

Fact-Finding Survey concerning Television Shopping Program Representations

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Fair Trade Commission

1 Background and purpose of the survey

Recently the number of so-called television shopping programs has greatly increased. Product representations on such television shopping programs are characterized by information that appears only momentarily, and as a television medium such programs possess the attribute of substantially influencing consumer awareness. As a result, inaccurate and inadequate representations are likely to easily create consumer misunderstanding. The Japan Fair Trade Commission (JFTC) therefore decided to conduct a fact-finding survey of television shopping program representations and summarize its thinking based on The Act against Unjustifiable Premiums and Misleading Representations ("Premiums and Representations Act").

(Survey Procedure)

Surveys conducted by consumer monitors

The JFTC asked 40 consumer monitors commissioned by the JFTC to watch and record programs containing representations likely to cause misunderstanding, and highlight the problems with the details of the representation in question, covering television shopping programs broadcast by ground-based broadcasting, BS broadcasting, communication satellite (CS) broadcasting and cable television during September and October 2002.

The JFTC received a report from the consumer monitors concerning 88 programs containing 42 hours and 40 minutes of broadcast time and 407 products.

Interview surveys with businesses and other parties

The JFTC conducted interviews with a total of seven companies, including four sales and marketing companies and three broadcasting companies that also engage

in product sales and marketing, as well as four trade associations representing sales and marketing companies or broadcasters (November 2002 ? May 2003).

2 The JFTC 's thinking concerning television shopping program representations under The Premiums and Representations Act

(1) Method of representation of matters important for product selection

Representations may cause consumer to misunderstand when matters important for making proper product selections are not disclosed and/or information is quickly removed from television screens. The Commission noted the example of hand-held steam cleaners (steam-type wrinkle removers), which are represented as being usable with all types of materials, because programs do not clearly disclose the fact that such products cannot be used with some materials.

Television shopping programs must represent clearly all matters important for making proper product selections, so they do not cause consumer to misunderstand. Such programs must ensure that such representations are made with easily viewed colors and contrasts, and are displayed as large as possible and kept on television screens for as sufficient an amount of time as possible.

(2) Representations concerning product details

A. Representations showing results and/or performance

TV shopping programs are likely to cause consumer misunderstanding when representing that users will enjoy results similar to those in the representation merely by using a device in question, such as claiming without reasonable grounds that a health device "reduces waist size by 3-4cm on average with 30 minutes of use," when the representations of results and/or performance are not based on test results or empirical data supporting such claims.

When making representations based on the test results or empirical data in question, television shopping programs must clearly disclose information such as the specific test conditions in order not to create consumer misunderstanding.

B. Representations of user testimonials

TV shopping programs are likely to cause consumer misunderstanding when emphasizing and representing exclusively testimonials that claim the results and/or performance of the product in question, or when excerpting and representing exclusively testimonials convenient for the company from among various testimonials, such as representing with regard to a diet food product that anyone will lose 10 kg or more, by representing only the testimonials of individuals who lost 10 kg or more even though most individuals who used the diet food product in question did not lose 10 kg or more, or when making representations using fictitious testimonials.

C. Representations of recommendation based on the experience of a famous individual who used a product

TV shopping programs are likely to cause consumer misunderstanding when making recommendations for a product in question, by representing a feeling or effects resulting from use, which are not based on actual personal use by the famous individual, as the feeling or effects based on actual personal use by that individual. This would include, for example, representing that anyone can build a powerful body like an athlete merely by drinking a health tonic every day, by having the athlete in question with a powerful build claim "I'm creating this body by drinking this breakfast substitute every day, too" despite the fact the powerfully-built athlete does not actually drink the health tonic in question each day.

D. Representations related to awards or patents

TV shopping programs are likely to cause consumer to misunderstand when making representations such as "recipient of the XX award" or "patented," for example, even though the products have not actually received the award or patent.

E. Representations of evaluations concerning product contents

TV shopping programs are likely to cause consumer to misunderstand as the entire representation together with representations concerning the quality or other aspects of a product in question when making representations concerning product popularity that contradict the facts or exaggerate the truth, even when concerning abstract representations of product details. This would include, for example, making representations concerning a brush that has never actually been sold as a brush for professional use, to make it seem as if the brush in question were an excellent product widely used by beauticians, by making representations such as “used widely at hair salons and approved by many professional beauticians. ”

(3) Representations concerning terms of trade

A. Representations that products normally sold separately are sold as a set

TV shopping programs are likely to cause consumer misunderstanding when programs use a designation such as “regular selling price ” to give the impression that a price is the price at which the product was being sold as a single item during the most recent reasonable period, despite the fact that the product in question had never actually been sold in the past as a single item or had only been sold as a single item for a short period of time. This kind of representation includes, for example, with regard to a necklace, the representation of the selling price for a single product as a comparative price to emphasize the low price as a selling price for the set, such as representing “regularly ¥10,000 per item, now ¥10,000 for a set of six ”, despite the fact the product is never sold as a single item and is always sold as a set of six, or when the sales price for a single product as a comparative price is groundless, such as when a company does not plan to ever sell the item as a single product in the future.

B. Representations to the effect that sales quantities are limited

TV shopping programs are likely to cause consumer to misunderstand when making representations that cause consumers to think a product is scarce, by especially emphasizing the idea that the sale quantity of the product in question has been

limited, such as representing “Limited to XX items this sale ” or “Few remaining! Will not be available again ” even though there remains a sufficient quantity of product for sale and the product is in fact not scarce.

C. Double price displays, etc.

TV shopping programs are likely to cause consumer to misunderstand when appropriate representation is not made concerning the details of the comparative price used to emphasize a low sale price when making double price displays.

Moreover, even in situations where using a well-grounded price for the comparative price, television shopping programs must accurately represent what kind of detail price the price in question is. TV shopping programs are likely to cause consumer to misunderstand when making vague representations about the price used for the comparative price.

When making representations to emphasize a low sale price, such as using the words “affordable ” or “special price ” even though these are not double price displays, the JFTC believes it is preferable to specifically clarify the reason or level of the low price in order to eliminate consumer ’s distrust.

3 JFTC ’s response in the future

The JFTC will continue to respond strictly to television shopping program representations in the future when facing cases in the breach of The Premiums and Representations Act.

Furthermore, to help make representations on television shopping programs more appropriate, efforts such as specifically drafting and observing voluntary standards that conform with actual conditions, and creating systematic check systems based on the standards in question at industry organizations and other entities, will also be important. The JFTC has asked trade associations and other entities to undertake a voluntary effort designed to make television shopping program representations more appropriate, taking into consideration the results of this survey.

In the future, the JFTC will continue to work with trade associations and other entities to aggressively support efforts to make representations more appropriate, including the dissemination of all necessary information.