

DESIGNATION OF SPECIFIC UNFAIR TRADE PRACTICES WHEN SPECIFIED SHIPPERS ASSIGN THE TRANSPORT AND CUSTODY OF ARTICLES

March 8, 2004

Fair Trade Commission Notification No. 1

In accordance with the provisions of Section 2(9) of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Law No. 54 of 1947), Specific Unfair Trade Practices When Specified Shippers Assign the Transport and Custody of Articles shall be designated as follows:

Specific Unfair Trade Practices When Specified Shippers Assign the Transport and Custody of Articles

1. When the specified shipper assigns to the specified distributor the transport or custody, the following activities are classified as unfair trade practices:
 - (1) Non-payment of money owed after passing a previously determined payment deadline without reasons attributable to the specified distributor;
 - (2) Reduction of the agreed amount of money owed without reasons attributable to the specified distributor;
 - (3) Unjust determination of an amount that is considerably lower than the amount normally paid for transport or custody, the details of which are similar to those of the transport or custody assigned to the specified distributor;
 - (4) Coercion concerning the purchase of articles designated by the specified shipper or the use of the services of the specified shipper unless there is any just reason;
 - (5) With respect to the payment of money owed, unjustly damaging the interests of the specified distributor through the delivery of a bill that is acknowledged difficult to be discounted by general financial institutions (denoting persons who are engaged in accepting deposits or savings, and providing loans) before the due date for paying the money owed;
 - (6) Unjustly damaging the interests of the specified distributor by coercing the specified distributor to provide the specified shipper with economic benefit including money and services;
 - (7) Unjustly damaging the interests of the specified distributor by coercing the

specified distributor to change the details of the transport or custody or re-perform the transport or custody after the distributor has completed transport or custody; and

- (8) Reduction of trade volume, suspension of trade or other disadvantageous treatment of the specified distributor for a reason that the distributor refused a request as set forth in one of the preceding Items.
2. Where the specified shipper engages in one of the activities set forth in the preceding Paragraph, the reduction in trade volume, suspension of trade or other disadvantageous treatment of the distributor for a reason that the distributor notified, or was about to notify, the Fair Trade Commission of the activity.

Remarks

1. For the purpose of this Notification, the “specified shipper” denotes entrepreneurs that meet one of the following criteria (except when subject to the provision of assigned services as provided in Paragraph 4 of Section 2 of the Act against Delay in Payment of Proceeds and Other Moneys to Subcontractors (Law No. 120 of 1956)):
 - (1) An entrepreneur whose amount of capital or total amount of subscribed equity is more than 300 million JPY, where the entrepreneur assigns the transport or custody of articles to an individual person or an entrepreneur whose amount of capital or total amount of subscribed equity is 300 million JPY or less;
 - (2) An entrepreneur whose amount of capital or total amount of subscribed equity is 300 million JPY or less and more than 10 million JPY, where the entrepreneur assigns the transport or custody of articles to an individual person or an entrepreneur whose amount of capital or total amount of subscribed equity is 10 million JPY or less; or
 - (3) Besides the entrepreneurs set out in the preceding two Items, an entrepreneur who assigns the transport or custody of articles and has a dominant bargaining position over an assigned entrepreneur.
2. For the purpose of this Notification, the “specified distributor” denotes entrepreneurs that meet one of the following criteria:
 - (1) An individual person or an entrepreneur whose amount of capital or total amount

- of subscribed equity is 300 million JPY or less (excluding subsidiaries of an entrepreneur whose amount of capital or total amount of subscribed equity is more than 300 million JPY) who is continuously assigned the transport or custody of articles by the specified shipper set forth in Item 1 of the preceding Paragraph;
- (2) An individual person or an entrepreneur whose amount of capital or total amount of subscribed equity is 10 million JPY or less (excluding subsidiaries of an entrepreneur whose amount of capital or total amount of subscribed equity is more than 10 million JPY) who is continuously assigned the transport or custody of articles by the specified shipper set forth in Item 2 of the preceding Paragraph; or
 - (3) Besides the entrepreneurs set out in the preceding two Items, an entrepreneur who is continuously assigned the transport or custody of articles by the specified shipper set forth in Item 3 of the preceding Paragraph and has a bargaining position inferior to that of the specified shipper.
3. Where an entrepreneur continuously assigns the transport or custody of articles to its subsidiary and the subsidiary re-assigns the transport or custody to another entrepreneur, if the entrepreneur directly assigned the transport or custody of the articles meets any of the criteria set out in the preceding Paragraph, the re-assigning entrepreneur shall be deemed the specified shipper and the re-assigned entrepreneur shall be deemed the specified distributor in applying this Notification.
 4. For the purpose of this Notification, the “money owed” denotes the freight or fee that an entrepreneur assigning the transport or custody of articles should pay the entrepreneur who transports or takes custody of the articles.
 5. For the purpose of the Notification, a “subsidiary” is a company whose majority of the voting rights of all shareholders (including all members, applies hereinafter in this Paragraph) are held by another company. (The voting rights exclude the voting rights of the shares and equity of the types provided in Paragraph 4 of Article 211-2 of the Commercial Code (Law No. 48 of 1899), and include the voting rights of the shares and equity the voting rights of which are deemed to be held based on the provision of Paragraph 5 of the Article. This shall apply hereinafter in this Paragraph.) In this event, a company, whose majority of voting rights of all shareholders is held by another company and one or more of its subsidiaries or one or more of the subsidiaries of another company, shall be deemed the subsidiary of

the other company.

Supplementary provision

This Notification shall come into effect on April 1, 2004.