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This English translation of the Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to Trade with Suppliers (Fair Trade Commission Notification No. 11 of 2005 (effective November 1, 2005)) has been prepared in compliance with the Standard Bilingual Dictionary (March 2007 edition). This is an unofficial translation. Only the original Japanese texts of laws and regulations have legal effect, and the translations are to be used solely as reference material to aid in the understanding of Japanese laws and regulations. The Government of Japan shall not be responsible for the accuracy, reliability or currency of the legislative material provided in this Website, or for any consequence resulting from use of the information in this Website. For all purposes of interpreting and applying law to any legal issue or dispute, users should consult the original Japanese texts published in the Official Gazette.

Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to Trade with Suppliers

May 13, 2005

Fair Trade Commission Notification No. 11 of 2005

In line with the provisions of paragraph 9, Article 2 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947), the Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to Trade with Suppliers shall be designated as follows:

Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to Trade with Suppliers

(Unjust return of goods)

- (1) A large-scale retailer returns goods in all or in part, which the retailer itself or its franchisees (hereinafter referred to as “the retailer, etc.”) purchased from a supplier, to that supplier (including acts materially equivalent to the return of goods, for example changing the contract from a purchase contract to a consignment sales contract or replacing the goods with other goods; the same shall apply hereinafter), except in the following cases:
 - (i) Return of goods to a supplier for a reason attributable to the supplier within a reasonable period from the day of receipt and limited to a quantity deemed

appropriate given the reason,

- (ii) Return of goods to a supplier in accordance with fixed conditions for return based on an agreement with the supplier at the time of purchasing the goods (limited to cases in which it is normal trade practice in general wholesale trade, excluding trade between large-scale retailers and suppliers, to return goods within a fixed period after the date of receipt and limited to a fixed quantity, or limited to a quantity in fixed proportion to the total quantity received and in which the conditions for the return of goods are set forth within the scope of the normal trade practice),
- (iii) Return of goods to a supplier with the supplier's prior consent, provided that the large-scale retailer accepts the loss that would normally be incurred by the supplier arising from the return of goods already delivered, and
- (iv) Return of goods to a supplier at the request of the supplier, provided that the disposal of the returned goods leads to direct benefits for the supplier.

(Unjust price reduction)

- (2) A large-scale retailer coerces a supplier into accepting a price reduction of the delivery price of goods purchased by the retailer, etc. after purchasing the goods from the supplier, except when the supplier accepts a reduction of the delivered price for any reason attributable to the supplier within a reasonable period from the date of receipt and to an extent deemed appropriate given the reason.

(Unjust consignment sales contract)

- (3) A large-scale retailer coerces a supplier into accepting a consignment sales contract with the retailer, etc. under conditions that are excessively disadvantageous to the supplier in light of normal trade practices carried out in general transactions of consignment sales excluding trade between large-scale retailers and suppliers.

(Forcing suppliers to lower prices for bargain sales, etc.)

- (4) A large-scale retailer sets delivery prices for particular goods that are excessively lower than the ordinary delivery prices of equivalent goods to the retailer, etc. for purposes such as bargain sales and forces a supplier to deliver the goods at the said prices.

(Refusal to receive specifically ordered goods)

- (5) A large-scale retailer refuses delivery of all or part of specific goods for reasons not attributable to the supplier after having entered into a contract in which the large-scale retailer designated specific standards, designs, types, etc. of the goods to be delivered, except in cases in which it obtains the supplier's consent for the

refusal and in which the large-scale retailer accepts the loss that would normally be incurred by the supplier as a result of the refusal.

(Coercion to purchase, etc.)

(6) A large-scale retailer coerces a supplier into purchasing any goods or services designated by the retailer, unless there is due cause.

(Unjust assignment of work to employees of suppliers, etc.)

(7) A large-scale retailer coerces a supplier into dispatching employees to assist with the ordinary operations of the retailer, etc., or the large-scale retailer coerces the supplier into paying the labor costs of employees hired by the retailer, etc. in lieu of coercing the supplier into dispatching employees, except in any of the following cases:

(i) With the prior consent of the supplier, the large-scale retailer assigns dispatched employees solely to sales operations of those goods delivered by the supplier (or sales and inventory operations for those goods if the dispatched employees of the supplier are regularly stationed at a store of the large-scale retailer), and limited to the extent that enables effective use of sales techniques or other ability possessed by the dispatched employees that leads to direct benefits for the supplier.

(ii) The large-scale retailer reaches a prior agreement with the supplier with respect to the dispatch terms and conditions, such as the types of duties assigned to dispatched employees, working hours and the period of dispatch, and it pays the cost generally required for the dispatch of employees.

(Unjust receipt of economic benefits, etc.)

(8) In addition to those acts set forth in the preceding paragraph, a large-scale retailer coerces a supplier into providing the retailer, etc. with economic benefits including money and services that the supplier clearly should not have to offer or that exceeds the limit recognized as reasonable in consideration of the benefits reaped by the supplier.

(Unfavorable treatment in response to refusal of requests)

(9) A large-scale retailer gives unfavorable treatment including delayed payment for goods delivered, reduction in trade volume, suspension of trade with a supplier on the grounds that the supplier refuses any of the requests set forth in any of the preceding paragraphs.

(Unfavorable treatment in response to notification to the Fair Trade Commission)

(10) A large-scale retailer gives unfavorable treatment including delayed payment

for goods delivered, reduction in trade volume, suspension of trade with a supplier on the grounds that the supplier notified, or attempted to notify the Fair Trade Commission of the fact that the large-scale retailer conducted, continued to conduct or continues to conduct any of the acts described in one of the preceding paragraphs.

Remarks

- (1) For the purposes of this Notification, the term “large-scale retailer” means an entrepreneur that engages in the retail sale of goods that are used by general consumers on a daily basis, including any retailer engaged in a designated chain business (which refers to the designated chain business provided in paragraph 1, Article 11 of the Act Concerning the Promotion of Small and Medium Retail Business (Act No. 101 of 1973); the same shall apply hereinafter), and which falls under any of the following items:
 - (i) An entrepreneur with sales of 10 billion yen or more in its last completed fiscal year. If the business is a designated chain business, the sales earned by the franchisees of the designated chain business shall be taken into account.
 - (ii) An entrepreneur owning a store that falls under either of the following descriptions:
 - (a) A store with a floor space (meaning the floor area for the retail store; the same shall apply hereinafter) of three thousand square meters (3,000 m²) or more within the limits of the Tokyo metropolitan area (special wards only) and designated cities prescribed in paragraph 1, Article 252-19 of the Local Governmental Act (Act No. 67 of 1947)
 - (b) A store with floor space of one thousand five hundred square meters (1,500 m²) or more within the limits of cities other than those falling under (a), towns and villages
- (2) For the purposes of this Notification, the term “Franchisee” means a franchisee participating in a designated chain business operated by a large-scale retailer.
- (3) For the purposes of this Notification, the term “Supplier” means an entrepreneur that supplies a large-scale retailer or its franchisees with goods for their own sales or for sales on consignment, excluding any entrepreneur whose bargaining position is not inferior to that of the large-scale retailer in question.

Supplementary provisions

- (1) This Notification will take effect from November 1, 2005.
- (2) The Designation of Specific Unfair Trade Practices in the Department Store Business (Fair Trade Commission Notification No. 7 of 1954; hereinafter referred to as the “Former Notification”) will be abolished when this Notification takes effect.

(3) For acts by a Department Store Entity prescribed in paragraph 1 of the remarks of the Former Notification that take place prior to the enforcement of this Notification, the provisions then in force shall still apply.