

# **Problems and Points of Concern under the Premiums and Representations Act Concerning Representations in BtoC E-Commerce**

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Fair Trade Commission

## **Introduction**

- 1 The Fair Trade Commission tackled problems such as how to approach electronic commerce for consumers (hereinafter referred to as “BtoC E-Commerce”) as it relates to the Premiums and Representations Act, from the standpoint of the need for businesses to appropriately disclose to consumers all of the material information necessary for making product and service choices, in order for consumers to have confidence in the rapidly growing BtoC E-Commerce, and publicly issued a report titled *Response of the Fair Trade Commission to BtoC E-Commerce : Focus on Advertising Disclosure Problems* in January 2001. (Note 1)
  
- 2 BtoC E-Commerce has become a unique source of information for consumers in information, such as product and service contents or the terms of sale, which is disclosed on company web pages (Note 2). For businesses, BtoC E-Commerce enables firms to easily change the content of information they disclose on their web page, such as product and service details or the terms of sale.

For businesses BtoC E-Commerce also offers the attractive feature of low initial start-up investment, which enables firms to simply and quickly enter or withdraw from selected markets.

Because information disclosure pages for BtoC E-Commerce are set up using computers and transactions are carried out using telecommunications lines, BtoC E-Commerce has the following special characteristics:

- ① Agreements can be entered into easily, such as when consumers enter an agreement by clicking on web pages in accordance with the instructions on the seller’s web site.
- ② Because the contract terms and conditions are provided on a computer screen, in some cases consumers may be unable to see all of the disclosed detailed without scrolling (Note 3) through the text.
- ③ As a technical characteristic, in order to be able to provide a high volume of information many web pages use techniques such as hyperlinks (Note 4).

As this indicates, not only does BtoC E-Commerce encompass the representations problems found in traditional business, by its very nature it can result in consumer misunderstandings regarding product or service choices or ordering procedures and can easily increase the amount of harm suffered by consumers as a result.

For this reason, to ensure the sound development of BtoC E-Commerce and more appropriate consumer transactions, the Fair Trade Commission has arranged a summary of problems under the Premiums and Representations Act as it concerns BtoC E-Commerce representations and has issued representation-related points of concern as requested by businesses. These materials take into consideration the results of intensive market surveillance of BtoC E-Commerce (“Internet

Surf Days”) conducted by the Commission since December 2000, in consideration of recent changes in the BtoC E-Commerce environment and trends in Internet-related complaints, and consultations with various parties.

- 3 This report is covered in three parts. In Part 1, there are classified representations for product and service transactions (transactions where companies solicit and consumers make purchases using a website; “BtoC E-Commerce in the strict sense) conducted directly over the Internet according to disclosure techniques using representations of product and service contents or transaction terms of sale, or by disclosure techniques using hyperlinks, then showed problem areas under the Premiums and Representations Act, case studies of problems, and representations-related points of concern. In Part 2, there is taken up the problem of representations for transactions that involve information (on-line information provider services), particularly digital contents, as a subset of all product and service transactions conducted directly via the Internet, then showed the problem areas under the Premiums and Representations Act, case studies of problems, and representation-related points of concern.

Finally, in Part 3, while not a problem that is limited strictly to BtoC E-Commerce, there are examined problem areas under the Premiums and Representations Act, case studies of problems, and representations-related points of concern for Internet connection service transactions, which are a prerequisite for conducting BtoC E-Commerce.

- 4 In the future, the Fair Trade Commission will continuously conduct intensive market surveillance of BtoC E-Commerce representations. Together with broadening its surveillance of advertising representations on the Internet by means such as consignment of Internet advertising surveillance to outside experts, the Commission will respond to new occurrences of Premiums and Representations Act-related problems by adjusting those aspects of BtoC E-Commerce representation that are problems under the Premiums and Representations Act, and by supplementing and expanding the points of concern.

(Note 1) In December 1998, the Fair Trade Commission expanded the representations that are subject to the regulations of Section 2 Paragraph 2 of the Premiums and Representations Act to clearly include representations such as advertising using devices such as the Internet that are provided for information processing, and made representations of product and service details or terms and conditions of transactions offered by businesses on their web pages subject to the regulations of the Premiums and Representations Act.

(Note 2) Web pages

“Web pages” refers to pages including text or images that are displayed on Internet browsers such as “Internet Explorer” or “Netscape Navigator.” Groups of web pages that are displayed together are also referred to a web site or simply “site”

(Note 3) Scrolling

“Scrolling” refers to the act of moving the inside screen disclosed on a computer

screen up or down or to the left or right when all of the information cannot be displayed together using a single image.

(Note 4) Hyperlink

“Hyperlink” refers to text shown in on a web page as differently colored text, underlined text, framed graphics or other link that is embedded in the web page, which is collectively referred to below as “hyperlink text”; such text is a means for the user to jump to a separate location on the relevant web page or to another web page or to an entirely different web side simply by clicking on the text.

## **Part 1 Representations for product and service transactions conducted directly through the Internet.**

### **1 Representations concerning contents and terms of sale related to products and services**

#### **(1) Problems under the Premiums and Representations Act**

BtoC E-Commerce by its nature can lead consumers to a mistaken understanding when making product or service choices or when placing orders, and can easily increase the amount of harm suffered by consumers as a result. Accordingly, there is a greater need for businesses to appropriately disclose to consumers information concerning product or service content or the terms of sale, than is the case for transactions that take place in a physically existing store.

When representations of product and service content or terms of sale will be misunderstood by consumers in general to be remarkably better or beneficial than actual fact or the products and services of competing businesses, such representations are misleading representation under the Premiums and Misrepresentations Act.

In addition, representations that will cause consumers in general to misunderstand some material aspect of the product or service contents or the terms of sale as a result of disclosure in a manner that emphasizes benefits and conceals disadvantages, or representations that do not disclose all material information or make such information difficult to find, are misleading representation together with other types of representations that are prescribed by the Premiums and Representations Act (Note 5).

(Note 5) This approach is also applied in Part 2 and Part 3 below.

#### **(2) Problem case studies**

##### **A Representations concerning product and service contents**

Representing that a computer anti-virus software has a “100% detection rate and can detect any virus” despite the fact that it will not in fact detect every virus.

Using expressions such as “Lose 5-6kg comfortably! Fast dieters can normally lose up to 3 or 4 kilograms in one week. No limiting of the food you eat! Original preparation formulated by our specialists based on medical studies uses natural ingredients that are good for dieting,” to emphasize efficacy and results without adequate scientific basis and to represent information in a manner that makes it appear to academically authorized.

Representing that a product or service is “approved by the regulatory authorities in (country) and patent received,” despite the fact that a product or service did not actually been approved by public authorities, in order to emphasize a product’s effectiveness.

Claiming “a moving testimonial from a user” representing to be “before” and “after” photographs showing that “after five days my acne was gone and my skin smooth,” which is appeared to be represented to be true or effective despite the fact the “before” photograph has been doctored by using a model with special make-up and the details of

the testimonial do not describe a user's actual experience.

## **B Representations concerning product or service terms of sale**

Representing that “if users sign up to use our company’s designated service provider they can lease a computer for free” when in fact the assessment value of the computer is included in the provider user fee or other charges, or representing that a computer will be provided for free despite the fact that the computer purchase cost is included in the monthly telecommunications charges.

Not clearly displaying the relevant conditions for product returns and representing that “customers may return the product at any time if it is not effective,” and representing that users can return the product without conditions, despite the fact there are strict conditions for product returns and in fact almost no products can be returned.

Representing that “our company will provide work you can do at home if you buy our computer” when selling personal computers to general consumers, despite the fact that purchaser will not receive any work he or she can perform at home.

Representing “Regular price ¥380,000 – Our special price ¥138,000” when the comparative price referred to as the “regular price” is not the price at which the item was actually sold during the most recent corresponding period, to represent that the price actually paid is remarkably inexpensive.

Representing in an online trading web page inviting the customer "if the dealings frequency this month exceeds ten times, the commission becomes 20% discount", despite the fact that the discount of the commission is not done.

### **(3) Points of concern with regard to representations**

#### (Representations with regard to product or service content)

Businesses should accurately and clearly disclose product and service content based upon objective facts.

Businesses should not make disclosures concerning product efficacy and results without adequate basis when advocating the efficacy or results of a product or service that will cause general consumers to have a mistaken understanding. In addition, when making this kind of representation, it is necessary for businesses to be prepared for their grounds such as laboratory work, data, etc. Regarding that the display on the web page becomes the only source for the consumer in BtoC dealings, it is preferable for businesses to disclose them.

When making representations concerning a product or service’s reliability or recommendation, such as relating the experiences of users, recommendations of experts, test data, etc. in order to assert the efficacy or effects of a product or service, businesses should disclose such information by stating specifically the conditions under which such information was obtained.

#### (Representations with regard to product or service terms of sale)

Businesses should accurately and clearly disclose the specific details of their terms of sale such as the selling price, shipping charges, period and method for payment of the price, delivery period, whether the product can be returned and product return policy, etc.

Businesses should accurately and clearly disclose the basis for claims when using

comparative prices based on facts such as the price at which a product was actually sold during the most recent corresponding period when making representations of twin-tier pricing.

## **2 Disclosure procedures**

### **(1) Problem areas under the Premiums and Representations Act**

BtoC E-Commerce is characterized by the fact that in some cases the disclosure details cannot be viewed in their entirety because they are provided on display terminals of computers and similar devices, and some technique such as scrolling or hyperlinks is used to display all of the content. Hyperlinks in particular have become an effective means of providing extensive information on display terminals such as those of computers.

When using hyperlinks, however, when information that concerns a product or service contents or terms of sale is disclosed on a web page other than the screen a consumer is viewing (referred to below as a “link”), the consumer will be unable to obtain the relevant information if he or she does not move to the relevant link by clicking on the differently colored text, underlined text, framed graphics or other link that is embedded in the web page (collectively referred to below as “hyperlink text”). In such situations, for example, when the hyperlink text is not clearly disclosed to be the place of important information, consumers may overlook the hyperlink text. The result is that the consumer will be unable to obtain information that is material to his or her product decision.

In addition, because of the fact that in BtoC E-Commerce a company can easily change the disclosure contents on its web page and its product or service contents or terms of sale, if the dates of information updates are not disclosed it will be difficult for consumers to know when the company first made the disclosed information available.

As this illustrates, a link may lead consumers in general to mistake understanding that the product or service contents or terms of sale are remarkably better or beneficial than actual fact or the products or services of competing businesses. When this occurs because ① consumers are unable to obtain important information concerning product or service content or the terms of sale because the hyperlink text is not clearly shown and they are unable to move to the link or ② it is difficult for consumers to understand the date when the disclosed contents are effective because the dates of information updates are not disclosed, such representations are likely to be a problem under misleading representation under the Premiums and Representations Act.

### **(2) Problem case studies**

#### **A When hyperlinks are used (Please refer to the Appendix)**

When a business claims that customers “can return the product if not completely satisfied” and the product return condition stating that “products must be returned within five days including the date of delivery” is disclosed on a link – for example, when the hyperlink text is shown as an abstract heading such as “additional information” – consumers may not think it is necessary to click on the relevant hyperlink text. By not clicking on the relevant

hyperlink text they will not jump to the relevant link page to obtain the information concerning the relevant product return conditions. As a result, consumers may mistakenly believe there are no conditions for product return and that they can return products at any time. (Appendix Case Study 1)

When a business claims “no shipping charges” and the product delivery conditions stating that “products will be shipped free of charge only to delivery locations within the Tokyo metropolitan area” is disclosed on a link – for example, when the hyperlink text is shown in unusually small text – consumers may overlook the relevant hyperlink text. By not clicking on the relevant hyperlink text they will not jump to the relevant link page to obtain the information concerning the relevant delivery conditions. As a result, consumers will mistake understanding that there are no conditions for product delivery and that products will be delivered anywhere free of charge. (Appendix Case Study 2)

When a business claims “three tablets daily of our new diet supplement – Lose 10kg in just 1 month!” and the weight loss conditions stating that “customers must engage in a suitable amount of exercise and limit their food intake in order to achieve the desired results” is disclosed on a link – for example, when the hyperlink text is placed on a separate page – consumers may overlook the relevant hyperlink text. By not clicking on the relevant hyperlink text they will not jump to the relevant link page to obtain the information concerning the conditions for losing weight. As a result, consumers will mistake understanding there are no other weight loss conditions and that they will lose weight by just consuming the product. (Appendix Case Study 3)

## **B Dates of information updates**

When the dates of information updates are not disclosed for example, when a website asserts a product is “new” with expressions such as “New Product” or “Latest Model,” consumers will mistake understanding a product or service is the latest version even when this is no longer the case.

When the dates of information updates are not shown in representations that claim, for example, “We’re dramatically slashing prices – One week only starting today,” consumers will mistake understanding that the low prices are continuing even though the relevant time period has passed and the sale has ended.

### **(3) Points of concern with regard to representations**

#### (When hyperlinks are used)

When information concerning product or service content or terms of sales is disclosed on a link, in order for consumers to understand the need to click on a link businesses should not use abstract expressions such as “additional information” for the hypertext link but should use specific expressions such as “terms and conditions for product returns” that enable consumers to clearly understand what is shown on the link.

When information concerning product or service content or terms of sales is disclosed on a link, to prevent consumers from overlooking important information businesses should take into consideration factors such as text size and color and clearly disclose the links to

the information.

When information concerning product or service content or terms of sales is disclosed on a link, the relevant text and links should be placed close to related information in a way that ensures it will not overlooked by consumers.

(Information renewal dates)

Each time it changes the information that is disclosed on a web page, a business should accurately and clearly disclose the date of the most recent changes.

Businesses should promptly revise the contents of and the part their web pages when the disclosed contents refer to past products or services that are different from current facts, such as when a “New Product” is in fact no longer new.

## **Part 2 Disclosures for Internet information service transactions**

### **1 Problems under the Premiums and Representations Act**

Information provider service transactions utilizing the Internet include services to provide text or graphics-based information for a fee, and the sale of digital contents such as software, music and graphic images using download procedures (Note 6).

Because internet information provider services complete their transactions using the Internet, such businesses must appropriately provide consumers with information such as whether they provide their information for free or charge a fee, the transaction terms and conditions such as payment for long-term contracts, and information related to the download procedures used to purchase their products.

When businesses make representations that lead general consumers to mistakenly believe that the circumstances concerning whether they charge a fee or provide products or services for free, terms of sale such as payment terms for a long-term contract, or download procedures for purchasing their product or service or remarkably better or beneficial than actual fact or the products and services of competing businesses, such representations are misleading representations under the Premiums and Representations Act.

(Note 6) “Download”

“Download” refers to the process of transferring data that is stored in a server computer to the client’s computer (personal computer) using the Internet.

### **2 Problem case studies**

#### **(1) Representations concerning whether products and services are free or require payment of a fee**

Representing simply that a “service site” is “free for everyone to use” without clearly disclosing that a user fee will be charged, so that users may believe they use the site at no charge even though user fees are assessed.

Information provider sites that merely display “30 Minutes No Charge” without clearly disclosing the condition that the free 30 minutes are available only when consumers use



the site for an hour or longer, so that consumers may believe they use a site for free without any conditions.

**(2) Representations concerning terms of sale for long-term contracts**

Graphic image provider sites that represent their business “First step is the first month” and do not clearly show that they assess a monthly fee despite the fact that the company will actually assess a monthly charge, by representing information in a way that leads consumers to mistake understanding that the transaction is limited to one month.

Long-term contract graphic provider sites that use techniques such as disclosing only that “Users can cancel their contract at any time” and do not disclose specifically the contract cancellation procedure or show the procedure in a hard to read manner such as small text or colors that are difficult to see, so that consumers may believe they easily cancel the contract at any time,.

Long-term contract graphic image provider sites that use means such as not clearly disclosing hyperlink text with a specific expression, or not placing the hyperlink text near the related information even though they disclose that “A monthly charge will be assessed” for the link page, so that consumers will not click on the relevant hypertext link to move to the relevant link page where they can obtain information pertaining to the fact that “A monthly fee will be assessed,” in order to lead consumers to mistake understanding that the transaction is the same as if it were limited to one month.

**(3) Disclosure concerning download procedures**

Representing that in the sites selling downloaded a web page creation software that display statements such as “Easy to download,” without clearly showing a specified version type of OS required, despite the fact that it is not be used on a computer that does not have an OS installed that satisfies specified version, in a manner that leads consumer to mistake understanding that they can use the software with any type of computer.

Representing that in the sites selling animation software by downloading that simply state the “Download time is only 5 minutes,” without disclosing information such as the type of line or transmission speed, despite the fact that such speed is actually only in the case where the purchaser uses an ADSL line, thereby representing their business as it consumers can be appeared to download the software in a short period of time regardless of the type of line they are using.

Representing that in the sites selling anti-virus softwares by download such as “Users can download the software again at any time – Our guarantee against trouble” for situations where users may download the software again because some problem occurs such as a loss of data, when in fact there is a limit to the number of times or the period of time in which the user can download the software again.

Representing that in the sites selling anti-virus softwares by downloading such as “Update is free”, despite the fact the updating is to be charged.

### 3 Points of concern with regard to representations

#### (Representations concerning fees charged or free products and services)

When an internet information provider service charges the service fees, the business should accurately and clearly disclose the fact that a fee will be charged.

In situations where consumers can use part of internet information provider service is at no charge, part of which is at no charge, businesses should accurately and clearly disclose information such as the specific content of the free products or services and the terms and conditions for free use of such products or services.

#### (Representations concerning the terms of sale for long-term contracts)

In situations involving long-term agreements such as those that assess monthly user fees, businesses should accurately and clearly disclose the fact that a fee will be charged.

In particular, businesses should accurately and clearly disclose information concerning the procedure for canceling a contract, taking consideration into factors such as the layout of the explanation and the size and color of the text.

When businesses disclose the facts of a long-term contract such as the monthly fees that will be charged and the contract cancellation procedure by using a link, business should clearly display the hyperlink text using specific expressions in order for the consumer to be able to understand the need to click on the link and not to overlook it, and should place the hypertext link near the related information.

#### (Representations concerning download procedures)

Businesses should accurately and clearly disclose information concerning the type of OS, type of CPU, memory requirements, hard disk capacity required and the fact that if the conflict between OS and other softwares is caused by installing the software, their software might not start normally, other operating environment conditions that are required to utilize their software.

Businesses should clearly disclose the time required to download software and the situation to which the time applies such as the type of transmission line used and transmission speed.

When the number of times or the period of terms in which users can re-download the software is limited, businesses should accurately and clearly disclose the detailed contents.

When a software sold by the download method needs to be updated regularly, businesses should disclose accurately and clearly whether the updating is to be charged or not.

### Part 3 Disclosures for Internet connection service transactions

#### 1 Premiums and Representations Act problems

For Internet connection services such as DSL and cable Internet that enable consumers to utilize broadband telecommunications, primary information on selecting a service includes transmission speed, the start date for the services provided and the service charges, etc., thus it is necessary for businesses to provide this type of information to consumers appropriately.

When businesses represent their transmissions speed, service start date, service charges, etc. in a way that leads consumers to mistake understanding that the company's products and services are remarkably better or beneficial than actual fact or the products and services of competing businesses, such representation is likely to be a problem of misleading representations under the

## Premiums and Representations Act.

### (Note 7) Broadband

The term “broadband” refers to transmission speeds of 64Kbps or greater using ISDN, when the traditional transmission speed is generally 56Kbps. There is no clear, precise definition, however. In many cases such services offer “continuous connection” for a “fixed service charge.”

## 2 Problem case studies

### (1) Representations concerning transmission speed

Internet service providers that enable consumers to use broadband telecommunications by providing so-called “best efforts” service. Representing those who represent their services by claiming simply “8Mbps maximum transmission speed,” without disclosing that the maximum transmission speed is not guaranteed and do not clearly indicate that transmission speeds will be slower depending on transmission facility conditions or interference from other circuits, so that consumers are led to misunderstand that they will always be able to get the broadband service at the maximum transmission speed.

### (2) Representations concerning start date for the services provided

Representing that “Start of transmission in less than 10 days” despite the fact that the services provided almost never begin within 10 days from the application for service for reasons such as delays in line connections, etc.

### (3) Representations concerning service charges

Representing that a company’s service as “Always less expensive than Company A” without indicating that their service transmission speed is slower than that provided by Company A, so that consumers are led to misunderstand that the company is providing the similar service as Company A but at a lower price.

Representing that a company’s price as “Drastically reduced”, by comparing the price to their earlier prices before the price is reduced even when it is not particularly inexpensive.

Representing for Internet service providers, in the Internet connection service using the ADSL line, to emphasis only the provider’s charge, despite the fact that it is necessary to charge the ADSL line separately.

### (4) Other representations concerning transaction conditions

Representing that a company emphasis that customers can “readily” or “right now” receive services, despite the fact that the service might not be able to be provided the service due to the communication environment, etc.

Representing that “It has no holiday all the year round. Support by telephone always.”, despite the fact that the open time of the telephone support which accepts the consultation,

etc. from the user is 9:00AM-5:00PM.

### **3 Points of concern with regard to representations**

(Representations concerning transmission speed)

Businesses should accurately and clearly disclose the fact that their broadband telecommunications speeds may be reduced by the condition of the telecommunications facilities or interference from other circuits.

(Representations concerning the start date of services provided)

When companies may be unable to begin providing services by the date indicated because of reasons such as delays in work to make the required circuit connections, they should accurately and clearly disclose this fact.

(Representations concerning service charges)

When disclosing service charge comparisons, businesses should make their comparisons with services that are recognized as equivalent transmission quality using commonly accepted concepts and that are provided at the same timing.

When making representations such as “drastically reduced” or “absolute lowest price” that assert the low cost of service charges, businesses should specifically disclose the degree and amount by which their services charges are less expensive.

Businesses should disclose accurately and clearly all the inclusive services charges customers pay to receive the services.

(Other representations concerning transaction conditions)

When making representations emphatically about the transaction conditions such as readily available services or complete support by telephone etc, businesses should disclose the concrete content accurately and clearly.