

"Premiums and Representations Act"

(Only Japanese version is authentic)

THE ACT AGAINST UNJUSTIFIABLE PREMIUMS  
AND MISLEADING REPRESENTATIONS

(Act No. 134 of 15 May 1962)

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 (Act 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 1972)
2. Restriction on Premium Offers to General Consumers (FTC Notification No. 5 of 1977)
3. Restriction on Premium Offers in Newspaper Industry (FTC Notification No. 5 of 1998)
4. Restriction on Premium Offers in Magazine Industry (FTC Notification No. 3 of 1992)
5. Restriction on Premium Offers to General Consumers in Household Electric Appliance Industry (FTC Notification No. 5 of 1992)
6. Restriction on Premium Offers to General Consumers in Real Estate Industry (FTC Notification No. 37 of 1997)
7. Restriction on Premium Offers in Ethical Drug, Medical Equipment and Hygienic Inspection Laboratories Industries (FTC Notification No. 54 of 1997)

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 determine 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 Section 7.

[Legislative history: partial amendment of Subsec.1, addition of Subsec.2 (Act No. 45 of 2003) ]

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)

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.

[Legislative history: partial amendment of Subsec.1 (Act No. 45 of 2003) ]

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 may be issued even when the said violation has already ceased to occur.
- (2) An order prescribed in the preceding subsection (hereinafter referred to as "cease

and desist order") shall be made by serving to such entrepreneur a certified copy of such cease and desist order which states the fact found by and the application of law thereto made by the Fair Trade Commission.

- (3) The provisions of Section 69-3 [service of documents] to Section 69-5 inclusive of the Act concerning Prohibition of Private Monopolization and Maintenance of Fair Trade shall apply mutatis mutandis to service of a certified copy in the preceding subsection.

[Legislative history : previous Subsec. 2 replaced; earlier Subsec. 3 amended in part and inserted into current Subsec. 2 (Act No. 89 of 1993, the administrative Procedures Act); partial amendment of Subsec. 1 and Subsec. 2, addition of Subsec.3 (Act No. 45 of 2003) ]

Note: Subsec. 2 --"Rules of Fair Trade Commission"--

Sec.1 of the Rules on Notification of Cease and Desist Order under the Provisions of Section 6 (2) of the Act Against Unjustifiable Premiums and Misleading Representations; and Request for Initiation of Hearing Procedures under Section 8 (1) of the said Act (FTC Rules No. 3 of 1962).

Sec. 7 [The Relation with Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade]

- (1) Acts in violation as provided for in subsection (1) of the preceding section shall be deemed to be unfair trade practices as provided for in the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade for the purpose of applying the provisions of Section 8 (1) [prohibited acts of trade associations] (v) and Section 25 [absolute liability] of the said Act and, for the purpose of applying the provisions of Division 2 [procedures] of Chapter VIII (excluding the provisions of Section 48 [recommendation, recommendation decision]) of the said Act, such acts shall be also deemed as acts in violation of Section 19 [prohibition of unfair trade practices] of the said Act.

- (2) In a decision against acts in violation as provided for in subsection (1) of the preceding section, the matters provided for by the first sentence of the said subsection may be ordered.
- (3) The Fair Trade Commission, in the event it has initiated hearing procedures against acts in violation as provided for in subsection (1) of the preceding section, or it has filed an application under Section 67 (1) [urgent injunction] of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade, shall not issue a cease and desist order against the said acts.

Sec. 8 [Hearing procedures, etc.]

- (1) Any person who complains about a cease and desist order may request the Fair Trade Commission to initiate hearing procedures on the act involved in the said order, within thirty days from the day on which the certified copy of such order was served in accordance with the Rules of the Fair Trade Commission.
- (2) The Fair Trade Commission shall, in the event a request under the provisions of the preceding subsection has been made, initiate hearing procedures on the said act without delay. In this case the provisions of Section 50 (4) [date of the first hearing proceeding] of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade shall not apply.
- (3) Except in the case provided for in the preceding subsection, the Fair Trade Commission shall not, with respect to an act against which a cease and desist order has been issued, initiate hearing procedures nor file an application as stipulated in subsection (3) of the preceding section.

[Legislative history: partial amendment of Subsec.1 (Act No. 45 of 2003) ]

Note: Subsec. 1-- "Rules of Fair Trade Commission"-- Section 2 of the Rules on Notification of Cease and Desist Order Under the Provisions of Section 6 (2) of the Act Against Unjustifiable Premiums and Misleading Representations; and Request for Initiation of Hearing Procedures Under the Provisions of Section 8 (1) of the said Act (FTC Rules No. 3 of 1962).

Sec. 9 [Effect, etc. of cease and desist orders]

- (1) A cease and desist order (except for the case in which a request was made in accordance with subsection (1) of the preceding section ) shall, after the period provided for in the said subsection has elapsed, be construed to be a final and conclusive decision for the purpose of applying the provisions of Section 26 [restriction on exercise of the right to claim for damages in court and prescription] and Section 90 (iii) [penalties against violations of final and conclusive decisions] of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade.
- (2) In case a decision on an act, for which a request has been made under the provisions of subsection (1) of the preceding section, has been rendered (excluding a decision dismissing the said request on account of its irregularity) the cease and desist order concerning the said act shall lose its effect.
- (3) The provisions of Section 64 [compulsory measures for investigation after decision] and Section 66 (2) [revocation or modification of decisions] of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade shall apply mutatis mutandis to a cease and desist order.

Sec. 9-2 [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.

[Legislative history: addition of this section (Act No. 44 of 1972); partial amendment (Act No. 45 of 2003) ]

Sec. 9-3 [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.

[Legislative history: addition of this Section (Act No. 44 of 1972)]

Sec. 9-4 [Collection of reports and inspection, etc.]

- (1) A prefectural governor may, where he finds it necessary for an instruction under the provisions of Section 9-2 [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.

[Legislative history: addition of this section (Act No. 44 of 1972)]

Sec. 9-5 [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.

[Legislative history: total amendment of this section (Act No. 87 of 1999)]

Sec. 9-6 [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 9-2 through 9-4 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.

[Legislative history: addition of this section (Act No. 87 of 1999)]

Sec. 10 [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 48 [recommendation, recommendation decision] and Section 49 [Initiation of hearing procedures], Section 67 (1) [urgent injunction] and Section 73 [accusation] 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.

[Legislative history: Subsec. 3 amended in part (Act No. 89 of 1993, the

Administrative Procedures Act)]

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 10 of the Act Against Unjustifiable Premiums and Misleading Representations (FTC Rules No. 4 of 1962).

Sec. 11 [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 (Act No. 160 of 1962) shall not be made.
- (2) A lawsuit relating to a request under the provisions of Section 8 (1) [hearing procedures, etc.] or a matter that a person may complain about under subsection 6 of the preceding section may only be brought against a decision.

Sec. 12 [Penalties]

- (1) 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 9-4 (1) [collection of reports and inspection, etc.], shall be penalized by a fine not more than five hundred thousand yen.
- (2) When a representative of a juridical person, or an agent, employee or any other person in the service of such juridical person or of an individual has violated, the provisions of the preceding subsection with respect to the business of the said juridical person or said individual, the said juridical person or said individual shall be fined as provided for in the preceding subsection in addition to the punishment of the offender.

[Legislative history: addition of this section (Act No. 44 of 1972); partial amendment of Subsec.1 (Act No. 45 of 2003)]