., Ltd. (hereinafter referred to as Chang Xing Long Packaging) sent a legal attest letter to Costco Wholesale Corporation (hereinafter referred to as Costco), the main distributor for Fu Guo International, and Chen Yi, claiming that the display paperboard boxes designed by the company had been awarded a utility patent and a technical report from the Intellectual Property Office of the Ministry of Economic Affairs had been obtained. The letter also accused Costco and Chen Yi of infringement of the company's patent right and demanded them to stop selling related products. As a result, the sales of boxed Fuji apples Fu Guo International supplied to Costco dropped by a large margin. However, since Chang Xing Long Packaging had not provided the technical report for the patent, the letter sent was in violation of the Fair Trade Law.

2. Findings of the FTC after investigation:

Although Chang Xing Long Packaging had been awarded the utility patent on Jul. 1, 2012, it had not yet obtained the technical report for the patent. After Chang Xing Long Packaging and Fu Guo International ended their display box business relationship in early Sep. 2013, Chang Xing Long Packaging discovered Fu Guo International was still using similar display paperboard boxes at Costco's outlets and therefore determined the boxes were an infringement of its utility patent. Another finding showed that Chang Xing Long Packaging did not send the legal attest letter for the patent infringement to Fu Guo International whose name was indicated on the boxes. Instead, it sent the letter to Costco which was only selling the Fuji apples in those boxes and had not purchased the boxes. Even worse, Chang Xing Long Packaging lied in the letter that it had obtained a technical report for the utility patent from the Intellectual Property Office of the Ministry of Economic Affairs. As a consequence, Costco believed the accusation was true and stopped purchasing Fuji apples from Fu Guo International.

3. Grounds for disposition:

- (1) Chang Xing Long Packaging stated that it had sent the legal attest letter to the

largest distributor of Fu Guo International on Sep. 30, 2013 because of its business dispute with Fu Guo International. However, by lying about having obtained the technical report for its utility patent, it had concealed the fact and misled Costco into stopping purchasing Fuji apples from Fu Guo International. Since Fu Guo International was a major supplier in the domestic boxed apple market and Costco was a principal distributor for the boxed apples from Fu Guo International, the letter-sending was therefore a deceptive practice able to affect trading order in violation of Article 24 of the Fair Trade Law.

(2) After assessing the motive behind the unlawful conduct of Chang Xing Long Packaging, the level of harm to trading order, as well as the business scale and sales of the offender, the FTC cited the first section of Article 41(1) of the Fair Trade Law, ordered the company to immediately cease the unlawful act and also imposed on it an administrative fine of NT\$50,000.

Appendix:

Chang Xing Long Packaging Co., Ltd.'s Uniform Invoice Number: 12749115

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

Tong Yi Water Co., Ltd.

1196th Commissioners' Meeting (2014)

Case: Tong Yi Water violated the Fair Trade Law for its water purifier marketing practices

Key Word(s): Water purifier, water purifier filter, raffle

Reference: Fair Trade Commission Decision of October 8, 2014 (the 1196th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 103117

Industry: Manufacture of Other Domestic Appliances (2859)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. Taichung City Government discovered that the name of a private citizen who had filed a complaint with it was not on the list of Sea-of-Flowers-in-Shinshe raffle prize winners posted on the website of Tong Yi Water Co., Ltd. (hereinafter referred to as Tong Yi Water) but the said private citizen had been informed of winning a water purifier. Tong Yi Water did acquire the consent of people informed of winning a purifier before installing it; however, after installation, the company would push those people to make a purchase of 2- or 3-year filter supply. In other words, Tong Yi Water had probably used the raffle as a pretext to market the filters and was suspected in violation of Article 24 of the Fair Trade Law.

2. Findings of the FTC after investigation:

According to Taichung City Government and Tong Yi Water, Tong Yi Water had set up a stand in the Shinshe Delicacy Section during the Sea of Flowers in Shinshe activity organized by Taichung City Government and the Council of Agriculture of the Executive Yuan and conducted a raffle. The raffle tickets distributed at the time did not carry the name of the raffle organizer and it had nothing to do with any government agency. Tong Yi Water did have the receipts of purchases of the raffle prizes the company offered but was unable to provide evidence that it had actually bought the scooter, smartphone, tablet computer and electronic rice cooker indicated on the ticket as the raffle prizes. Messages left by private citizens on the Facebook wall of the organizer of Sea of Flowers in Shinshe showed that the prize for every person informed of winning was a water purifier and each person agreed to have the water purifier installed had to pay 10% of the value of the water purifier (the fee according to Tong Yi Water was to cover the company's expenses for operating the activity and had nothing to do with prize winning tax). Tong Yi Water did provide the list of winners of other prizes but none of those winners was on the winner list posted on the company's website. Meanwhile, the company supplying the purifiers to Tong Yi Water testified that the cost of a purifier was far cheaper than the 10% fee paid by people who had agreed to have the purifier installed. After installing the purifier, Tong

Yi Water pushed a package deal of replacement filters on these people. Only until then were the people told the cost of the filters. In other words, these people had agreed to have the purifier installed without knowing the price of the replacement filters in advance.

3. Grounds for disposition:

(1)When an enterprise conducts a raffle and informs people they have luckily won the prizes without actually performing the drawing or without disclosing that the aim of the raffle is to sell certain products or services to attract people to participate in a promotional activity unknowingly, such marketing approaches will put consumers in a relatively disadvantageous position because of the information asymmetry in between.

(2)Tong Yi Water conducted the raffle in an activity organized by government agencies to make the public believe the raffle was associated with a government agency or organization. Then the company informed people with no intention of making purchases that they had won prizes and took advantage of their aleatory attitude to obtain their personal information. Even those who were not listed on the prize winner list were informed of winning prizes. Then the company lied about the value of the purifier to make people under information asymmetry think it was worthwhile to pay a small fee to have the purifier installed or even agree to purchase the consumable parts (filters). The overall marketing practice was deceptive and obviously unfair conduct able to affect trading order and in violation of Article 24 of the Fair Trade Law. Therefore, the FTC cited the first section of Article 41(1) of the same law, ordered the company to cease the unlawful act and also imposed on it an administrative fine of NT\$100,000.

Appendix:

Tong Yi Water Co., Ltd.'s Uniform Invoice Number: 54595788

Summarized by Ma, Ming-Ling ; Supervised by Wu, Lieh-Ling

Chapter 11

Multi-level Marketing Supervision Act Violations

Lian Heng Co., Ltd.

1177th Commissioners' Meeting (2014)

Case: Lian Heng Co., Ltd. violated the Multi-level Marketing Supervision Act by failing to buy back goods at 90% of the original price from a participant after contract termination

Key Word(s): Multi-level marketing

Reference: Fair Trade Commission Decision of May 28, 2014 (the 1177th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.103071

Industry: Direct Selling Establishments (4872)

Relevant Law(s): Article 21(2) of the Multi-level Marketing Supervision Act

Summary:

1. The FTC received complaints from individuals via e-mail stating that they joined the multi-level marketing organization of Lien Heng Co., Ltd. (hereinafter referred to as "the Company") and purchased a pre-need funeral agreement and urn. However, when they intended to withdraw from the organization, the Company sent a legal attest letter notifying them that they had violated the Company's business regulations by encouraging other participants to withdraw from the organization, that their qualifications were cancelled, and that the Company would not refund their products. The complainants believed that the Company's conduct was likely in violation of the Multi-level Marketing Supervision Act.

2. The FTC received complaints from 14 other individuals while it was

investigating this case. The complainants joined the Company between 2011 and 2012. After receiving their refund applications, the Company sent a legal attest letter notifying them that they had violated the Company's business regulations by encouraging other participants to withdraw from the organization, that their qualifications were cancelled, and that the Company would not refund their products. The complainants hired an attorney to respond to the legal attest letter on July 6, 2013, and requested that the Company to hand over the urn or return the payment of 13 individuals. The price of an urn was NT\$55,000 when participants joined, and the refund was calculated based on the price of NT\$45,000. At the same time, the Company also deducted several thousand NTD for warehouse management fees.

3. The Multi-level Marketing Supervision Act was enacted on January 29, 2014. The provisions of the Fair Trade Law on multi-level marketing are no longer applicable on the day the Multi-level Marketing Supervision Act took effect in accordance with Article 39 of the Multi-level Marketing Supervision Act. Article 21 of the Multi-level Marketing Supervision Act stipulates that 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, however, 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 5 of the Administrative Penalty Act stipulates that, in the case of change in law or self-governing ordinance after the commission of the act, the law or self-governing ordinance in force at the time when sanction therefor was initially imposed by the administrative agency shall apply; provided,

however, that the provision most favorable to the person punished shall apply if the law or self-governing ordinance in force prior to the imposition of the sanction is more favorable to him.” Article 23-2 of the Fair Trade Law and Article 21 of the Multi-level Marketing Supervision Act both stipulate that the multi-level marketing enterprise shall buy back all goods possessed by the participant at 90% of the original purchase price within 30 days from the termination of the contract, and that the multi-level marketing enterprise may deduct the bonuses or remuneration paid to the participant for the purchase as well as the amount of the decreased value of the goods. The time period for multi-level enterprises to handle affairs related to a participant’s withdrawal and the deductible items are the same in the Fair Trade Law and Multi-level Marketing Supervision Act. As the administrative penalty in the Multi-level Marketing Supervision Act is more favorable than administrative penalty in the Fair Trade Law, the administrative penalty in this case therefore shall be based on the Multi-level Marketing Supervision Act in accordance with the Administrative Penalty Act.

4. Between June 3, 2013 and December 26, 2013, the Company received a total of 158 refund applications from participants after contract termination. The participants all joined the multi-level marketing organization between 2011 and 2013 and purchased an urn at the price of NT\$55,000; the unit price for the second and any further urns was NT\$45,000. From the date that the products were deliverable, only 6 did not pass the 6 month mark, while the remaining 152 all passed the six month mark. The FTC found that when the Company was buying back products from participants, the Company first deducted the bonus of NT\$10,000 from the first urn of NT\$55,000 and used NT\$45,000 as the original price of the first urn; the Company then used NT\$45 thousand as the price of the second and any further urns. The Company calculated 90% of the original price of the urns and then deducted warehouse management fees, which was the amount in contention. There were calculations provided by the Company to the complainants when buying back the products that could prove the Company did indeed deduct the bonus and warehouse management fee. These two items, i.e. the bonus and warehouse management fee,

were not deductible items in accordance with the Multi-level Marketing Supervision Act. As a result, the fact the Company failed to buy back products from participants at 90% the original price due to deducting these two items was a violation of Article 21(2) of the Multi-level Marketing Supervision Act. The FTC therefore imposed an administrative fine of NT\$200,000 on the Company in accordance with Article 32(1) of the same act.

Appendix:

Lian Heng Co., Ltd.'s Uniform Invoice Number: 53809679

Summarized by Lin, Jia-Te; Supervised by Chen, Jen-Ying

Appendix I

Fair Trade Law of 2015

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.)

Amendments Promulgated on February 4, 2015;

Amendment Promulgated on June 24, 2015;

(The 2015 Amendment added Article 47-1)

CHAPTER I GENERAL PRINCIPLES

Article 1

This Law is enacted for the purposes of maintaining trading order, protecting consumers' interests, ensuring free and fair competition, and promoting economic stability and prosperity.

Article 2

The term "enterprise" as used in this Law refers to any one of the followings:

1. a company;
2. a sole proprietorship or partnership;
3. any other person or organization engaging in transactions through the provision of goods or services.

A trade association organized by businesses, or any other organization lawfully established to promote the interests of its members is deemed as an enterprise as referred to in this Law.

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 compete for 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 “relevant market” as used in this Law means a geographic area or a coverage wherein enterprises compete in respect of particular goods or services.

Article 6

The term “competent authority” as used in this Law means the Fair Trade Commission.

For any matter provided for in this Law that involves the authorities of any other ministries or commissions, the competent authority may consult with such other ministries or commissions to deal therewith.

CHAPTER II RESTRAINTS OF COMPETITION

Article 7

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 the 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 preceding paragraph.

Article 8

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 the relevant market reaches one half of the market;
2. the combined market share of two enterprises in the relevant market reaches two thirds of the market; and
3. the combined market share of three enterprises in the 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 the threshold amount as publicly announced by the competent authority, 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 competent authority if the establishment of such enterprise or any of the goods or services supplied by such enterprise to the 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 9

Monopolistic enterprises shall not engage in any one of the following conducts:

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. other abusive conducts by its market power.

Article 10

The term “merger” as used in this Law means any one of the following conditions:

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 number of 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 assets 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 held or acquired by an enterprise that is controlled by, controlling, or affiliated with the acquiring enterprise, and by an enterprise where both it and the acquiring enterprise are controlled by the same enterprise or enterprises shall be included.

Article 11

Any merger that falls within any of the following circumstances shall be filed with the 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 competent authority.

The threshold amount of the sales referred to in Subparagraph 3 of the preceding paragraph shall include the sales amount of an enterprise that is controlled by, controlling, or affiliated with the enterprise in the merger, and of an enterprise where both it and the enterprise in the merger are controlled by the same enterprise or enterprises. The calculation method shall be publically announced by the competent authority.

A person or a group that has controlling interest in an enterprise is deemed as an enterprise pertinent to the provisions of this Law with regards to merger.

The controlling interest as referred to in the preceding paragraph means that the person or the group, as referred to in the preceding paragraph, and their related persons, hold a majority of the total number of outstanding voting shares or the total capital of the said enterprise.

The scope of the related persons as referred to in the preceding paragraph is defined as follows:

1. the same natural person, and the natural person's spouse, as well as the person's blood relatives within the second degree of kinship;
2. an enterprise in which the person, referred to in the preceding subparagraph, holds more than one half of the total number of outstanding voting shares or total capital;
3. an enterprise in which the person, referred to in Subparagraph 1, acts as its chairman, president or the director representing a majority of directors;
4. the same group and its representative, manager, or any other person with

representing authority, and his/her spouse, as well as his/her blood relatives within the second degree of kinship;

5. the same group and the enterprise in which the natural person of the preceding subparagraph holds more than one half of the total number of outstanding voting shares or total capital.

The sales amount as referred to in Paragraph 1 Subparagraph 3 shall be announced separately by the competent authority in different industries.

Enterprises shall not proceed to merge within a period of 30 days starting from the date the competent authority accepts the complete filing materials, provided that the competent authority may shorten or extend the period as it deems necessary and notifies in writing the filing enterprise of such change.

Where the competent authority extends the period in accordance with the proviso of the preceding paragraph, such extension may not exceed 60 days; for cases of extension, decisions on the filing shall be made in accordance with the provisions of Article 13.

Where the competent authority fails to notify of the extension as referred to in the proviso of Paragraph 7 or make any decision as referred to in the preceding paragraph before the period expires, 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 12

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, or its 100% held subsidiary, 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 10, Paragraph 1, Subparagraph 2 herein;
5. where a single enterprise reinvests to establish a subsidiary and holds 100% shares or capital contribution of such a subsidiary;
6. any other designated type of merger promulgated by the competent authority.

Article 13

The competent authority may not prohibit any of mergers filed if the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint.

The competent authority may impose conditions or undertakings in any of the decisions it makes on the filing cases referred to in Article 11, Paragraph 8 herein in order to ensure that the overall economic benefit of the merger outweighs the disadvantages resulted from competition restraint.

Article 14

The term “concerted action” as used in this Law means that competing enterprises at the same production and/or marketing stage, by means of contract, agreement or any other form of mutual understanding, jointly determine the price, technology, products, facilities, trading counterparts, or trading territory with respect to goods or services, or any other behavior that restricts each other’s business activities, resulting in an impact on the market function with respect to production, trade in goods or supply and demand of services.

The term “any other form of mutual understanding” as used in the preceding

Paragraph means other than contract or agreement, a meeting of minds whether legally binding or not which would in effect lead to joint actions.

The mutual understanding of the concerted action may be presumed by considerable factors, such as market condition, characteristics of the good or service, cost and profit considerations, and economic rationalization of the business conducts.

The act of a trade association or other groups, as referred to in Article 2 Paragraph 2, 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 concerted action as used in this Law.

Article 15

No enterprise shall engage in 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 competent authority for such concerted action has been approved:

1. unifying the specifications or models of goods or services for the purpose of reducing costs, improving quality, or increasing efficiency;
2. joint research and development on goods, services, 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, or services 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, because of economic downturn, that the enterprises in the same industry have difficulty to maintain their business or encounter a situation of overproduction;

7. joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small and medium enterprises ; or
8. joint acts required for the purposes of improving industrial development, technological innovation, or operational efficiency.

After receipt of the application referred to in the preceding Article, the competent authority shall make a decision within three months, the period of which may be extended once if necessary.

Article 16

The competent authority may impose conditions or undertakings in the approval it grants pursuant to the provisions of the preceding article.

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

Article 17

After a concerted action is approved, the 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, because the cause for approval no longer exists, the economic condition changes, the enterprises involved engage in any conduct beyond the scope of approval, or violate the conditions or undertakings which the competent authority imposed pursuant to Paragraph 1 of the preceding Article.

Article 18

The competent authority shall voluntarily make public the approvals, and their relevant conditions, undertakings, and time limits, referred to in the preceding three articles.

Article 19

An enterprise shall not impose restrictions on resale prices of the goods supplied to its trading counterpart for resale to a third party or to such third party for making further resale. However, those with justifiable reasons are not subject to this limitation.

The provision of the preceding paragraph shall apply mutatis mutandis to services provided by an enterprise.

Article 20

No enterprise shall engage in any of the following acts that is likely to restrain 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. preventing competitors from participating or engaging in competition by inducement with low price, or other improper means;
4. causing another enterprise to refrain from competing in price, or to take part in a merger, concerted action, or vertical restriction by coercion, inducement with interest, or other improper means;
5. imposing improper restrictions on its trading counterparts' business activity as part of the requirements for trade engagement.

CHAPTER III **UNFAIR COMPETITION**

Article 21

No enterprise shall make or use false or misleading representations or symbols on the matter that is relevant to goods and is sufficient to affect trading decisions on goods or in advertisements, or in any other way make it known to the public.

The matter, referred to in the preceding paragraph that is relevant to the goods, and is sufficient to affect trading decisions, includes: price, quantity, quality, content, production process, production date, valid period, method of use, purpose of use, place of origin, manufacturer, place of manufacturing, processor, place of processing, or any other relevant item that has touting effects.

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

The preceding three paragraphs shall apply mutatis mutandis to services provided by 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 have any of the following acts with respect to the goods or services it supplies:

1. using in the same or similar manner in the same or similar category of merchandize, 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 the public, so as to cause confusion with such person's goods; or selling, transporting, exporting, or importing goods bearing such representation; or
2. using in the same or similar manner in the same or similar category of services, the personal name, business or corporate name, or service mark of another, or any other symbol that represents such person's business or services, commonly known to the public, so as to cause confusion with the facilities or activities of the business or service of such person;

The provisions of the preceding paragraph are not applicable to 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, as referred to in the preceding paragraph, if that enterprise has obtained a legally registered trademark.

The provisions of Paragraph 1 shall not apply to any one of the following:

1. using in an ordinary manner the generic name customarily associated with the goods or services, or the representation customarily used in the trade of the same category of goods or services; or selling, transporting, exporting or importing goods or services bearing such name or representation;
2. using in good faith one's own name, or selling, transporting, exporting or importing goods or services bearing such name;
3. using, with good faith, in the same or similar manner the representation referred to in the first or second subparagraph of the first paragraph before such representation having become commonly known to the public, or using such representation by any successor that acquires such representation together with the business from a bona fide user; or selling, transporting, exporting or importing goods or services bearing such representation.

Where any enterprise has any of the acts set forth in the second or third subparagraphs of the preceding paragraph which is likely to cause confusion or mistake concerning the origins of such goods or services with another enterprise, the latter enterprise may request the former to add appropriate distinctive labeling, unless the former only transports such goods.

Article 23

No enterprise shall compete for trading opportunities by means of improper offerings of gifts or prizes.

The competent authority shall enact the regulations with regard to the scope of gifts or prizes, amount of improper offering and other related matters.

Article 24

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

Article 25

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 INVESTIGATION AND SANCTION PROCEDURES

Article 26

The competent authority may investigate and handle, upon complaints or ex officio, any involvement in the violation of the provisions of this Law that harms the public interest.

Article 27

In conducting investigations under this Law, 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 onsite inspection of the office, place of business, or other locations of the parties and any related third party.

The competent authority may seize articles obtained from the investigation that may serve as evidence. The scope, and duration of holding the seized articles are limited to the need of investigation, inspection, verification, or any other purpose of preserving evidence.

Any person, subject to an investigation conducted by the competent authority pursuant to the provisions of Paragraph 1, shall not evade, obstruct, or refuse to cooperate without justification.

An investigator carrying out his/her duties under this Law shall present the documents supporting such duties; the person to be investigated may refuse the investigation where the investigator fails to present such documents.

Article 28

In conducting investigations into an enterprise's conduct that may violate the provisions of the Law, if such enterprise makes commitments to take specific measures to cease and rectify its alleged illegal conduct within the time prescribed by the competent authority, the competent authority may suspend the investigation.

In the situation referred to in the preceding paragraph, the competent authority shall monitor whether such enterprise fulfills its commitments.

If the enterprise has fulfilled its commitments by taking specific measures to cease and rectify its alleged illegal conduct, the competent authority may decide to terminate the investigation. However, under any of the following circumstances, the investigation shall be resumed:

1. the enterprise fails to fulfill its commitments;
2. there is a significant change to the facts upon which the decision to suspend the investigation was based;
3. the decision to suspend the investigation was based on incomplete or misleading information provided by the enterprise.

The limitation on the power to impose sanctions, under the circumstance as described in Paragraph 1, interrupts on the day of suspending the investigation. Where the competent authority resumes the investigation, the limitation on the power to impose sanctions shall start on the date of the following day when the investigation

is resumed, which shall be added to the period of time elapsed prior to suspending the investigation.

CHAPTER V COMPENSATION FOR DAMAGES

Article 29

If any enterprise violates any of the provisions of this Law and thereby infringes upon the rights and interests of another, the injured may request the removal of such infringement; if there is a likelihood of infringement, prevention may also be claimed.

Article 30

Any enterprise that violates any of the provisions of this Law and thereby infringes upon the rights and interests of another shall be liable for the damages arising therefrom.

Article 31

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 compensation more than the 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 32

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 the lapse of ten years from

the time of infringing conduct is committed.

Article 33

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 34

If any enterprise violating the provisions of Article 9 or Article 15 is ordered by the competent authority pursuant to paragraph 1 of Article 40 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 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.

Article 35

The competent authority may grant exemption from or reduction of fines to be imposed in accordance with paragraph 1, 2 of Article 40 on enterprises in violation of Article 15 but meeting one of the following conditions:

1. the enterprise files a complaint or informs the 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 the 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 competent authority investigates the said illegal conduct in accordance with this Law.

The 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 or Article 20 is ordered by the competent authority pursuant to paragraph 1 of Article 40 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 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 24, 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.

If any representative, agent, employee or other worker of a juristic person commits an offense referred to in the provisions of Article 24 while executing his/her duties, not only the actor shall be punished in accordance with the provision of the preceding paragraph, the juristic person shall also be fined as prescribed in the preceding paragraph.

No action shall be brought against the violation referred to in the preceding two paragraphs unless there is a complaint filed.

Article 38

Where any other laws provide for more severe punishment than those prescribed in Article 34, Article 36 and Article 37, the provisions of such other laws shall apply.

Article 39

Where any enterprise(s) proceeds with a merger in violation of Paragraph 1 or Paragraph 7 of Article 11 herein, or proceeds with a merger despite that the competent authority decides upon the filing to prohibit such merger, or fails to perform the undertakings required as pursuant to Paragraph 2 of Article 13, the 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 their positions, or make any other necessary dispositions, and may impose an administrative penalty of not less than two hundred thousand and not more than fifty million New Taiwan Dollars upon such enterprise(s).

Where any enterprise(s) proceeds with a merger under the circumstances where the filing contains any false or misleading items, the 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, and may impose an administrative penalty of not less than one hundred thousand and not more than one million New Taiwan Dollars upon such enterprise(s).

Where any enterprise violates the disposition made by the competent authority pursuant to the provisions of the preceding two paragraphs, the competent authority may order for dissolution, suspension or termination of business operation.

The period for suspension of business operation ordered pursuant to the preceding paragraph shall be limited to six months each.

Article 40

The competent authority may order any enterprise that violates Article 9, Article

15, Article 19 and Article 20 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 one hundred thousand and not more than fifty 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 competent authority may continue to order such enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative penalty of not less than two hundred thousand and not more than one hundred million New Taiwan Dollars until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action.

The competent authority may impose an administrative penalty 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 9 or 15.

The competent authority shall enact the regulations with regard to the calculation of the total sales of the previous fiscal year, definition of serious violations, and calculation of administrative penalties.

Article 41

The power to impose sanctions pursuant to the provisions of the preceding two Articles is expired upon the lapse of five years.

Article 42

The competent authority may order any enterprise that violates Article 21, Article 23 to Article 25 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 and not 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 competent authority may continue to order such enterprise to cease therefrom, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative penalty of not less than one hundred thousand and not more than fifty million New Taiwan Dollars until its ceasing therefrom, rectifying its conduct or taking the necessary corrective action.

Article 43

If any trade association or organization as referred to in Article 2 Paragraph 2 violates the provisions of this Law, the competent authority may impose a penalty on any member who participated in such violation. However, if the member is able to demonstrate that the member has no knowledge of the violation, or did not participate in the mutual understanding, did not implement, or ended such violation prior to the investigation conducted by the competent authority, the member may not be punished.

Article 44

Shall any person subject to any investigation, conducted by the competent authority pursuant to the provisions of Article 27, violate the provisions of Article 27 Paragraph 3, the competent authority may impose an administrative penalty of not less than fifty thousand and not more than five hundred thousand New Taiwan Dollars. Shall such person continue to evade, interfere or refuse to cooperate without justification upon another notice, the competent authority may continue to issue notices of investigations, and may impose consecutively thereupon an administrative penalty of not less than one hundred thousand and not more than one million New Taiwan Dollars each time until such member accepts the investigation, appears to respond, or renders relevant materials like books and records, documents, or exhibits.

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, Patent Act or other Intellectual property laws.

Article 46

The Act has precedence over other laws with regards to the governance of any enterprise's conduct in respect of competition. However, this stipulation shall not be applied to where other laws provide relevant provisions that do 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 competent authority, for mutual protection.

Article 47-1

To strengthen the investigation and sanction over concerted actions and promote the healthy development of market competition, the competent authority may set up an anti-trust fund.

Capital sources of the preceding anti-trust fund are as follows:

1. 30% of the fines imposed according to the Law;
2. interests accrued on the fund;

3. budgetary allocations;
4. other relevant incomes.

The fund under Paragraph 1 shall be used for the following purposes :

1. rewards for the reporting of illegal concerted actions;
2. promotion of cooperation, investigation and communication matters with international competition law enforcement agencies;
3. subsidies to the related expenses incurred from litigations associated with the Law and rewards reporting of illegal actions;
4. deployment and maintenance of databases in relation to the competition law;
5. research and development on the systems in association with the competition law;
6. education and advocacy of the competition law;
7. other necessary expenditures to maintain the market order.

The previous paragraph governing the scope of reporting reward, the qualifications of informer, the criteria of rewarding, the procedures of rewarding, the revocation, abolishment and recovery of reward, and the maintenance of confidentiality of the informer's identity shall be determined by the competent authority.

Article 48

Where disposition or decisions made by the competent authority pursuant to this Law are objected or challenged, the procedures for administrative litigation shall apply directly.

Where administrative appeal cases are not concluded prior to the enactment of the amendment of this Law, they shall be concluded in accordance with the Administrative Appeal Act.

Article 49

The enforcement rules of this Law shall be made and promulgated by the competent authority.

Article 50

This Law takes effect on the date of promulgation, except Article 10 and Article 11, which were amended on January 22, 2015, shall take effect thirty days from the date of promulgation.

Appendix II

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-level 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 referred 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 resale prices freely; any agreement contrary to this provision shall be void.

Article 19

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

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

Article 20

No enterprise shall have any of the following acts with respect to the goods or services it supplies:

1. using in the same or similar manner, the personal name, business or corporate name, or trademark of another, or container, packaging, or appearance of another's goods, or any other symbol that represents such person's goods, commonly known to relevant enterprises or consumers, so as to cause confusion with such person's goods; or selling, transporting, exporting, or importing goods bearing such representation;
2. using in the same or similar manner, the personal name, business or corporate name, or service mark of another, or any other symbol that represents such person's business or service, commonly known to relevant enterprises or consumers, so as to cause confusion with the facilities or activities of the business or service of such person; or
3. using on the same or similar goods the mark that is identical or similar to a well-known foreign trademark that has not been registered in this country; or selling, transporting, exporting, or importing goods bearing such trademark.

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

1. using in an ordinary manner the generic name customarily associated with the goods or the representation customarily used in the trade of the same category of goods; or selling, transporting, exporting or importing goods bearing such name or representation;
2. using in an ordinary manner the name or representation that is customarily used in the trade of the same type of business or service;
3. using in good faith one's own name, or selling, transporting, exporting or importing goods bearing such name; or
4. using, with good faith, in the same or similar manner the representation referred to in the first or second subparagraph of the preceding paragraph before such representation having become commonly known to the relevant enterprises or consumers, or using such representation by any successor that acquires such representation together with the business from a bona fide user; or selling, transporting, exporting or importing goods bearing such representation.

Where any enterprise has any of the acts set forth in the third and fourth

subparagraphs of the preceding paragraph which is likely to damage or cause confusion with the business, goods, facilities, or activities of another enterprise, the latter enterprise may request the former to add appropriate representation unless the former only transports such goods.

Article 21

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

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

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

Where any advertising agency makes or designs any advertisement that it knows or 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 purchase as well as the amount of the decreased value of the goods.

Article 23-3

When the participant exercises the right to rescind or terminate the agreement in accordance with the two preceding articles, the multi-level 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 nor more than fifty million New Taiwan Dollars shall be assessed upon such enterprise(s).

Where any enterprise(s) proceeds with a merger under the circumstance set forth in subparagraph 2 of the proviso of Article 11, paragraph 5, an administrative 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 III

Enforcement Rules of Fair Trade Law of 2015

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

Amendments Promulgated on 2 July 2015

by Fair Trade Commission Order Kung Fa Tzu No. 10415605721

Article 1

These Enforcement Rules are adopted pursuant to the provisions of Article 49 of the Fair Trade Law (hereinafter referred to as the “Law”).

Article 2

The term “trade association” in Paragraph 2 of Article 2 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 Act;
3. professional bodies established according to other laws and regulations, such as bar associations, accountant associations, architect associations, doctor associations and technician associations.

The other organization lawfully established to promote the interests of its members described in Paragraph 2 of Article 2 of the Law refers to business organizations, besides those described in the last paragraph, that are established according to the Civil Organizations Act or other relevant laws to enhance their member's benefits.

Article 3

The following factors shall be taken into consideration when determining whether an enterprise constitutes a monopoly as referred to Article 7 of the Law:

1. the market share of the enterprise in a relevant market;
2. the possibility of substitution of the goods or services amidst changes in a relevant market, giving regard to considerations of time and place;
3. the ability of the enterprise to influence prices in a relevant market;
4. whether formidable difficulties exist to entry to a relevant 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 relevant 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 competent authority or that recorded by other government agencies.

Article 5

Authorized representatives of the trade associations or other organizations described in Paragraph 2 of Article 2 of the Law may be deemed as actors in concerted actions in the Law.

Article 6

The control or affiliation relation described in Paragraph 2 of Article 10 and Paragraph 2 of Article 11 of the Law refers to any of the following circumstances:

1. where an enterprise holds the shares or capital contributions of another enterprise to an extent of more than half of the total number of voting shares or total capital of such other enterprise;
2. where an enterprise directly or indirectly controls the personnel, financials or business operation of another enterprise, and thus possesses controlling power over such other enterprise;
3. where an enterprise possesses controlling power over another enterprise due to the relations between the two as described in Article 10, Paragraph 1, Subparagraph 3 or 4 of the Law;
4. where a person or a group as specified by Article 11, Paragraph 3 of the Law and their related persons hold the shares or capital contributions of another enterprise to an extent of more than half of the total number of voting shares or total capital of such other enterprise.

The control or affiliation relations may be presumed by any of the following circumstances:

1. more than half of executive shareholders or directors are the same between two enterprises;
2. more than half of the voting shares or more than half of the total capital is owned by the same shareholders for two enterprises.

Article 7

“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 competent authority or recorded by other government agencies.

Article 8

A merger of enterprises as described in Paragraph 1 of Article 11 of the Law shall be filed with the competent authority by the following enterprises:

1. the enterprises participating in the merger, where an enterprise is merged into another, assigned by or leases from another enterprise(s) the operations or assets of another, jointly operates on regular basis with another, or is commissioned by another enterprise to run operation;
2. the enterprise that holds or acquires the shares or capital contributions of another enterprise. However, it shall be the enterprise with ultimate control if there are control or affiliation relations between the holding or acquiring enterprises, or the holding or acquiring enterprises are controlled by the same enterprise or a group of enterprises.
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 merger has not yet been established, the existing enterprises participating in the merger shall file.

Financial holdings companies shall file with the competent authority if the companies or any subsidiaries in which the companies have controlling interest as specified in the Financial Holding Company Act participate in the merger.

Article 9

A report of a merger of enterprises under Paragraph 1 of Article 11 of the Law shall be filed with the 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 revenue of the preceding fiscal year for the participating enterprise, the enterprise with a control or affiliation relation with the participating enterprise, and the affiliated enterprise controlled by the same enterprise or a group of enterprises with the participating enterprise;
 - (4) the number of employees of each participating enterprise;
 - (5) the 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. the 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. the major future operating plans of the participating enterprises;
 7. the overview of the long-term investments by the participating enterprises in other enterprises;
 8. the overview of voting shares or capital contributions of the acquired enterprises that are owned by the person or group as described in paragraph 3, Article 11 of the Law;
 9. the most recent prospectus or annual report of a participating enterprise's stock listed on the stock exchange or traded on over-the-counter markets;
 10. information of the market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;

11. any other documents required by the competent authority to perform a comprehensive assessment of the impact of the proposed merger on competition.

The form of the report referred to in the preceding paragraph shall be prescribed by the competent authority.

If there is any just cause why the documents or data required by the first paragraph are not being provided in the merger filings, it shall be identified and explanations shall be presented in the filing report.

Article 10

Where the materials submitted with the merger report pursuant to Paragraph 1 of Article 11 of the Law fail to comply with the requirements of the preceding article or are deficient in content, the 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 11

The date accepting the complete filing of report materials referred to in Paragraph 7 of Article 11 of the Law means the filing date on which the report materials filed with the competent authority are in conformity with Article 9 and the contents thereof are also complete.

Article 12

According to the proviso clause in Paragraph 1 of Article 15 of the Law, the application for approval shall be jointly filed by the enterprises participating in the concerted actions.

If the preceding enterprises are trade associations or other organizations described in Paragraph 2 of Article 2 of the Law, such trade associations or

organizations shall submit the applications.

The applications in the preceding two paragraphs may be made through an agent.

Article 13

An application for approval pursuant to the proviso of Paragraph 1 of Article 15 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) the other required information.
2. the contract, agreement or other document evidencing agreement to the concerted action.
3. the concrete substance and implementation methods of the concerted action.
4. the basic data on the participating enterprises:
 - (1) the name and residence or domicile of each participating enterprise, or the name and the location of the office or place of business of each participating company, sole proprietorship, partnership, or association;
 - (2) the name and residence or domicile of the representative or administrator, if any, of each enterprise; and
 - (3) the business items, capital, and turnover in the preceding fiscal year of each participating enterprise.
5. quarterly reports for the past three years on the prices and production and sales values (volumes) of those products or services relevant to the concerted action, of each participating enterprise;
6. financial statement and operating report of each participating enterprise for the preceding fiscal year;
7. information of the market structure relating to horizontal competition and

- upstream and downstream enterprises of the participating enterprises;
8. an assessment report on the concerted action;
 9. the other documents as specified by the competent authority.
- The form of the application referred to in the preceding paragraph shall be set by the competent authority.

Article 14

The assessment report on the concerted action referred to in Subparagraph 8, Paragraph 1 of the preceding article shall also specify the following:

1. cost structure before and after the concerted action and analytical data on forecasted changes;
2. the impact of the concerted action on enterprises not participating;
3. the impact of the concerted action on the structure, supply and demand, and pricing of the relevant market;
4. the impact of the concerted action on upstream and downstream enterprises and their markets;
5. concrete benefits and detrimental effects of the concerted action for the overall economy and public interest;
6. the other required information.

Article 15

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 1, 3 or 8, Paragraph 1, Article 15 of the Law, in addition to the requirements specified by the preceding Article, shall also present in detail the anticipated concrete results in cost reduction, quality improvement, increased efficiency, rationalization of operations, industrial development, or technological innovation.

Article 16

The concerted action assessment report accompanying an application for

approval filed pursuant to Subparagraph 2, Paragraph 1, Article 15 of the Law, in addition to the requirements specified by Article 14, shall also 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 17

The concerted action assessment report accompanying an application for approval filed pursuant to Subparagraph 4, Paragraph 1, Article 15 of the Law, in addition to the requirements specified by Article 14, shall also specify the following information:

1. the export value (volume) of each participating enterprise for the most recent three-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 18

The concerted action assessment report accompanying an application filed pursuant to Subparagraph 5, Paragraph 1, Article 15 of the Law, in addition to the requirements specified by Article 14, shall also specify the following information:

1. the export value (volume) of each participating enterprise for the most recent three years;
2. a comparison of the costs required for import by the individual enterprises versus those required for concerted import;
3. the anticipated concrete results in strengthening trade.

Article 19

The concerted action assessment report accompanying an application for approval filed pursuant to Subparagraph 6, Paragraph 1, Article 15 of the Law, in addition to the requirements specified by Article 14, shall also specify the following information:

1. difficulty in staying in the business or overcapacity in the same industry due to economic recession;
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. the changes in the number of businesses in the relevant industry over the preceding three years;
4. market prospects for the relevant industry;
5. the adopted or contemplated self-help methods, other than concerted action, to turn around the business; and
6. the anticipated results of the concerted action.

In addition to that enumerated above, the competent authority may request the provision of other related materials.

Article 20

The concerted action assessment report accompanying an application for approval filed pursuant to Subparagraph 7, Paragraph 1, Article 15 of the Law, in addition to the requirements specified by Article 14, shall also 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 21

A small or medium-sized business as referred to in Subparagraph 7, Paragraph 1, Article 15 of the Law shall be determined in accordance with the criteria set forth in the Act for Development of Small and Medium Enterprises.

Article 22

Where an enterprise applying for approval of concerted action pursuant to the proviso clause in Paragraph 1, Article 15 submits materials that are incomplete or are deficient in content, the 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.

Article 23

The three-month period specified in Paragraph 2, Article 15 of the Law shall be calculated from the day next to the date on which the competent authority receives the application. However, where the materials submitted by the enterprise are incomplete or deficient in content and the 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 24

To apply for an extension pursuant to Paragraph 2 of Article 16 of the Law, the enterprises shall prepare the following materials to file with the competent authority:

1. an application form;
2. contract, agreement or document evidencing other form of mutual understanding of the concerted action;
3. concrete details and implementation plans of the proposed concerted action;
4. basic data of participating enterprises;

5. quarterly data during the past three years of the prices and revenues/volumes of the participating enterprises' products/services associated with the concerted action;
6. the financial statement and operating report for the preceding fiscal year of each participating enterprise ;
7. market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;
8. the concerted action assessment report.
9. a copy of the original approval;
10. the reasons for applying for the extension; and
11. the other documents or materials designated by the competent authority.

The concrete details and implementation plans of the proposed concerted action required by Subparagraph 3 of the preceding paragraph shall be consistent with the scope of approval under the original application. Re-applications are required if such details and implementation plans extend beyond the approved scope.

When participating enterprises apply for an extension of the concerted action pursuant to Paragraph 2 of Article 16 of the Law, the competent authority may require addition data or records to be submitted before set deadlines in the event of applications incomplete or deficient in content. Applications may be rejected if participating enterprises fail to present missing data before the deadlines or the data presented remain incomplete.

Article 25

The just cause stated in the proviso clause of Paragraph 1 of Article 19 of the Law shall be determined by the competent authority on the basis of the evidence presented by participating enterprises and taking into account the following factors:

1. encouragement of downstream enterprises to enhance efficiency or quality of pre-sale service;
2. prevention of free-riding effects;
3. promotion of entries of new businesses or brands;
4. stimulation of competition between brands;

5. other reasonable economic grounds concerning competition.

Article 26

The following factors shall be taken into consideration when determining whether just cause exists as referred to in Subparagraph 2, Article 20 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.

In determining whether the discrimination mentioned in the preceding paragraph is likely to restrain competition, 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 or services, and the impact that carrying out such restrictions would have on market competition shall be considered.

Article 27

The “low price inducement” described in Paragraph 3 of Article 20 of the Law refers to the offering of the prices below costs or obviously inappropriate so as to hinder competition or prevent competitors from participating in the market.

In determining whether the low price inducement mentioned in the preceding paragraph is likely to restrain competition, 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 or services, and the impact that carrying out such restrictions would have on market competition shall be considered.

Article 28

“Restrictions” as used in Subparagraph 5 of Article 20 of the Law refer to tie-ins, exclusive dealing, restrictions in regards to territory, customers, use, or other aspects of business activities.

In determining whether the restrictions mentioned in the preceding paragraph are improper and being likely to restrain competition, 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 or services, and the impact that carrying out such restrictions would have on market competition shall be considered.

Article 29

In cases where actions of an enterprise violate the provisions of Paragraphs 1 or 4 of Article 21 of the Law, the competent authority may order the enterprise to publish corrective advertisements pursuant to the provisions of Article 42 of the Law.

The methods, number of appearances, and duration of the advertisements referred to in the preceding paragraph shall be determined by the competent authority, taking into consideration the degree of impact of the original advertisements.

Article 30

The competent authority may refuse to process complaints that lack substantive content or have no genuine name or address affixed thereto.

Article 31

The competent authority, when giving notice as prescribed in Subparagraph 1, Paragraph 1, Article 27 of the Law, shall specify the following items in writing:

1. the name and residence or domicile of the recipient of the notice; if the notified one is 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. the provisions concerning punishment for failure to appear without proper reason.

The preceding notice shall be served at least 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 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 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 competent authority shall include the following items in writing:

1. the name and residence or domicile of the notified person; if the notified one is 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. the provisions concerning punishment for refusal to submit without justification.

Article 35

After the competent authority has received books and records, documents, and any other required materials or evidence provided by the party or the related party, the 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 Laws;
2. the degree of the Law's harm to market order;
3. the duration of the Law'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. types of, number of, and intervening time between past violations, and the punishment for such violations; and
7. remorse shown for the Law and attitude of cooperation in the investigation.

Article 37

These Enforcement Rules shall take effect from the date of promulgation.

Appendix IV

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. the impact of the concerted action on enterprises not participating;
3. the impact of the concerted action on the structure, supply and demand, and pricing of the relevant market;
4. the impact of the concerted action on upstream and downstream enterprises and their markets;
5. concrete benefits and detrimental effects of the concerted action for the overall economy and public interest;
6. other required information.

Article 16

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of subparagraph 1 or 3, paragraph 1, Article 14, of the Law shall include a concerted action assessment report that sets out in detail the anticipated concrete results in cost reduction, quality improvement, increased efficiency, or rationalization of operations.

Article 17

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of subparagraph 2, paragraph 1, Article 14, of the Law shall specify the following information:

1. the difference between the funding required for individual research and development and that required for joint research and development;
2. the anticipated concrete results in technology upgrading, quality improvement, cost reduction, or increased efficiency.

Article 18

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of subparagraph 4, paragraph 1, Article 14, of the Law shall specify the following information:

1. the export value (volume) of each participating enterprise for the most recent one-year period, the percentage of the total export value (volume) of the same product for which it accounts, and the enterprise's ratio of exports to domestic sales; and
2. the anticipated concrete efficacy in promoting exports.

Article 19

The concerted action assessment report accompanying an application filed pursuant to the provisions of subparagraph 5, paragraph 1, Article 14, of the Law shall specify the following information:

1. the export value (volume) of each participating enterprise for the most recent three years;
2. a comparison of the costs required for import by the individual enterprises versus those required for concerted import;
3. the anticipated concrete results in strengthening trade.

Article 20

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of subparagraph 6, paragraph 1, Article 14, of the Law shall specify the following information:

1. a monthly comparative breakdown for the preceding three years of the average fixed costs, average variable costs, and pricing of specified goods of each participating enterprise;
2. a monthly breakdown for the preceding three years of production capacity, equipment utilization rate, production and sales value (volume), import/export value (volume) and inventory levels of each participating

- enterprise;
3. changes in the number of businesses in the relevant industry over the preceding three years;
 4. market prospects for the relevant industry;
 5. adopted or contemplated self-help methods, other than concerted action, to turn around the business; and
 6. anticipated results of the concerted action.

In addition to that enumerated above, the central competent authority may request the provision of other related materials.

Article 21

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of subparagraph 7, paragraph 1, Article 14, of the Law shall specify the following information:

1. materials to show meeting the criteria to be recognized as a small or medium-sized enterprise.
2. anticipated concrete results in achieving improved operational efficiency or strengthened competitiveness.

Article 22

A small or medium-sized business as referred to in subparagraph 7, paragraph 1, Article 14, of the Law shall be determined in accordance with the criteria set forth in the Statute for the Development of Small and Medium-Sized Enterprises.

Article 23

Where an enterprise applying for approval of concerted action pursuant to paragraph 1, Article 14 submits materials that are incomplete or are deficient in content, the central competent authority may issue notice to require supplementation or correction of the application within a specified period of time, with the reasons stated for such requirement. If such supplementation or correction is not made within

the specified time period or is so made but the submitted materials remain deficient, the application will be rejected.

Supplementation or correction referred to in the preceding paragraph may be made only once.

Article 24

The three-month period specified in Article 14, paragraph 2 of the Law shall be calculated from the day next to the date on which the central competent authority receives the application. However, where the materials submitted by the enterprise are incomplete or deficient in content and the central competent authority has issued a notice to require supplementation or correction within a specified time, the period shall be calculated from the day next to the date of receipt of the supplementation or correction.

Article 25

To apply for an extension pursuant to paragraph 2, Article 15, of the Law, the enterprises shall prepare the following materials to file with the central competent 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 promulgation.

Appendix V

Enforcement Rules of Fair Trade Law of 2002

(formerly translated as Implementing Rules to the Fair Trade Law)

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

Article 1

These Enforcement Rules are adopted pursuant to the provisions of Article 48 of the Fair Trade Law (hereinafter referred to as the “Law”).

Article 2

The term “trade association” in Article 2, Subparagraph 3 of the Law refers to the following:

1. Industry associations and chambers of industry organized under the Industrial Association Law;
2. Commercial associations, federations of commercial associations, exporter associations, and federations of exporter associations, and chambers of commerce organized under the Commercial Association Law;
3. Other professional associations organized under the provisions of other laws and regulations.

Article 3

The following factors shall be taken into consideration when determining

whether an enterprise constitutes a monopoly as referred to in Article 5 of the Law:

1. the market share of the enterprise in a particular market;
2. the possibility of substitution of the goods or services amidst changes in a particular market, giving regard to considerations of time and place;
3. the ability of the enterprise to influence prices in a particular market;
4. whether formidable difficulties exist to entry to a particular market by other enterprises;
5. import and export status of the goods or services.

Article 4

Production, sales, inventory, and import/export value (volume) data for the enterprise and the particular market shall be taken into account when calculating the market share of an enterprise.

Data necessary for the calculation of the market share may be based on that obtained upon investigation by the central competent authority or that recorded by other government agencies.

Article 5

The responsible person of a trade association may be deemed as the actor in concerted action as under Article 7 of the Law.

Article 6

“Sales amount” in Subparagraph 3, Paragraph 1, Article 11 of the Law means the total sale or operating revenue of an enterprise.

Calculation of the total sale or operating revenue referred to in the preceding paragraph may be based on data obtained through investigation by the Central Competent Authority or recorded by other government agencies.

Article 7

A report of a merger of enterprises under Article 11, Paragraph 1 of the Law

shall be filed with the Competent Central Authority by the following enterprises:

1. the enterprises in the merger, where an enterprise is merged into another, assigned by or leases from another enterprise(s) of the operations or assets of another, regularly runs operation jointly with another, or is commissioned by another enterprise to run operation;
2. the holding or acquiring enterprise, where an enterprise holds or acquires shares or capital contribution of another enterprise; and
3. the controlling enterprise, where an enterprise directly or indirectly controls the business operations or the appointment or discharge of personnel of another enterprise.

If an enterprise required to file a report has not yet been established, the existing enterprises in the merger shall file the report(s).

Article 8

A report of a merger of enterprises under Paragraph 1, Article 11 of the Law shall be filed with the Central Competent Authority with the following documents attached:

1. a report form specifying the following information:
 - (1) type and substance of the merger;
 - (2) the name and the place of office of each participating enterprise, or the name and the place of the office or business of each participating company, sole proprietorship, partnership, or association ;
 - (3) the scheduled date of merger;
 - (4) the name of the attorney-in-fact, if any, and the supporting document therefor,
 - (5) other required information;
2. basic data on each participating enterprise:
 - (1) the name and residence or domicile of the responsible person or administrator, if any, of each enterprise;
 - (2) the capital and business items of each participating enterprise;
 - (3) the turnover in the preceding fiscal year of each participating enterprise

and any enterprise with which it has a relationship of control or subordination;

- (4) the number of employees of each participating enterprise.
- (5) Certificates of incorporation or establishment of each participating enterprise.
- 3. the financial statement and operating report for the preceding fiscal year of each participating enterprise;
- 4. data such as the production or operating costs, sales prices, and production and sales values (volumes) of the participating enterprises' goods or services related to the combination applied for;
- 5. an explanation of the benefits of the merger for the overall economy and any disadvantages due to restraints on competition;
- 6. major future operating plans of the participating enterprises;
- 7. overview of the long-term investments by the participating enterprises in other enterprises;
- 8. if a participating enterprise's stock is listed on the stock exchange or traded on over-the-counter markets, the most recent prospectus or annual report;
- 9. information of the market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;
- 10. other documents as specified by the Central Competent Authority.

The form of the report referred to in the preceding paragraph shall be prescribed by the Central Competent Authority.

Article 9

Where the materials submitted with the merger report pursuant to Paragraph 1, Article 11 fail to comply with the requirements of the preceding article or are deficient in content, the Central Competent Authority may issue notice to require supplementation or correction within a specified period of time, with the reasons stated for such requirement. If such supplementation or correction is not made within the specified time period or is so made but the submitted materials remain deficient, the filing will not be accepted.

Article 10

The term “financial enterprises” as used in Article 11, Paragraph 2 of the Law refers to financial institutions under Article 4 of the Financial Institution Merger Law and financial holding companies under Article 4 of the Financial Holding Company Law.

Article 11

The date accepting the complete filing of report materials referred to in Paragraph 3, Article 11 of the Law means the filing date on which the report materials filed with the Central Competent Authority are in conformity with Article 8 and the contents thereof are also complete.

Article 12

The Central Competent Authority may publish in the government gazette its decisions made on the filings of mergers pursuant to Article 11, Paragraph 4 of the Law.

Article 13

An application for approval of concerted action filed pursuant to the proviso of Article 14, Paragraph 1 of the Law shall be jointly filed with the Central Competent Authority by all the enterprises participating in such action.

An application for approval of concerted action by a trade association as referred to in Article 7, Paragraph 4 of the Law shall be filed with the Central Competent Authority by the trade association.

The applications in the preceding two paragraphs may be made through an agent.

Article 14

An application for approval pursuant to the proviso of Article 14, Paragraph 1 of the Law shall be accompanied by the following documents:

1. an application form that sets forth the following:
 - (1) the names of the goods or services to which the concerted action applies;
 - (2) the type of concerted action;
 - (3) the implementation period and area of the concerted action;
 - (4) the name of the attorney-in-fact, if any, and the supporting document therefor;
 - (5) other required information;
2. the contract, agreement or other document evidencing agreement to the concerted action;
3. the concrete substance and implementation methods of the concerted action;
4. basic data on the participating enterprises:
 - (1) the name and residence or domicile of each participating enterprise, or the name and the location of the office or place of business of each participating company, sole proprietorship, partnership, or association;
 - (2) the name and residence or domicile of the representative or administrator, if any, of each enterprise; and
 - (3) the business items, capital, and turnover in the preceding fiscal year of each participating enterprise.
5. quarterly reports for the past two years on the prices and production and sales values (volumes) of those products or services relevant to the concerted action, of each participating enterprise;
6. financial statement and operating report of each participating enterprise for the preceding fiscal year;
7. information of the market structure relating to horizontal competition and upstream and downstream enterprises of the participating enterprises;
8. an assessment report on the concerted action; and
9. other documents as specified by the Central Competent Authority.

The form of the application referred to in the preceding paragraph shall be set by the Central Competent Authority.

Article 15

The assessment report on the concerted action referred to in Subparagraph 8, Paragraph 1, of the preceding article shall specify the following:

1. cost structure before and after the concerted action and analytical data on forecasted changes;
2. the impact of the concerted action on enterprises not participating;
3. the impact of the concerted action on the structure, supply and demand, and pricing of the relevant market;
4. the impact of the concerted action on upstream and downstream enterprises and their markets;
5. concrete benefits and detrimental effects of the concerted action for the overall economy and public interest;
6. other required information.

Article 16

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 1 or 3, Paragraph 1, Article 14, of the Law shall include a concerted action assessment report that sets out in detail the anticipated concrete results in cost reduction, quality improvement, increased efficiency, or rationalization of operations.

Article 17

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 2, Paragraph 1, Article 14, of the Law shall specify the following information:

1. the difference between the funding required for individual research and development and that required for joint research and development;
2. the anticipated concrete results in technology upgrading, quality improvement, cost reduction, or increased efficiency.

Article 18

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 4, Paragraph 1, Article 14, of the Law shall specify the following information:

1. the export value (volume) of each participating enterprise for the most recent one-year period, the percentage of the total export value (volume) of the same product for which it accounts, and the enterprise's ratio of exports to domestic sales; and
2. the anticipated concrete efficacy in promoting exports.

Article 19

The concerted action assessment report accompanying an application filed pursuant to the provisions of Subparagraph 5, Paragraph 1, Article 14, of the Law shall specify the following information:

1. the export value (volume) of each participating enterprise for the most recent three years;
2. a comparison of the costs required for import by the individual enterprises versus those required for concerted import;
3. the anticipated concrete results in strengthening trade.

Article 20

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 6, Paragraph 1, Article 14, of the Law shall specify the following information:

1. a monthly comparative breakdown for the preceding three years of the average fixed costs, average variable costs, and pricing of specified goods of each participating enterprise;
2. a monthly breakdown for the preceding three years of production capacity, equipment utilization rate, production and sales value (volume), import/export value (volume) and inventory levels of each participating

- enterprise;
3. changes in the number of businesses in the relevant industry over the preceding three years;
 4. market prospects for the relevant industry;
 5. adopted or contemplated self-help methods, other than concerted action, to turn around the business; and
 6. anticipated results of the concerted action.

In addition to that enumerated above, the Central Competent Authority may request the provision of other related materials.

Article 21

The concerted action assessment report accompanying an application for approval filed pursuant to the provisions of Subparagraph 7, Paragraph 1, Article 14, of the Law shall specify the following information:

1. materials to show meeting the criteria to be recognized as a small or medium-sized enterprise.
2. anticipated concrete results in achieving improved operational efficiency or strengthened competitiveness.

Article 22

A small or medium-sized business as referred to in Subparagraph 7, Paragraph 1, Article 14, of the Law shall be determined in accordance with the criteria set forth in the Statute for the Development of Small and Medium-Sized Enterprises.

Article 23

Where an enterprise applying for approval of concerted action pursuant to Paragraph 1, Article 14 submits materials that are incomplete or are deficient in content, the Central Competent Authority may issue notice to require supplementation or correction of the application within a specified period of time, with the reasons stated for such requirement. If such supplementation or correction is not made within

the specified time period or is so made but the submitted materials remain deficient, the application will be rejected.

Supplementation or correction referred to in the preceding paragraph may be made only once.

Article 24

The three-month period specified in Article 14, Paragraph 2 of the Law shall be calculated from the day next to the date on which the Central Competent Authority receives the application. However, where the materials submitted by the enterprise are incomplete or deficient in content and the Central Competent Authority has issued a notice to require supplementation or correction within a specified time, the period shall be calculated from the day next to the date of receipt of the supplementation or correction.

Article 25

To apply for an extension pursuant to Paragraph 2, Article 15, of the Law, the enterprises shall prepare the following materials to file with the Central Competent:

1. an application form;
2. a copy of the original approval;
3. the reasons for applying for the extension; and
4. other documents or materials designated by the Central Competent Authority.

When the Central Competent Authority approves an extension, it shall record the original approval number and period along with the extension and publish them in the government gazette.

Article 26

The following factors shall be taken into consideration when determining whether just cause exists as referred to in Subparagraph 2, Article 19, of the Law:

1. supply and demand conditions in the market;
2. cost differences;

3. transaction amounts;
4. credit risks; and
5. other reasonable grounds.

Article 27

“Restrictions” as used in Subparagraph 6, Article 19, of the Law refers to the circumstances under which an enterprise engages in restrictive activity in regards to tie-ins, exclusive dealing, territory, customers, use, or otherwise.

In determining whether the restrictions mentioned in the preceding paragraph are reasonable, the totality of such factors as the intent, purposes, and market position of the parties, the structure of the market to which they belong, the characteristics of the goods, and the impact that carrying out such restrictions would have on market competition shall be considered.

Article 28

In cases where actions of an enterprise violate the provisions of Paragraphs 1 or 3, Article 21, of the Law, the Central Competent Authority may order the enterprise to publish corrective advertisements pursuant to the provisions of Article 41 of the Law.

The methods, number of appearances, and duration of the advertisements referred to in the preceding paragraph shall be determined by the Central Competent Authority, taking into consideration the degree of impact of the original advertisements.

Article 29

“Participant” as used in Paragraph 3, Article 23bis, and Paragraph 2, Article 23ter, of the Law means the party to a contract that has been rescinded or terminated, and does not extend to other participants.

Article 30

The Central Competent Authority may refuse to process complaints that lack

substantive content or have no genuine name or address affixed thereto.

Article 31

The Central Competent Authority, when giving notice as prescribed in Subparagraph 1, Paragraph 1, Article 27 of the Law, shall do so in writing.

The written notice in the preceding paragraph shall specify the following information:

1. name and residence or domicile of the recipient of the notice; if a company, sole proprietorship or partnership, trade association, or organization, the name of its responsible person and the address of its office or place of business;
2. the matter to be investigated and the explanations or materials that the notified party is required to provide with respect to such matter;
3. date, time, and place of required appearance;
4. provisions concerning punishment for failure to appear without proper reason.

The notice shall be served no later than 48 hours prior to the date when appearance is required, provided this restriction shall not apply in cases where urgent circumstances exist.

Article 32

A person notified pursuant to the preceding article may retain an attorney-in-fact to appear and make statements on his or her behalf, provided that when the Central Competent Authority deems necessary, it may give notice requiring appearance in person.

Article 33

After a person notified pursuant to the provisions of Article 31 has appeared and made a statement, the Central Competent Authority shall produce a written record of the statement, to be signed by the notified person. If the notified person is unable to

sign the record of statement, he or she may seal or fingerprint it instead; if the notified person refuses to sign, seal, or fingerprint the record of statement, such facts shall be recorded.

Article 34

When issuing notice pursuant to Subparagraph 2, Paragraph 1, Article 27 of the Law, the Central Competent Authority shall include the following items in writing:

1. the name and residence or domicile of the notified person; if a company, sole proprietorship or partnership, trade association or organization, the name of the responsible person and the location of the office or place of business;
2. the matter to be investigated;
3. the explanations, books and records, documents, and other materials or evidence required to be submitted by the notified party;
4. the time limit for submission;
5. provisions concerning punishment for refusal to submit without justification.

Article 35

After the Central Competent Authority has received books and records, documents, and any other required materials or evidence provided by relevant agencies, associations, enterprises, or individuals, the Central Competent Authority shall issue a receipt at the request of the provider.

Article 36

When assessing fines in accordance with the Law, all circumstances shall be taken into consideration, and the following items shall be noted:

1. motivation, purpose, and expected improper benefit of the acts;
2. the degree of the act's harm to market order;
3. the duration of the act's harm to market order;
4. benefits derived on account of the unlawful act;
5. scale, operating condition, and market position of the enterprise;

6. whether or not the type of unlawful act involved in the violation has been the subject of correction or warning by the Central Competent Authority;
7. types of, number of, and intervening time between past violations, and the punishment for such violations; and
8. remorse shown for the act and attitude of cooperation in the investigation.

Article 37

These Enforcement Rules shall take effect from the date of promulgation.

Appendix VI

Multi-Level Marketing Supervision Act of 2014

Multi-Level Marketing Supervision Act

*Promulgated by Presidential Decree Hua Zong Yi Yi Tzu No. 10300013741
on January 29, 2014*

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 organization by having participants introduce new participants into multi-level marketing enterprise, 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-level marketing 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 1 of preceding Article, a report is not required except for the change of enterprise's name;
2. for change of enterprise's name, 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 guise 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 writing 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 writing 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 Subparagraphs 2 to 7 of Paragraph 1 of Article 10;
2. breaches of contract by the participants and the measures to the breaches;
3. the rights and obligations as referred in Articles 20 to 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 multi-level marketing 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 door-to-door sale;
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 services 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 subparagraphs 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 a notice in writing within thirty 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. Providing that when six months lapse exceeds 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 deduct 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 marketing 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 account 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 of Paragraph 1 of Article 6, Paragraph 2 of Article 20, Paragraph 2 of Article 21, Article 22 or Article 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 impose a fine of 100,000 New Taiwan Dollars or more and not more than 5,000,000 New Taiwan Dollars, 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 impose a fine of 200,000 New Taiwan Dollars or more and not more than 10,000,000 New Taiwan Dollars 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, Paragraph 2 of Article 21, Article 22, or Article 23, when applied

mutatis mutandis according to Article 24.

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 100,000 New Taiwan Dollars or more and not more than 2,000,000 New Taiwan Dollars, 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 200,000 New Taiwan Dollars or more and not more than 4,000,000 New Taiwan Dollars 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, Articles 9 to 12, Article 14, Article 15, Article 17, Article 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 50,000 New Taiwan Dollars or more and not more than 1,000,000 New Taiwan Dollars 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 100,000 New Taiwan Dollars or more and not more than 2,000,000 New Taiwan Dollars 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 50,000 New Taiwan Dollars or more and not more than 500,000 New Taiwan Dollars. 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 100,000 New Taiwan Dollars or more and not more than 1,000,000 New Taiwan Dollars 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 Paragraph 1 of Article 6.

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 Paragraph 1 of Article 13.

Participants participating 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 with supplemental amendments. If any multi-level marketing enterprises do not provide supplemental amendments, the competent authority will make decision as the enterprises in violation Paragraph 1 of Article 7.

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 Paragraph 1 of Article 13.

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 relevant to multi-level marketing in the Fair Trade Law shall not apply.

Article 40

The enforcement rules of this Act shall be made and promulgated by the competent authority.

Article 41

This Act shall take effect upon promulgation.

Appendix VII

Enforcement Rules of Multi-Level Marketing Supervision Act of 2015

*Enacted and Promulgated by Order Kung Fa Tzu No. 10315602971 on April 17,
2014*

*Amendment to Article 19 Promulgated by Order Kung Fa Tzu No. 10415608581
on October 7, 2015*

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 Article 6, Paragraph 1, Subparagraph 1 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 Article 6, Paragraph 1, Subparagraph 1 of the Act refer to the main business places and other business places.

Article 3

The multi-level marketing plans stated in Article 6, Paragraph 1, Subparagraph 2 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 Article 10, Paragraph 1, Subparagraph 1 of the Act 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 Article 10, Paragraph 1, Subparagraph 2 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 Article 10, Paragraph 1, Subparagraph 5 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 Article 18 of the Act 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 of the Act 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 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 marketing 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 Article 28, Paragraph 1, Subparagraph 1 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 Article 14 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 Article 28, Paragraph 1, Subparagraph 2 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. 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.

Article 20

These Enforcement Rules shall take effect from the date of promulgation.

Appendix VIII

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 refer to the gross business volume of preceding year, and if the enterprise has been operating for less than one year, it refers 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 Article 14 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.

Date	Name of the Case	Page
1104(01/02/13)	Top Greats Biotech Co., Ltd. and Fujicome Biotech Marketing Co., Ltd. violated the Fair Trade Law for conducting false and untrue advertising	103
1105(01/09/13)	PChome Online Inc. and Auto Care Parts Co., Ltd. violated the Fair Trade Law by posting advertisement of “US-made AJ PII Vegetal Fuel-saving Tablets”	105
1106(01/16/13)	Single & Double Dining Co., Ltd. violated the Fair Trade Law by failing to fully disclose important franchising information	173
1107(01/23/13)	Hong Zhu Construction Co., Ltd. and Han Tian Advertising Co., Ltd. violated the Fair Trade Law for posting false and untrue advertisements for “Exploration 21” housing project	107
1108(01/30/13)	Private LPG stations for autos in greater Taipei area violated the Fair Trade Law by joint cancellation of discounts for cash payments	35

- 1108(01/30/13) MicroBio Co., Ltd. violated the Fair Trade Law by 176
conducting comparative advertising
- 1111(02/20/13) Adelaide Co., Ltd. violated the Fair Trade Law by posting 110
false and untrue advertisements in newspapers
- 1112(02/27/13) Taipei Bar Association was complained for violation of the 37
Fair Trade Law for issuing notices requesting members “to
charge consultation fees according to established rates”
- 1112(02/27/13) Luxgen Motor Co. violated the Fair Trade Law for posting 111
false and untrue advertisements for its automobile Luxgen 7
MPV
- 1114(03/13/13) Skechers Inc. violated the Fair Trade Law by posting false 115
and untrue advertisement for its Shape-ups/ Tone-ups series
- 1115(03/20/13) Lifting service operators in Hualian County violated the Fair 38
Trade Law for joint price increase
- 1115(03/20/13) Turkey sellers violated the Fair Trade Law by engaging in 41
concerted action
- 1118(04/10/13) Tong Ying Industrial Co., Ltd. violated the Fair Trade Law 117
for posting false and untrue advertisements for the Aerosoles
products
- 1119(04/17/13) International Functional Foods Co., Ltd. violated the Fair 179
Trade Law during its franchisee recruitment for Dr. Jiang’s
Zero Pollution Shop

- 1120(04/24/13) Shang Xing Bird Shop violated the Fair Trade Law for sending patent infringement warning letters without justification 181
- 1125(05/29/13) Turkey sellers violated the Fair Trade Law by engaging in concerted action 41
- 1125(05/29/13) Run Far Outdoors violated the Fair Trade Law for resale price maintenance imposing restrictions on distributors 65
- 1125(05/29/13) Hwe-Hon Enterprise Co., Ltd. and 3 other companies violated the Fair Trade Law by engaging in obviously unfair conduct in selling school edition films 184
- 1126(06/05/13) Timer Technology Co., Ltd. violated the Fair Trade Law by requesting distributors to maintain resale price for its “HOCO” cell phone leather cases 67
- 1126(06/05/13) Liyi Shop International Co., Ltd. violated the Fair Trade Law for issuing notice on intellectual property right infringement to auction websites and then sending suggested price lists to urge those suspected of infringement to comply with suggested prices to avoid price competition 85
- 1127(06/05/13) Multilevel sales business Taiwan Good Co. violated the Fair Trade Law by deducting bonus without justification when participants returned products upon contract termination 165

- 1128(06/19/13) The Executive Yuan revoked the FTC's decision on domestic waste electronic and electrical equipment disposal businesses' concerted action by setting up of an operation center and instructed the FTC to come up with a more appropriate resolution 43
- 1129(06/26/13) Vigan Construction Co., Ltd. violated the Fair Trade Law by posting false and untrue advertisement for its "Love with Sky River" housing project 119
- 1131(07/10/13) The FTC initiated an ex officio investigation on FENC's suspected violation of failing to file a pre-merger notification regarding its possession of 100% shares of FET 13
- 1131(07/10/13) Heyford International Ltd. violated the Fair Trade Law for posting false concert stage arrangement for "2NE1 Global Tour New Revolution Concert" 121
- 1133(07/24/13) Taiwan Mobile violated the Fair Trade Law by posting false advertisement of "free intra-network calls" 124
- 1134(07/31/13) FCFC and FPC violated the Fair Trade Law by cutting sodium sulfate supply 3
- 1134(07/31/13) Tong Hui Construction Co., Ltd. violated Article 24 of the Fair Trade Law for not providing the lists of unit proportions to the buyers when marketing presale houses 187

1035(08/07/13)	Yuanta Financial Holdings filed a pre-merger notification regarding its intention to acquire 100% issued shares of New York Life Insurance Taiwan Corporation	20
1136(08/14/13)	VicoVation and Digital Star violated the Fair Trade Law by restricting online auction prices	69
1136(08/14/13)	Hua Rong Construction violated the Fair Trade Law by posting false advertisement for “Shen Geng No. 3” housing project	126
1136(08/14/13)	Jung Shin International violated the Fair Trade Law while engaging in multi-level marketing practices	168
1139(09/04/13)	FCFC and FPC violated the Fair Trade Law by cutting sodium sulfate supply	3
1139(09/04/13)	Taiwan International Ports Corporation Ltd. violated the Fair Trade Law by imposing discriminative warehouse rental rates on cargo handling businesses	6
1146(10/31/13)	Samsung and 2 other companies violated Article 24 of the Fair Trade Law for concealing their identity and pretending to be private citizens and making deceptive comparisons of products from other enterprises online	189
1148(11/06/13)	9 independent power plants (IPPs) violated the Fair Trade Law by engaging in concerted action	50

1149(11/13/13)	Mei Chi Cheng Enterprise violated the Fair Trade Law during its “Good Morning Mei Chi Cheng” franchisee recruitment process	192
1153(12/11/13)	TDA violated the Fair Trade Law by setting a price list	87
1153(12/11/13)	Kingyo International violated the Fair Trade Law for failing to disclose full and complete franchise information	194
1055(12/25/13)	TDCC filed a Pre-merger notification regarding its intention to merge with TISSC	22
1155(12/25/13)	The FTC initiating ex officio investigation into Apple Asia Ltd.’s violation of Fair Trade Law by restricting domestic telecom businesses’ iPhone prices	73
1157(01/08/14)	Yungshin Pharm Ind. Co., Ltd. was complained for violating the Fair Trade Law by giving away gifts with its Yunnan Baiyao Toothpaste	90
1157(01/08/14)	Docome Life violated the Fair Trade Law while engaging in multi-level marketing practices	170
1159(01/22/14)	The Association of Taoyuan Land Administration Agents violated the Fair Trade Law by issuing a reference price list to its members	54
1163(02/19/14)	Pa Star Technology Co. violated the Fair Trade Law by posting false advertisements for ZANWA refrigerators on several shopping websites	129

1164(02/26/14)	Digilion Inc. violated the Fair Trade Law by restricting resale price	75
1169(04/02/14)	Easycard Corporation filed a pre-merger notification to the FTC regarding the intention of 8 companies to jointly invest in and operate the bonus points business of DDpowers Corporation	24
1169(04/02/14)	Taiwan Sakura Corporation violated the Fair Trade Law by restricting online sales prices	77
1173(04/30/14)	Avon Cosmetics Taiwan Ltd. violated the Fair Trade Law by posting a false advertisement for its water purifier	132
1174(05/07/14)	New Vision Co., Ltd. violated the Fair Trade Law by concealing important trading information when recruiting franchisees for “HealthCom Medical Supply” stores	133
1175(05/14/14)	FCFC and FPC violated the Fair Trade Law by cutting sodium sulfate supply	3
1176(05/21/14)	Da Guan Technology Corp. violated the Fair Trade Law by using improper means to cause other companies to refrain from price competition	92
1177(05/28/14)	Lian Heng Co., Ltd. violated the Multi-level Marketing Supervision Act by failing to buy back goods at 90% of the original price from a participant after contract termination	215

- 1178(06/04/14) Zhongpu Township Betel Nut Association violated the Fair Trade Law by jointly deciding the prices of betel nuts 94
- 1178(06/04/14) Kwong Lung Enterprise Co., Ltd. violated the Fair Trade Law by posting a false advertisement claiming that it was the “exclusive manufacturing of feather bedding and pillows for department store brands” 136
- 1178(06/04/14) Yuelao International Information Network Co., Ltd. violated the Fair Trade Law by posting a comparative advertisement on its website 138
- 1179(06/11/14) Taiwan Taxi Corporation and 4 other taxi companies violated the Fair Trade Law by failing to file pre-merger notifications to the FTC 15
- 1181(06/25/14) Shiyun Motor Co. violated the Fair Trade Law by posting a false and untrue advertisement for its used cars 140
- 1182(07/02/14) Financial Information Service and two other companies filed a pre-merger notification regarding their intention to jointly manage a payment service 27
- 1183(07/09/14) Yi Chi Construction Co., Ltd. violated the Fair Trade Law in sales of the presale houses of “Yue Wan – You Yue Area” 197
- 1184(07/16/14) Skinfood Co., Ltd. violated the Fair Trade Law by posting a false advertisement and failing to fully disclose franchising information 142

1184(07/16/14)	Skinfood Co., Ltd. violated the Fair Trade Law by posting a false advertisement and failing to fully disclose franchising information	199
1184(07/16/14)	Trustwin Tech was complained for violating the Fair Trade Law by unjustifiably sending warning letters	202
1187(08/06/14)	Hualien Cable TV Network, Tung Tai Cable TV and Tong Ya Cable TV violated the Fair Trade Law by conducting frequent joint operations without filing a pre-merger notification to the FTC as required by law	17
1189(08/20/14)	Chang Xing Long Packaging violated the Fair Trade Law for sending patent infringement legal attest letters without justification	207
1194(09/24/14)	Proudly Construction violated the Fair Trade Law for its “Li Chi Xiang Xie” housing project advertisements	145
1196(10/08/14)	Eastern Home Shopping & Leisure, Li Jie International and Fubon Multimedia Technology violated the Fair Trade Law for false advertising	147
1201(11/12/14)	Kaohsiung Association of Real Estate Appraisers violated the Fair Trade Law by imposing restrictions on its members’ bid offers	57
1201(11/12/14)	SofyDOG violated the Fair Trade Law for restricting distributors’ pet food resale prices	80

1202(11/19/14)	Yulon Nissan Motor violated the Fair Trade Law by posting false advertisements for Nissan Sentra	150
1203(11/26/14)	BASF Taiwan filed a pre-merger notification regarding its intention to acquire the main business operations and assets of Taiwan Sheen Soon	30
1203(11/26/14)	39 enterprises engaging in joint shipment of wheat imports was complained for violating the Fair Trade Law by disregarding conditions attached to FTC's approval of their concerted action by refusing Jing Zhong Enterprise and Taiwan Grains to be part of the operation	61
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