

ACT AGAINST UNJUSTIFIABLE PREMIUMS AND MISLEADING REPRESENTATIONS

(Law No. 134 of 1962)

(Tentative Translation)

Sec. 1 [Purpose]

This Act, in order to prevent inducement of customers by means of unjustifiable premiums and misleading representations in connection with transactions of a commodity or service, by establishing special provisions for the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Law No. 54 of 1947), aims to secure fair competition, and thereby to protect the interests of consumers in general.

Sec. 2 [Definitions]

- (1) The term "premiums" as used in this Act shall mean any article, money or other kinds of economic benefits which are given as means of inducement of customers, regardless of whether a direct or indirect method is employed, or whether or not a lottery or prize competition method is used, by an entrepreneur to another party in connection with a transaction involving a commodity or service (transactions relating to real estate shall be included; hereinafter the same), and which are designated by the Fair Trade Commission as such.

- (2) The term "representations" as used in this Act shall mean advertisement or any other descriptions which an entrepreneur makes or uses as means of inducement of customers, with respect to the substance of the commodity or service which he supplies or the terms of sale or any other matter concerning the transaction, and which are designated by the Fair Trade Commission as such.

Note: Subsec.1 and 2 --"designation"-- Designation of Premiums and Representations Under the Provisions of Section 2 of the Act Against Unjustifiable Premiums and Misleading Representations (FTC Notification No. 3 of 1962)

Sec. 3 [Restriction or prohibition of premiums]

The Fair Trade Commission may, when it finds it necessary to prevent unjust inducement of customers, restrict the maximum value of a premium or the aggregate amount of premiums, the kind of premiums or method of offering of a premium or any other matter relating thereto, or may prohibit the offering of a premium.

Note: "restriction or prohibition"

1. Restriction on Premium Offers by Lotteries or Prize Competition (FTC Notification No. 3 of 1977)
2. Restriction on Premium Offers to General Consumers (FTC Notification No. 5 of 1977)
3. Restriction on Premium Offers in Magazine Industry (FTC Notification No. 3 of 1992)
4. Restriction on Premium Offers to General Consumers in Real Estate Industry (FTC Notification No. 37 of 1997)
5. Restriction on Premium Offers in Ethical Drug, Medical Equipment and Hygienic Inspection Laboratories Industries (FTC Notification No. 54 of 1997)
6. Restriction on Premium Offers in Newspaper Industry (FTC Notification No. 5 of 1998)

Sec. 4 [Prohibition of misleading representations]

(1) No entrepreneur shall make such representation as provided for in any one of the following paragraphs in connection with transactions regarding a commodity or service which he supplies:

- (i) Any representation by which the quality, standard or any other matter relating to the substance of a commodity or service are shown to consumers in general to be much better than the actual one or much better than that of other entrepreneurs who are in competitive relationship with the entrepreneur concerned contrary to the fact and thereby which is found likely to induce customers unjustly and to impede fair competition;

- (ii) Any representation by which price or any other terms of transaction of a commodity or service will be misunderstood by consumers in general to be much more favorable to the consumer in general than the actual one or than those of other entrepreneurs who are in competitive relationship with the entrepreneur concerned, and thereby which is found likely to induce customers unjustly and to impede fair competition; or
 - (iii) In addition to those stipulated in the preceding two paragraphs, any representation by which any matter relating to transactions as to a commodity or service is likely to be misunderstood by consumers in general and which is designated by the Fair Trade Commission as such, finding it likely to induce customers unjustly and to impede fair competition.
- (2) The Fair Trade Commission may, where it finds it necessary in order to evaluate whether any representation constitutes paragraph (i) of the preceding subsection, designate a period and require the entrepreneur concerned to submit data as reasonable grounds for the representation he makes. In such cases, if the entrepreneur fails to submit the data, the representation concerned shall be deemed to fall under the said paragraph for the purpose of applying the provisions of Section 6 (1) and (2).

Note: para. 3-- "designation"

1. Misleading Representations on Soft Drinks without Juice, etc. (FTC Notification No. 4 of 1973)
2. Misleading Representations on Country of Origin of Goods (FTC Notification No. 34 of 1973)
3. Misleading Representations on Cost of Consumer Credit (FTC Notification No. 13 of 1980)
4. Misleading Representations on Bait Advertising of Real Estate (FTC Notification No. 14 of 1980)
5. Misleading Representations on Bait Advertising (FTC Notification No. 17 of 1993)
6. Misleading Representations on Fee-Charging Homes for the Elderly (FTC Notification No. 3 of 2004)

Sec. 5 [Public hearing and notification]

- (1) When the Fair Trade Commission takes action to effect designation under the provisions of Section 2 [definitions] or subsection 1 (iii) of the preceding section [designation of misleading representations], or to restrict or prohibit under the provisions of Section 3 [restriction or prohibition of premiums] ,or to change or abolish them, it shall hold a public hearing in accordance with the Rules of the Fair Trade Commission and shall hear the opinion of the related entrepreneurs and the public.

- (2) Designation, restriction, prohibition as well as amendment and abolition thereof under the provisions of the preceding subsection shall be made by notifications.

Note: Subsec. 1 --"Rules of Fair Trade Commission"-- Rules Concerning Public Hearing Under the Provision of Section 5 (1) of the Act Against Unjustifiable Premiums and Misleading Representations (FTC Rules No. 2 of 1962).

Sec. 6 [Cease and desist order]

- (1) The Fair Trade Commission may, in the event there is an act violating the restriction or prohibition under the provisions of Section 3 [restriction or prohibition of premiums] or violating the provisions of Section 4 (1) [prohibition of misleading representations], order the entrepreneur concerned to cease such an act, or to take the measures necessary to prevent the resurgence of the said act, or to take any other necessary measures including publicizing the matters relating to the implementation of such measures. Such an order (hereinafter referred to as “cease and desist order”) may be issued even when the said violation has already ceased to occur.

- (2) Acts in violation as provided for in Subsection (1) of the preceding section shall be deemed as acts in violation of Section 19 [prohibition of unfair trade practices] of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (in the case where trade associations cause entrepreneurs to employ such acts as constitute the said acts, such acts shall be deemed to be unfair trade practices as provided for in the said Act), and cease and desist order shall be deemed as cease and desist order(order to take elimination measures), for the

purpose of applying the provisions of Section 8-2 [elimination measures against prohibited acts of trade associations], Section 20 [measures against unfair trade practices], Section 25 [absolute liability], Section 26 [restriction on exercise of the right to claim for damages in court, prescription] and provisions of Division 2 [procedures] of Chapter VIII (Excluding Section 46, Section 49 (3) through (5), Section 50, Section 51, Section 53, Section 55 (2), (5) and (6), Section 59 (2), Section 65, Section 67, Section 69 (3), Section 70-2 (4), Section 70-9 through 70-11, and Section 70-12 (1)). In this case, the term “the written order (to take elimination measures)” appearing in Section 49 (1) shall be read as “the written (cease and desist) order”, the term “the measures necessary to eliminate the violation or to ensure that the violation is eliminated” appearing in the said Subsection shall be read as “the measures necessary to cease such an act, or to prevent the resurgence of the said act, or to take any other measures including publicizing the matters relating to the implementation of such measures”, the term “An (written) order to take elimination measures” appears in the Subsection (2) of the said Section shall be read as “a written cease and desist order”, the term “the order to take elimination measures” appearing in Subsection (6) of the said Section shall be read as “the cease and desist order”, the term “sixty days” appearing in the said Subsection shall be read as “thirty days”, the term “the order to take elimination measures” appearing in Section 70-15 of the said Act shall be read as “the cease and desist order”, and the term “Chapter III” appearing in Section 70-21 of the said Act shall be read as “Chapter III (Excluding Section 13 (1) and Division 3).

- (3) With respect to the application of the provisions of Section 90 (3), Section 92, Section 95 (1) (ii), (2) (ii) and (3), Section 95-2 and Section 95-3 (each of the provisions are limited to the segments concerning Section 90 (3) of the Act concerning Prohibition of Private Monopolization and Maintenance of Fair Trade), elimination order shall be deemed as cease and desist order (order to take elimination measures).

Note: Subsec. 1 --The Rules on Cease and Desist Order under the Provisions of Section 6 (1) of the Act Against Unjustifiable Premiums and Misleading Representations (FTC Rules No. 15 of 2005).

Sec. 7 [Instruction by prefectural governors]

A prefectural governor may, where he finds an act violating the restriction or prohibition prescribed in the provisions of Section 3 [restriction or prohibition of premiums] or Section 4 (1) [prohibition of misleading representations], instruct the entrepreneur concerned to cease and desist such violation, or to take the measures necessary to prevent the resurgence of such violation, or to take any other necessary measure including publishing the matters relating to the implementation of such measures. Such an instruction may be issued even when the said violation has already ceased to occur.

Sec. 8 [Request for measures to the FTC]

- (1) A prefectural governor may, in case where the entrepreneur concerned does not comply with the instruction issued under the provisions of the preceding section, or in case where a prefectural governor finds it necessary in order to put an end to any violation as prescribed in the said section, or to prevent the resurgence of such violation as prescribed in the said section, request the Fair Trade Commission to take appropriate measures in accordance with the provisions of this Act.
- (2) The Fair Trade Commission shall, when requested under the provisions of the preceding subsection, notify the said prefectural governor of the measures which the Fair Trade Commission has taken with respect to the said violation.

Sec. 9 [Collection of reports and inspection, etc.]

- (1) A prefectural governor may, where he finds it necessary for an instruction under the provisions of Section 7 [instruction by prefectural governors] or a request under the provisions of subsection (1) of the preceding section, ask the entrepreneur concerned or other entrepreneurs who have business relationship with him to submit a report on the premiums he offers or the representations he makes, or may have his staff enter offices or other places of business of the entrepreneur concerned or other entrepreneurs who have business relationship with him, inspect accounting books, documents and other matters, or ask questions of the persons concerned.
- (2) The staff who conduct an inspection or ask questions in accordance with the provisions of the preceding subsection shall carry their identification cards and

show them to the persons concerned.

- (3) The authority under the provisions of subsection (1) shall not be construed as one granted for the purposes of criminal investigation.

Sec. 10 [Technical advice, recommendations, and requests to submit information]

- (1) The Fair Trade Commission may give a prefectural governor appropriate technical advice or recommendations as to his administrative operation and other related matters conducted under the provisions of the preceding three sections, or request his information necessary in order to give the advice or recommendations or to provide information regarding his appropriate administrative operation.
- (2) A prefectural governor may request from the Fair Trade Commission its technical advices, recommendations, or provisions of information necessary for the management and the execution of his/her administrative operation conducted under the provisions of the preceding three sections.

Sec. 11 [Request for Corrections]

- (1) The Fair Trade Commission, where it finds that on administrative operation by a prefectural governor under the provisions of the Section 7 through 9 violates the relevant laws and regulations or that it is significantly inappropriate and prejudicial to public interests for a certainty, may request him/her to take necessary measures in order to correct the violation or to improve his/her administrative operation.
- (2) The prefectural governor, when requested under the preceding subsection, shall take necessary measures to correct the violations or to improve his/her administrative operation.

Sec. 12 [Fair Competition Codes]

- (1) Entrepreneurs or a trade association may, upon obtaining authorization from the Fair Trade Commission in accordance with the Rules of the Fair Trade Commission, with respect to the matters relating to premiums or representations, conclude or

establish an agreement or a code, aiming at prevention of unjust inducement of customers and maintaining fair competition. The same shall apply in the event alterations there are attempted.

(2) The Fair Trade Commission, unless it finds that an agreement or a code under the preceding subsection (hereinafter referred to as "fair competition code") meets each of the following paragraphs, shall not grant authorization under the preceding subsection:

- (i) That it is appropriate to prevent unjust inducement of customers and to maintain fair competition;
- (ii) That it is not likely unreasonably to impede the interests of consumers in general or the related entrepreneurs;
- (iii) That it is not unjustly discriminatory; and
- (iv) That it does not restrict unreasonably the participation in or withdrawal from the fair competition code.

(3) The Fair Trade Commission, when it finds that the fair competition code as authorized under subsection 1 has ceased to meet each paragraph of the preceding subsection, shall cancel the said authorization.

(4) The Fair Trade Commission, in case it has taken a measure under the provisions of subsection 1 or the preceding subsection, shall make the said measure public by a notification in accordance with the Rules of the Fair Trade Commission.

(5) The provisions of Section 7 [Elimination measures] (1) and (2) (including cases applicable mutatis mutandis under Section 8-2 [Elimination measures against prohibited acts of trade associations] (2) and Section 20 [Measures against unfair trade practices] (2)), Section 8-2 (1) and (3), Section 20 (1), Section 70-13 [Urgent injunction] (1) and Section 74 [Accusation, report on non-prosecution] of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade shall not be applied to the fair competition code that has been authorized under subsection (1), and to such acts of entrepreneurs or a trade association as have been done in accordance therewith.

(6) Any person who complains about a measure taken by the Fair Trade Commission

under the provisions of subsection 1 or 3 may file an objection with the Fair Trade Commission within thirty days from the day on which the notification has been made under the provisions of subsection 4. In this case the Fair Trade Commission shall dismiss the said objection, or shall cancel or alter the said measure by a decision after taking hearing procedures.

Note: Subsec. 1 and 4 -- "Rules of the Fair Trade Commission"--The Rules Concerning Application, etc. for Authorization of Fair Competition Code Under Provisions of Section 12 of the Act Against Unjustifiable Premiums and Misleading Representations (FTC Rules No. 4 of 1962).

Sec. 13 [Exemption from the Administrative Complaint Review Act]

- (1) With respect to a measure taken by the Fair Trade Commission in accordance with the provisions of this Act, an appeal under the Administrative Complaint Review Act (Law No. 160 of 1962) shall not be made.
- (2) A matter that a person may complain about under subsection 6 of the preceding section may only be brought against a decision.

Sec. 14 [Penalties]

- (1) Where any witness or expert witness who under oath, in accordance with the provisions of Article 54 or Article 166 of the Code of Criminal Procedure (Law No. 131 of 1948) which are applied mutatis mutandis in Section 62 of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Section 6 (2) of this Act, made a false statement or expert testimony, he or she shall be punished by penal servitude from not less than three months to not more than ten years.
- (2) Where a person committing an offense under the preceding subsection confesses his or her crime prior to the termination of the hearing procedures and before the discovery of such crime, the penalty for such offense may be commuted or remitted.

Sec. 15

Any person committing any one of the following offenses shall be punished by penal servitude of not more than one year or by a fine of not more than three million yen:

- (i) Any person concerned with a case or any witness who, in violation of the measures issued to him or her under the provisions of Section 47(1)(i) or (2) or Section 56(1) of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Section 6 (2) of this Act, fails to appear or to give a statement, or gives a false statement, or fails to submit a report, or submits a false report;
- (ii) Any expert witness who, in violation of the measures issued to him or her under the provisions of Section 47(1)(ii) or (2) or Section 56(1) of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Section 6 (2) of this Act, fails to appear or to give expert testimony, or gives a false expert testimony;
- (iii) Any holder of the matters who, in violation of the measures issued to him or her under the provisions of Section 47(1)(iii) or (2) or Section 56(1) of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Section 6 (2) of this Act, fails to submit the same; or
- (iv) Any person who refuses, obstructs, or evades the inspection as provided for in Section 47(1)(iv) or (2) or Section 56(1) of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Section 6 (2) of this Act.

Sec. 16

Any person who failed to submit a report or submitted a false report, or refused, obstructed or evaded inspection, or failed to answer or made false answers to the questions, as provided in Section 9 (1) [collection of reports and inspection, etc.], shall be penalized by a fine not more than five hundred thousand yen.

Sec. 17

Any witness or expert witness who refuses to take the oath, in violation of the order

issued to him or her under the provisions of Article 154 or Article 166 of the Code of Criminal Procedure which are applied mutatis mutandis in Section 62 of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Section 6 (2) of this Act,. shall be punished by a fine of not more than two hundred thousand yen

Sec. 18

- (1) When a representative of a juridical person, or an agent, an employee, or any other person in the service of a juridical person or of an individual has, with regard to the business or property of the said juridical person or individual, committed a violation stipulated in Section 15 or Section 16, the said juridical person or the said individual shall be punished by such fine as provided for in the said Sections in addition to the punishment of the offender.
- (2) Where a representative, a manager, an agent, an employee, or any other person in the service of a non-juridical organization has, with regard to the business or property of the said organization, committed a violation stipulated in Section 15 or Section 16, the said non-juridical organization shall be punished by such fine as provided for in the said Sections in addition to the punishment to the offender.
- (3) In the case of the preceding subsection, the representative or manager shall represent the said organization in related acts of procedure and the provisions of the Code of Criminal Procedure related to acts of procedure where the juridical person is the defendant or the suspect shall apply.