

GUIDELINES FOR THE INTERPRETATION OF
THE NOTIFICATION
CONCERNING DESIGNATION OF PREMIUMS, ETC.

April 1, 1977

Secretary General Notice No. 7

(Amendments: Secretary General Notice No. 11 of October 1, 1988,
Secretary General Notice No. 1 of February 16, 1996)

Upon a decision of the Fair Trade Commission (hereinafter referred to as "FTC"), the Notification Concerning Designation of premium, etc. (FTC Notification No. 3 of 1962) should be interpreted in accordance with the following guidelines;

Guidelines for the Interpretation of the Notification Concerning Designation of Premiums, etc.

I. Interpretation of "as a means of inducement of customers"

A. Determination in this regard shall be made on the basis of whether a method can be objectively considered as designed to induce customers, regardless of the subjective intent or original purpose of the offerer. Thus, as an example, the offer of money or goods to be made in the context of friendship, etiquette, gratitude or similar, to encourage the return of containers for products he supplies, or the return of market research questionnaires in relation to products he supplies, can also be considered "as a means of inducement of customers."

B. "As a means of inducement of customers" shall include those means designed to induce continued or increased patronage from existing customers in addition to those designed to induce new customers.

II. Interpretation of "entrepreneur"

- A. Even non-profit organizations such as cooperatives and mutual benefit societies shall be considered entrepreneurs with regard to their activities of providing commodities and/or services.
- B. Where an organization such as an educational foundation or religious corporation engages in profit-making activities (as defined in Section 26 of the Private School Law and elsewhere), those activities shall be considered activities of an entrepreneur.
- C. Where an organization such as an educational foundation, religious corporation, or a public institution such as a local government body conducts activities similar to the private economic activities of ordinary entrepreneurs, those activities shall be treated in the same way as for ordinary entrepreneurs.
- D. Where a trade association plans and makes its member entrepreneurs implement an offer of excessive premiums in connection with the transactions of commodities or services offered by the member entrepreneurs, the entrepreneurs offering the premiums shall be subject to the provisions of the Act Against Unjustifiable Premiums and Misleading Representations, while the trade association shall be subject to the provisions of Section 8, Subsection 1, Item v of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (see Section 7, Subsection 1 of the Act Against Unjustifiable Premiums and Misleading Representations).

III. Interpretation of "transactions related to commodities and services which the entrepreneur supplies"

- A. "Transactions related to commodities and services which the entrepreneur supplies" shall include transactions at all levels of distribution through to the final user with respect to the products manufactured and/or sold by the entrepreneur.
- B. "Transactions" shall include leasing, exchange and other transactions in addition to selling.
- C. "Transactions" shall include relations such as those between banks and depositors and those between credit companies and consumer card users.
- D. "Transactions" shall not include transactions by an entrepreneur in connection with the acquisition of commodities or the like (e.g. the purchase of second-hand books).

E. Where an entrepreneur supplies "goods A" as raw materials for manufacture into "goods B," and the manufacturing process so transforms the goods A as to make them quite different to the resulting goods B, transactions related to the goods B shall not be deemed "transactions related to commodities which the entrepreneur supplies" with respect to the original entrepreneur supplying the goods A.

However, in cases where it is clear to consumers of goods B that goods A have been used in the manufacture of goods B (e.g. if the entrepreneur supplying raw liquid ingredients for a cola drink offers premiums involving bottled cola drink made from the raw liquid ingredient), transactions related to the goods B will be deemed to be "transactions related to commodities which the entrepreneur supplies commodities" with respect to the original entrepreneur supplying the goods A.

IV. Interpretation of "in connection with a transaction"

A. An offer of other kinds of economic benefits conditional upon a transaction shall be deemed to be "in connection with" the transaction.

B. An offer of other kinds of economic benefits when not conditional upon a transaction shall still be deemed to be "in connection with" a transaction if the other party to the transaction is the primary subject of the offer in such ways as follows (this applies equally when such an offer is effected in conjunction with other means of an offer not deemed to be "in connection with" transactions):

1. Product wrapping and/or container giving details of a scheme offering economic benefits (e.g. wrapping and/or containers that display a quiz or other scheme requiring application).
2. Schemes where the purchaser of a commodity or service becomes eligible for the offer of (or is in a more advantageous position with respect to) economic benefits (e.g. a requiring respondents quiz requiring respondents to purchase the product in order to answer questions and/or find clues, a newspaper advertisement quiz to submit an appearance of the product label in order to obtain an economic benefit).
3. Economic benefits offered by a retailer or service supplier to customers who enter the premises of the retailer or service supplier (including the offer of economic benefits by another entrepreneur when there exists a specific cooperative relationship such as support or co-sponsorship, so that the economic benefits are deemed to be offered jointly or with the consent of the original retailer or service supplier) or when it can be found that the offer of economic benefits is coerced by the original retailer or service supplier.

4. Offering customers who enter the premises of a retailer or service supplier with whom the following types of specific relationship exists:
- a) Majority capital of the retailer or service supplier is held by the entrepreneur who offer economic benefits,
 - b) The retailer or service supplier is a Franchisee with whom a franchise contract has been concluded by the entrepreneur who offer economic benefits, and
 - c) The majority of customers entering the premises of the retailer or service supplier can be recognized to be party to transactions involving commodities or services provided by the entrepreneur who offer economic benefits (e.g. gasoline stations affiliated with petroleum wholesalers).
- C. An offer of money, articles, free tickets or similar as inducement of another party to a transaction shall be deemed to be "in connection with" transactions.
- D. Where the offer of economic benefit is considered as fulfilling the original purpose of a transaction in light of normal business practices, such an offer shall not be deemed to be "in connection with" the transaction (e.g. public lottery pay outs, pachinko prizes, sugar and cream when provided together with coffee at a cafe).
- E. Where two or more commodities or services are provided under a single transaction (a) through (c), such an offer as those in the following cases (a) through (c) shall not, as a general rule, be deemed to be "in connection with" the transaction. However, where the additional commodity or service is provided by means of a lottery or prize competition (e.g. "win X") or where the party to the transaction is made aware that the additional commodity or service represents a premium (e.g. promotions such as "Receive a present of X," "Buy X and receive Y" or "No charge for X"), such an offer shall be deemed to be "in connection with" the transaction.
- 1. Where two or more commodities and/or services are clearly retailed as a combination (e.g. a hamburger and drink sold together for X JPY; golf clubs sold as a set with a bag and other accessories for X JPY; hairdressers offering a haircut together with shampoo and blow-dry for X JPY; an assortment of soy sauce and salad oil).
 - 2. Where two or more commodities and/or services are retailed in combination as a business practice (e.g. a spare tire together with an automobile).

3. Where two or more commodities and/or services are combined to provide a single commodity or service with original functionality or utility (e.g. toy candy, package holidays).

F. Where a stated offer of a scheme to provide economic benefit to general consumers in an advertisement (refer to FTC Notification No. 34 of 1971) is not deemed to be "in connection with" transactions, and a purchaser of commodities or services provided by the relevant entrepreneur happens by coincidence to be among the applicants, the offer of economic benefit to those purchaser shall not be deemed "in connection with" the transaction.

G. Remuneration by an entrepreneur of an intermediary who introduces a purchaser to commodities and/or services provided by the entrepreneur is not deemed to be "in connection with" the transaction (except where the intermediary is limited to the purchaser of the relevant commodity or service).

V. Interpretation of "article, money, or other kinds of economic benefits"

A. "Economic benefit" shall be deemed to include such articles or the like that can be furnished at minimal expense to the provider and/or that are not available in the marketplace, but for which the recipient would normally expect to have to pay an economic cost. Items for which the recipient would not expect to have to pay an economic cost (e.g. testimonial certificate, commemorative plaque, commemorative badge, trophy or other article conveying honor to the recipient) are not deemed to represent "economic benefit."

B. The benefit associated with being able to purchase commodities or services at cheaper than the ordinary price shall be deemed an "economic benefit."

C. The offer of money or goods recognized as remuneration (or other payment) for work performed, although an economic benefit to the party in a transaction, shall not be deemed to constitute an offer of premiums (e.g. where the purchaser of a certain product who has applied to be a "product monitor" is paid by the company as remuneration for this work).

VI. Interpretation of "economic benefit deemed to be a discount in light of normal business practices"

A. Determination of whether or not an economic benefit is "deemed to be a discount" shall take into account factors such as the nature of the transaction, the nature of

the associated economic benefit and the method of offering, and shall be based on the viewpoint of fair competition order.

B. In this context, in industries covered by Fair Competition Codes, reference should be made to the provisions of the relevant codes.

C. As a general rule, the following represent "economic benefit deemed to be a discount in light of normal business practices:"

1. In line with standards considered appropriate in the context of the commonly accepted idea of transactions, reducing the price payable by the other party in a transaction (including price reduction conditional on multiple transactions) (e.g. "reduce X JPY for customers buying more than Y articles"; "when purchasing a suit, reduce X percentage off a coat purchased at the same time"; "discount Y JPY off the following purchase for every multiple of X JPY spent"; "discount X JPY after Y times of uses").

2. In line with standards considered appropriate in the context of the commonly accepted idea of transactions, refunding a portion of the price paid by the other party in a transaction (including refunds conditional on multiple transactions) (e.g. "refunds X percentage of the receipt total"; "cash-back offers to customers who send in a certain number of product stickers").

3. In line with standards considered appropriate in the context of the commonly accepted idea of transactions, providing the purchaser with an additional commodity or service identical to that purchased, at no extra cost. (This includes cases where a substantially identical commodity or service is provided, as well as cases where such an offer is effectively conditional on multiple transactions) (e.g. "an extra CD for customers purchasing three CDs"; "an extra pair of pants provided free of charge to customers purchasing a suit"; "a free coffee voucher for customers who purchase five coffees"; "the equivalent of one business shirt dry-cleaned free of charge for customers who collect a certain number of stamps"; "travel vouchers provided to customers who fly a certain number of miles with a given airline"). However, offers such as one free juice for customers who drink a certain number of coffees or free chips for customers who purchase a hamburger do not constitute the additional offer of a substantially identical commodity or service.

4. The followings do not constitute "economic benefit deemed to be a discount:"

- a) Price reduction or cash refund which is offered in the form of a lottery or prize competition, or on which restrictions apply to the use of the reduced or partially refunded sum (e.g. the money must be used as travel expenses), or on along which premiums are also provided under the same scheme (e.g. the party to the transaction can choose either money or complimentary travel), and
- b) Cases where the purchaser of a commodity or service is provided with an additional, identical commodity or service at no extra cost, but such offers made in the form of a lottery or prize competition or in conjunction with the offer of premiums under the same scheme (e.g. the purchaser of product A can choose to receive either another product A or a different product B).

VII. Interpretation of "economic benefit deemed to be after-sales service in light of normal business practices"

- A. Determination of whether or not an economic benefit is "deemed to be after-sales service" shall take into account factors such as the characteristics of the original commodity or service, the nature of and necessity for the after-sales service, the content of contract of the original transaction, and shall be based on the viewpoint of fair competition order.
- B. In this context, in industries covered by Fair Competition Codes, reference should be made to the provisions of the relevant codes.

VIII. Interpretation of "economic benefit deemed to be related to the commodity or service in the relevant transaction in light of normal business practices"

- A. Determination of whether or not an economic benefit is "deemed to be related to a commodity or service" shall take into account factors such as the characteristics of the commodity or service and the nature of the economic benefit, and shall be based on the viewpoint of fair competition order.
- B. In this context, in industries covered by Fair Competition Codes, reference should be made to the provisions of the relevant codes.
- C. Product wrapping and/or containers as required in order to protect the physical contents of, or preserve the quality of the commodity shall not be considered premiums.