

Fair Trade Commission

【FTC Newsletter】

No.016

May, 2009

Publisher: Tang, Jinn-Chuan

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He Yang Construction Corporation Sold a Presale House Violated the FTA

During the FTC's 900th Commissioners' Meeting on February 4, 2009, the FTC determined that He Yang Construction Corporation violated Article 24 of the Fair Trade Act by selling a presale house at "Hsin-Yi New Aspect," and failing to disclose the summary table of each household's share of the areas or list the ratio of each household's share of items to the total common part of the building, and to make such information available for public viewing, for being given away, or for free access. Its act of deception was sufficient to affect trading order and therefore pursuant to Article 41 of the same Act, the company was ordered to cease the unlawful act from the second day after the day on which the disposition arrived, and an administrative fine of NT\$ 200,000 was imposed upon the company.

The FTC indicated that the allocation of the common parts of a presale house involved the calculation of the area of the property which was to be transacted and of the value of the house, and the summary table of each household's share of the areas was the chief reference for purchasers to be familiar with the details regarding the allocation of the public facilities of the whole "Hsin-Yi New Aspect" and to know from such perception whether the allocation

of public facilities was fair or not. Such information was material trading information. Therefore, during the process of a transaction of a presale house and in order to enable a building developer's actions to conform to Article 24 of the Fair Trade Act, and the intention of Subparagraph 4, Paragraph 2 of Point 3 of the FTC Explanation on Sales of Presale Houses, the building developer was required, in the sales and purchase agreement for the property, to list the items in the public facilities that were allocated to each co-owner, and specify the method of calculating the areas of the public facilities or proportion of the shares of such areas. In the same way, the summary table for each household's share of the areas needed to be sufficient to display the results of the calculation of the shares of the areas of the public facilities, or at least the proportion of each household's share of each item in relation to the overall public facilities needed to be listed in the table. In addition, such a building developer could, on its own accord, decide to adopt a method to let purchasers be familiar with the said type of summary table, and the method to be adopted was to make such information available for the public's viewing or for free access, or else give the information away.

The findings of the FTC after investigation showed that He Yang Construction Corporation failed to clearly provide the summary table listing each household's share of the areas, or the proportion of each household's share of each item in relation to the overall "Hsin-Yi New Aspect" that was sufficient to display the result of the calculation of shares of the region's common parts, and it failed to make such information available for public viewing or for free access, or give the information away, although in the sale and purchase agreement it listed the items



making up the common parts that were allocated to each co-owner, and specified the shared areas of the common parts at the time when it sold the presale house at "Hsin-Yi New Aspect." Therefore, the company's act did not conform to the aforesaid explanation and violated Article 24 of the Fair Trade Act.

After the FTC considered the details of the motive of the unlawful act of He Yang Construction Corporation; the degree of the unlawful act's harm; the circumstances that made the company violate laws; the operating scale of the company; and the company's attitude after its violation of laws, it made the aforesaid decision pursuant to the fore part of Article 41 of the Fair Trade Act.

Uni-President Enterprises and Weilih Food Fined for Not Filed a Pre-Merger Report



During the FTC's 901st Commissioners' Meeting on February 11, 2009, the FTC found that the personnel of Uni-President Enterprises Corporation (hereinafter referred to as "Uni-President Company") had obtained half of the total number of seats of the board of directors and the board of supervisors of Weilih Food Industrial Co., Ltd. (hereinafter referred to as "Weilih Food Company"), and an officer of the same company served as the president of Weilih Food Company. Uni-President Company should

have filed a pre-merger report to the FTC accordingly but did not. Uni-President Company therefore violated Article 11(1) of the Fair Trade Act. It was not only ordered to correct its act, but also an administrative fine of NT\$ 500,000 was imposed upon it.

The FTC indicated that the personnel of Uni-President Company obtained three seats on the board of directors and one seat on the board of supervisors of Weilih Food Company after the re-election of the board of directors and of the board of supervisors of Weilih Food Company were held and finalized on October 7, 2008. The number of said seats acquired by Uni-President Company was one half of the total number of seats of the board of directors and the board of supervisors of Weilih Food Company. In the same way, the position of president of Weilih Food Company was served by the general manager of the Uni-President Company, Lo, Chih-Hsien. As such a circumstance might have formed a merger type that controlled the business operations, or appointment or discharge of personnel, the FTC decided to open a case on the aforesaid circumstances of Uni-President Company and



investigated such circumstances.

The FTC pointed out that Uni-President Company had filed a pre-merger report to it with respect to its earlier intention to indirectly acquire more than one third of the shares of Weilih Food Company through the subsidiary. The merger between Uni-President Company and Weilih Food Company was however prohibited after being considered by the FTC. From then on, although Uni-President Company and Weilih Food Company did not proceed with the above-mentioned merger, the personnel of the former obtained one half of the total number of seats of the latter's board of directors and board of supervisors, and an officer of such a company served as the president of the latter. What had occurred to the personnel of Uni-President Company had made their company have a considerable ability to affect the decision-making of the major operation, and such occurrences were the factors that weakened the competition between both parties in the market. These acts of Uni-President Company constituted the merger type, in which "an enterprise directly or indirectly controls the business operation, or appointment or discharge of personnel of another enterprise" provided in Article 6(1)(v) of the Fair Trade Act, and accordingly, Uni-President Company still needed to file a pre-merger report to the FTC but failed to do so.

The FTC made the aforesaid decision pursuant to Articles 13(1) and 40(1) of the same Act after it first considered the fact that Uni-President Company did exhibit corrective behavior from that time on, its officer did resign as the president of Weilih Food Company on his own accord, as well as, secondly, mulling over the motives, purposes and anticipated improper profits of the unlawful acts of Uni-President Company; the degree and duration of the unlawful acts' harm to market order, the benefits derived on account of the unlawful acts; the scale, operating conditions and market position of said company; whether or not the types of unlawful acts involved in the violation have been corrected or warned by the Central Competent Authority; the types and numbers of and intervals between past violations, and the punishments for such violations; the remorse shown for the acts and the company's attitude of cooperation in the investigation; the extent to which the company deserved reprehension, and the financial strength of the company; and other factors.

PresiCarre and Carrefour Taiwan Fined for Publishing the Misleading Ad

During the FTC's 906th Commissioners' Meeting on March 18, 2009, the FTC resolved that the content of the advertisement published by PresiCarre Co., Ltd. (hereinafter referred to as PresiCarre) and Carrefour Taiwan Co. Ltd. (hereinafter referred to as Carrefour Taiwan), which stated "get discount coupons of NT\$7,200 when spending more than NT\$3,600 in consumer vouchers at Carrefour," was false and misleading, and violated Article 21(1) of the Fair Trade Act. Besides calling for the immediate suspension of such illegal activities, the FTC imposed fines of NT\$2,500,000 and NT\$500,000 on PresiCarre and Carrefour Taiwan, respectively.

The FTC indicated that PresCarre and Carrefour Taiwan had promoted the following: "get discount coupons of NT\$7,200 when spending more than NT\$3,600 in consumer vouchers at Carrefour" in Carrefour supermarkets during the Chinese New Year. Since the advertisement clearly specified that a certain amount of purchasing is a prerequisite for the use of the discount coupons, that feature of the NT\$7,200 discount coupon was not illegal. As for the restrictions on the discount coupon, the promotion advertisement read "purchase anything you want (except for cigarettes)." Besides, in the "directions for using the discount coupon," it stated that "the discount coupon is not applicable for Carrefour voucher and cigarette products." The above-mentioned advertisement gave people the impression that, except for Carrefour voucher and cigarette products, customers were free to apply the "discount coupon" to other product categories once their purchase exceeded a certain amount of money. However, once a consumer actually got a "discount coupon," he/she would see the "directions for using the discount coupon" on the back of the discount coupon, which listed several product categories that were not applicable to the discount coupon. The product categories included: beer, liquors



(such as whiskey, brandy, XO, and kaoliang liquor), delivery or installation fees, extended warranties for home appliances, and so on.

After comparing the “inapplicable product categories” listed on the “get discount coupons of NT\$7,200 when spending more than NT\$3,600 in consumer vouchers at Carrefour” advertisement and the directions on the back of the discount coupon, the FTC indicated that Carrefour’s claim to let customers “purchase anything you want (except for cigarettes)” and the published “directions for using the discount coupon” intended to encourage consumers to spend their consumer vouchers by suggesting a broader range of applicable items. However, later on, the company adopted a more restricted rule that limited the applicable product categories. As a result, many consumers reported the case to the FTC. After several visits to Carrefour supermarkets in Taipei and Kaohsiung, the FTC found out that the product categories applicable for the discount coupon differed from what was specified in the advertisement. Since Carrefour’s advertisement failed to clearly disclose the true restrictions on the “discount coupon,” it violated Article 21 of the Fair Trade Act regarding the regulations on misleading advertisements.

As a reminder, the FTC indicated that, in order to seek business opportunities for the consumer vouchers, a business could design all kinds of consumer voucher promotions to attract consumers; many stores used discounts or coupon promotions. However, if there were restrictions to the discount or coupon, the business needed to clearly disclose such restrictions to consumers; there should not be any misleading statements. The FTC suggested that consumers pay close attention to promotion rules and restrictions, in order to avoid possible disputes. If a consumer discovered any unclear restrictions on the use of consumer vouchers, he should have attached specific evidence and reported the matter to the FTC.

Las Vegas Co. Fined for Untrue Ad

During the FTC’s 906th Commissioners’ Meeting on March 18, 2009, the FTC resolved the case on Las Vegas International Entertainment Co., Ltd. (hereinafter referred to as Las Vegas Co.). Las Vegas Co. held the “2009 World Circus and Children’s Folkgame Fair --- Yilan Circus Show.” In its advertisement, it claimed that the program was as “instructed by the Tourism Bureau of the Ministry of Transportations and Communications and the Yilan County Government,” and the animal shows included “snakes coming out of the cave, camel tricks, and kangaroo tricks.” Moreover, the facilities in the Calf Theme Park included “a ferris wheel, wave swinger, pirate boat, merry go round, and spinning cup,” etc. The content of the advertisement contained a false and misleading representation, which violated Article 21(1), applicable mutatis mutandis Article 21(3), of the Fair Trade Act. As a result, the FTC ordered the company to suspend the above-mentioned illegal advertisement immediately,

from the second date since the disposition was served, and fined Las Vegas Co. NT\$500,000.

The FTC indicated that, in response to media reports during the Chinese New Year that the advertisements for the “2009 World Circus and Children’s Folkgame Fair --- Yilan Circus Show” may contain false or misleading content, it would take the initiative to investigate the case on site. The disputed advertisements claimed to offer the following performance in the animal show room, “horse riding, dog tricks, snakes coming out of the cave, camel tricks, and kangaroo tricks, clown,” etc. When the FTC conducted an on-site investigation on January 31, 2009, the performance was suspended, and a notice, stating that “due to changes in the program, the animal show room will be closed from January 31 to February 6,” was posted on site. When the FTC visited the site again on February 21, there was still no animal performance, which obviously differed from what the advertisement had claimed. According to the FTC’s investigation, the Las Vegas Co. admitted that during the Chinese New Year, the only animal performance in the animal show room was that by a miniature horse tour and some dog tricks; promised performances such as “snakes coming out of the cave, camel tricks, or kangaroo tricks” were substituted by animal dolls and magic shows presenting dogs, pigeons, etc. There was a huge difference between the claimed and actual performance, which was not acceptable to the public. As a result, the advertisement constituted a false and misleading representation.



In addition, the disputed advertisement claimed to be “instructed by the Tourism Bureau of the Ministry of Transportations and Communications and the Yilan County Government.” The FTC checked with the above-mentioned authorities as to whether they instructed the program, and both said that they did not. Moreover, the Yilan County Government pointed out that it made it clear that it should not be listed during the meeting held on November 13, 2008. The Yilan County Government also sent two letters, dated November 28 and December 4, 2008, requesting not to be listed on the advertisement of Las Vegas

Co. before signing the contract. Las Vegas Co. intentionally leveraged public reliance on government authorities, causing consumers to mistakenly believe that the program was instructed by the government authorities. This constituted a false and misleading representation.

The FTC also indicated that, even though the advertisement claimed that the facilities in the Calf Theme Park included “a ferris wheel, wave swinger, pirate boat, merry go round, spinning cup,” etc., Las Vegas Co. claimed that, due to changes in the site, large facilities such as the ferris wheel and pirate boat could not be installed. As a result, Las Vegas Co. offered a 3D movie theater, an earthquake experience vehicle, a soccer room, family ball room, dinosaur play room, arcade basketball competition, and other indoor activities instead. The pleasure and attraction of those indoor activities could hardly compare with the large facilities mentioned in the advertisement, such as the “ferris wheel, wave swinger, pirate boat, merry go round, and spinning cup,” etc. Las Vegas Co. failed to meet general consumers’ reasonable expectations on entertainment facilities when they travel to Yilan City. As a result, its actions constituted a false and misleading representation.

Lastly, after considering the motive, damage range, benefits resulting from illegal behavior, business scale, and attitude after committing the illegal activities, the FTC indicated that Las Vegas Co. shall be disposed pursuant to Article 41 of the Fair Trade Act



Statistics on the Operations of the FTC Commissioners' Meeting

A while back, when a friend was interviewed for admission to graduate school; one of the questions was “please briefly describe the operations of the FTC Commissioners' Meeting.” The question showed that both college professors and the general public were interested in the functions, powers, and operations of the FTC Commissioners' Meeting. In order to increase understanding, the following will provide an overview on the functions, powers, and operations of the FTC Commissioners' Meeting.

1. The Functions and Powers of the Commissioners' Meeting

The Commissioners' Meeting is the decision-making body for the FTC. It adopts a collegiate system and reviews important policies. According to Article 14 of the Organic Law of the FTC, the main functions of the Commissioners' Meeting can be divided into the following 6 categories: 1. Deliberating the fair trade policies; 2. Deliberating and evaluating administration plans relate to fair trade; 3. Assessing public notices, approvals, and disposition related to the enforcement of the Fair Trade Act; 4. Deliberating laws and regulations related to fair trade; 5. Deliberating proposals by Commissioners; and 6. Deliberating Other matters as provided by law.

2. Statistics for the 2008 Achievements of the Commissioners' Meeting

In 2008, there were 53 Commissioners' Meetings (the average meeting time was 2 hours), with a total of 618 proposals, among which 296 were discussions (47.9%) and 322 were reports (52.1%). On average, each meeting dealt with 11.7 cases, 5.6 were discussions and 6.1 were reports. The proposals in the 2008 Commissioners' Meetings increased by 127 cases compared to last year (an increase of 25.9%). (Table 1)

Based on the different features, the 296 discussions reviewed in 2008 included 218 complaints and self-initiated investigations, 36 applications & notifications, 20 laws and regulations, 1 request for explanation of law, 1 project proposals, 7 research projects, and 13 other items. According to the results of the reviews, 199 (67.2%) were passed as proposed, 70 (23.6%) were passed with amendments, 17 (5.7%) were pending for further deliberation, and 10 (3.4%) were others. (Table 2 and Graph)

Table 1 Submissions to the Commissions Meeting

Unit: cases; %

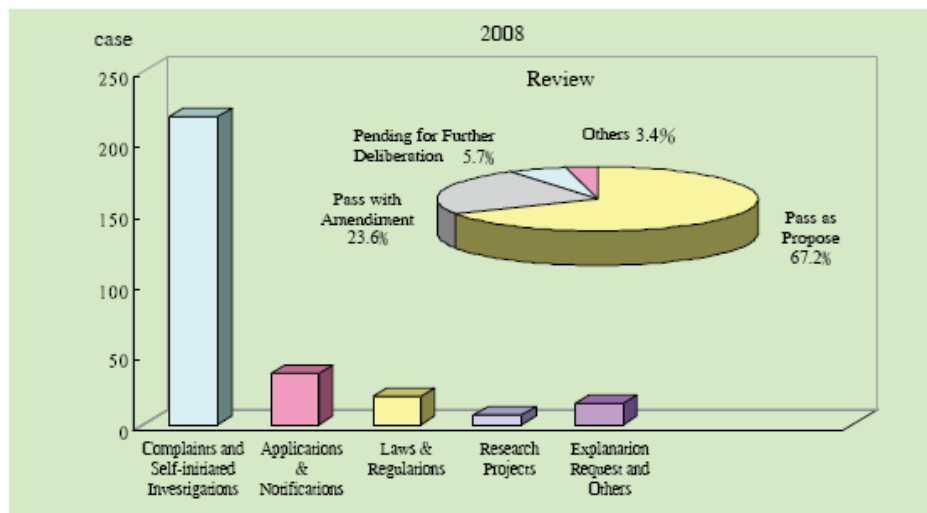
Year	Total		Reports		Discussions	
	Cases	% of Total	Cases	% of Total	Cases	% of Total
2006	600	100.00	244	40.67	356	59.33
2007	491	100.00	195	39.71	296	60.29
2008	618	100.00	322	52.10	296	47.90

Table 2 Discussions by Type

Unit: cases; %

Year	Total	Law & Regulations	Project Proposals	Complaints and Self-initiated Investigations	Applications & Notifications	Requests for Explanation	Research Projects	Other
2006	356	41	-	248	38	1	13	15
2007	296	22	-	220	39	1	6	8
2008	296	20	1	218	36	1	7	13
Year	Ratio							
2006	100.0	11.52	-	69.66	10.68	0.28	3.65	4.21
2007	100.0	7.43	-	74.32	13.18	0.34	2.03	2.70
2008	100.0	6.76	0.34	73.65	12.16	0.34	2.36	4.39

Deliberation on Discussions



FTC Activities in March 2009

■ On March 3, the FTC invited Professor Ma, Chia-Ying of the Department of Accounting, Soochow University, to present a speech entitled “Studies on the fund flows of the Procomp’ s case and the current changes in international financial funds from the perspective of tax collection and accounting.”

■ On March 3, the FTC invited the Vice General Manager, Tzeng, Cing-Chuan of the Product Planning Division, Chinatrust Commercial Bank, Ltd., to present a speech on “The Practice of Cross-selling and Cooperation among Financial Institutions.”

■ On March 4, the FTC hosted the “Conference on Competitions Issues related to Elementary and Junior High School Textbook Sales.”

■ On March 12, the FTC invited Professor Franz Jurgen Sacker of the Free University

Berlin, Germany, to present a speech entitled “Basic Principles of Network Infrastructure Regulation and the Relationship to Competition Law-A Comparison between European and US-American-Law.”

■ On March 17, the FTC hosted a conference on “Studies on the Relationship between the Responsibility Insurance for Full-time Employees of the Insurance Companies and the Fair Trade Act.”

■ On March 19, the FTC invited Vice President Wang, Rong-Tzong of the Eee PC Business Division, Acer Inc., to present a speech entitled “The Strategic Analysis and Market Trend on the PC and Installed Operating System from the Development of the Eee PC”

■ On March 24 and 31, the FTC held the “FTC Introduction to Regulations on the Information Disclosure for Franchisers” in Taipei and Kaohsiung, respectively.

■ On March 26, the FTC hosted the “Conference on Issues related to the Milk Market and Fair Trade Act.”

■ On March 27, the FTC held the “FTC Introduction to Regulations on Trading Activities in the Agricultural Products Market” in Taichung.

■ On March 28 and 29, the FTC arranged Fair Trade Act Camps in the Department of Information Management and the Department of Business Management, School of Professional and Continuing Studies, Fortune Institute of Technology.



FTC International Exchanges in March 2009

- On March 10 and 11, the FTC held the “ICN Merger Workshop.”
- On March 12, officials from the EU Directorate General for Competition and the Head of Office of the European Economic and Trade Office visited the FTC.
- On March 12, the FTC arranged for the Deputy Director and officials of the Mongolia Authority for Fair Competition and Consumer Protection to visit and have meetings with the Mongolian and Tibetan Affairs Commission and the West Asian Section of the Ministry of Foreign Affairs.
- On March 18, the FTC took part in the conference call of the ICN Merger Workgroup.
- On March 23 and 24, the FTC sent representatives to join the “ICN Unilateral Conduct Workshop” in Washington, D.C, USA.
- On March 24, the FTC participated in the 2009 “EC-Taiwan IPR Working Group 3rd Videoconference” hosted by the Intellectual Property Office of the Ministry of Economic Affairs.

