

Application of the Premiums and Representations Act in FY2005, and efforts towards proper consumer-related transactions (Overview)

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Fair Trade Commission of Japan

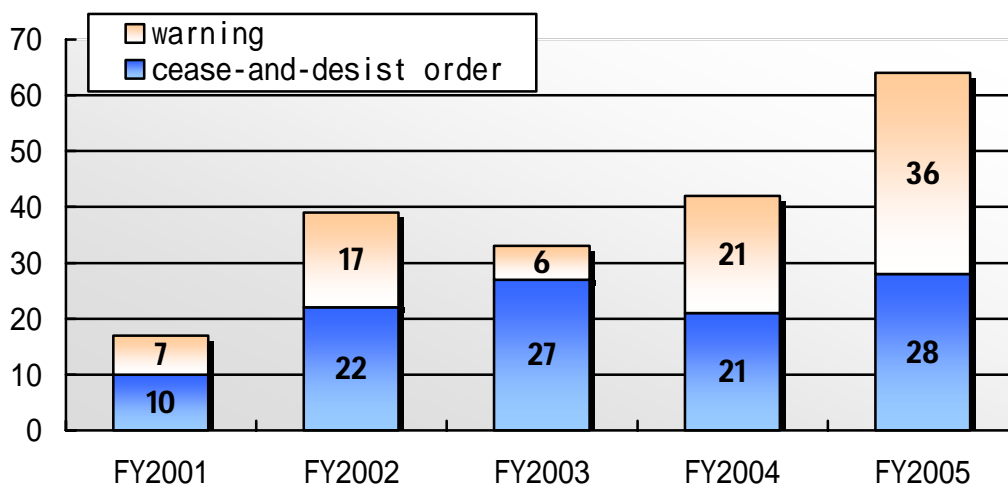
I. Premiums and Representations Act enforcement

1. Enforcement by the Fair Trade Commission of Japan

(1) The number of cases

The number of cases concerning the Acts against Unjustifiable Premiums and Misleading Representation (“Premiums and Representation Act”) handled by the Fair Trade Commission of Japan (the “JFTC”) in FY 2005, amounted to 674, comprising 28 cases resulting in cease-and-desist orders, 36 cases resulting in warnings, and 610 caution cases. While the number of total caution cases declined compared to last year when misrepresentations concerning consumption tax were frequently reported the number of cease-and-desist order cases and warning cases combined has increased by 22 (52%). Moreover, the JFTC issued 5 cease-and-desist orders with applying Section 4(2) of the Premiums and Representation Act (which stipulates that JFTC orders to submit data which shows reasonable grounds for representation within reasonable time, otherwise that representation shall be deemed to fall under misleading representation).

Trend in the number of cases made public over these five years



(2) Major cases

a. Cease-and-desist orders

Breakdown of all cases of Cease-and-desist orders in FY2005 is as follows.

Case Category	The number of cases
misleading representation concerning diet food (Sec. 4(2) of the Premiums and Representation Act was applied to each case)	2 cases
misleading representation concerning foods (except for diet foods)	14 cases
misleading representation concerning hot springs water	2 cases
misleading representation concerning electric bicycles	2 cases
misleading representation concerning country of origin of china	1 case
misleading representation concerning water purifier (Sec. 4(2) of the Premiums and Representation Act was applied to each case)	3 cases
misleading representation concerning fee-charging nursing homes for the elderly	2 case
misleading representation concerning dual price in temporary sale	1 case
misleading representation concerning airfare	1 case

b. Warnings

Breakdown of all warning cases is as follows.

Case Category	the number of cases
misleading representation concerning the place of origin of food	3 cases
misleading representation concerning toilet paper	1 case
misleading representation concerning the products related to important intangible cultural heritage	10 cases
misleading representation concerning the function of recharger for cell phone	12 cases
misleading representation concerning the artificial pearl	1 case
misleading representation concerning health food products	1 case
misleading representation concerning dual price setting committed by supermarket	1 case
misleading representation concerning price of gasoline	6 cases

misleading representation concerning bait-and-switch advertisement conducted by comprehensive discount store	1 case
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2. Enforcement by Prefectural government

The number of cases in which prefectural government issued Instruction according to the Sec.7 of the Premiums and Representation Act in FY 2005 was 11 cases (targets of Instructions are 12 companies).

II. Efforts to ensure fair consumer transaction

1. Revision of the regulations

- (1) The abolishment of “Designation of Specific Unfair Trade Practices in Canned Food or Bottled Food Business” (in February 2006)

JFTC, on February 1, 2006, abolished “Designation of Specific Unfair Trade Practices in Canned Food or Bottled Food Business” (established in 1961) from the viewpoint of streamlining of regulation, since this regulation had hardly been applied, and JFTC is able to regulate activities covered in this designation by applying Premiums and Representations Act or Fair Competition Code for Representations Concerning Canned food.

- (2) The abolishment of “Designation of Specific Unfair Practices by Offering Economic Benefits through Lotteries or Other Means in Advertisement” (in April 2006)

“Designation of Specific Unfair Trade Practices by Offering Economic Benefits through Lotteries or Other Means in Advertisement” defines the conduct offering in advertisement to general consumers that the entity or the person selects certain persons by (using) lotteries or other means and provides excessive money, goods and other economic benefits in the light of normal trade practices, as an unfair trade conduct which is unlawful under the Section 19 of the Antimonopoly Act. However, since the causation between consumers’ choice and the benefit given by those means is becoming unclear, and it had been rare that entrepreneur gave premiums which were close to 10,000,000 JPY, the JFTC abolished this designation on April 27, 2006.

2. Fact-finding survey of representations with regard to automobile inspections

In the field of car maintenance, competition for customers has been fierce

because of the increase of maintenance factories under the relaxation of regulations. Moreover, concerning automobile safety inspection, the JFTC had frequently found representations emphasizing cheap price and/or short time, representations in which actual price required for services or actual provided services are confusing, and hence the JFTC conducted the survey on representation about automobile safety inspection, clarify the interpretation of Premiums and Representation Act from the viewpoint of consumers' appropriate choice of products, and published them.

3. Improvement of e-commerce transaction to consumers

JFTC consigned 80 general consumers as JFTC e-commerce surveyors to survey Internet advertising representations on a steady basis and let them report to JFTC problematic representation ("e-commerce surveillance system"). JFTC then utilizes them to find clue of infringement cases, and to raise awareness of compliance to the Premiums and Representation Act (47 e-mails for enlightenment are sent in FY2005).

Moreover, as problems emerging on the Internet are transnational, the JFTC is deepening its cooperation with foreign authorities by, for example, participating in the International Internet Sweeps conducted from February to March 2006 by the International Consumer Protection and Enforcement Network ("ICPEN") consisting of consumer protection authorities of OECD members and other countries. JFTC, while participating in this activity, sent e-mail to 47 undertakings operating websites in order to raise awareness of compliance to Premiums and Representation Act.

4. Amendment of the Fair Competition Codes

In the context of increasing complexity of representations about products/services, diversity of consumers' needs, etc., the JFTC has guided industries to establish and review their fair competition codes for ensuring proper representation and preventing offers of excessive premiums.

In FY2005, JFTC certified the amendment of fair competition codes as follows.

- (1) Full-fledged amendment of "Fair competition codes for representations concerning/regarding real estates".

In order to reflect the diversification of trade practices in real estates market, JFTC certified the codes' amendments including the establishment of rules

about necessary items to be represented in case of transaction through bid or auction, the improvement of rules concerning advertisement on the Internet, and the establishment of rules concerning criteria for naming real estates. Moreover, overall structure was improved for better understanding.

(2) Partial amendment of “Fair competition codes for representations concerning/regarding tour arrangement service”

In order to reflect the codes’ amendment of regulatory law for travel agency, and changes of transaction practice and market environment, the JFTC certified the amendments including change of the code’s name, the establishment of criteria for representation concerning hot-spring tours, the establishment of representation method concerning code sharing of flight, the improvement of rules concerning the application via the Internet, and the improvement of rules concerning representation of meal service in the form of photograph or drawings.

(3) Partial amendment of “Fair competition codes for representations concerning/regarding banking service”

In order to reflect the changes of transaction practice and market environment, the JFTC certified the codes’ amendments including the improvement of rules of representation based on pervasion of the internet use, representation to clarify the demerit of service, the improvement of rules concerning necessary items to be represented for service charge, the improvement of rules of representation concerning interest rate of fixed deposit in foreign currency, and the establishment of rules to avoid consumers’ possible confusion between deposit and other financial products.

5. Adoption of “Proper consumer-related transaction facilitator system”

JFTC established the “Proper-consumer-transaction facilitator system” in FY2005. Under this system, JFTC selected not exceeding 200 members as facilitators among the current monitors of JFTC consumer monitoring system, etc., based on experience and knowledge pertain to consumer-related transaction regulation, variety of age and district, etc, in order to foster appropriate consumer-related transaction.

In FY2005, JFTC makes a good use of them by consigning them to cooperate in inquiry surveys, information collection activities in specific cases, and spot examination of sales, etc.

6. Consultation service relating to the Premiums and Representations Act

JFTC provides consultation service for entrepreneurs/companies pertaining to premium offering and representation method, in order to avoid violations of Premiums and Representations Act.

The number of consultations relating to the Premiums and Representations Act accepted by JFTC accounts for 21,871 cases in FY2005.

