

Fair Trade Commission

【FTC Newsletter】

No.020

September, 2009

Publisher: Wu, Shioh-Ming

Editor-in-Chief: Hu, Kuang-Yu

Selected Cases	Dante Coffee Shop Violated the Fair Trade Act
	Chairman of the Taichung County Lunchbox Guild Violated the Fair Trade Act
	Zhanfulong Co., Ltd. Violated the Fair Trade Act
	Pai Chian Fined for False Advertisements
FTC Statistics	Merger Statistics
FTC Activities	FTC Activities in July 2009
FTC International Exchanges	FTC International Exchanges in July 2009

Dante Coffee Shop Violated the Fair Trade Act

During its 914th Commissioners' Meeting on May 13, 2009, the FTC resolved the case on Dante Coffee Shop (hereinafter called Dante). Dante failed to fully disclose material trading information in writing to trading counterparts 10 days prior to establishing the franchise relationship; such action sufficiently affected trading order in franchising and was obviously unfair. It violated Article 24 of the Fair Trade Act; the unlawful activities were suspended, and an administrative fine of NT \$500,000 was imposed pursuant to Article 41 of the said Act.

The FTC indicated that, to ensure fair competition in franchising, the "FTC Guidelines on the Disclosure of Information by Franchisers" had been stipulated to avoid the omission of material information and to protect trading order in franchising. Material information shall be provided to trading counterparts in writing; Article 24 of the Fair Trade Act is violated if a franchising enterprise omits material trading information or prevents a trading counterpart from reviewing the contract, making it obviously unfair to the trading counterpart and affecting trading order.

After investigation, the FTC found out that the Article of Franchising for Dante Coffee Chain Stores mentioned that "a general store is about 40 ping (1 ping = 3.3 square meters) and requires an investment of about NT\$4.5 million, including a NT\$300,000 franchise fee,



NT\$300,000 security deposit, and NT\$150,000 for staff support, equipment, decorations, and facilities, etc.” However, once the contract had been signed with Dante, the actual payment far exceeded the above amount. Even though Dante listed “etc.” on the items for investment, some of the items and amounts were still not fully disclosed.

Secondly, a trading counterpart cannot acknowledge the full contents of intellectual property rights and material information for franchise stores from documents provided by Dante or on the website. Trademarks, patents, and copyright all involve exclusive rights, and the general public cannot access such information without key words or an application number; besides, since Dante does not apply for patents and copyright, if not fully-disclosed in writing, the trading counterpart can hardly be aware of the actual condition regarding Dante’s intellectual property rights and its legality. In addition, as for information regarding franchise stores and their location (city/county) domestically in the previous fiscal year, even though Dante included a statistical graph of franchise stores until the end of 2005 in item 5 of the introduction to chain stores in the past; the informer entered the franchise in the year 2007. This suggests that Dante failed to update such franchise store information, and it was impossible for a franchise store to access such data in the previous year (the year 2006). Dante also failed to disclose statistics regarding terminated franchise agreements.

Although Dante verbally introduced relevant franchise information, the data provided by Dante was incomplete. An information-disadvantaged trading counterpart can hardly acquire sufficient and complete trading information by verbal inquiry; it cannot easily access the actual situation of Dante’s intellectual property rights, changes in market scale, and future development, or interview existing franchise stores to check the accuracy of information and evaluate risks. A trading counterpart is under the risk of mistakenly entering into a franchise agreement. As a result, the fact that Dante failed to fully disclose material trading information in writing to a trading counterpart is sufficient to affect the trading order in franchising and is obviously unfair. It violated Article 24 of the Fair Trade Act.

After considering Dante’s motive, the damage caused, illegal behavior, business scale, and attitude after the violation, the FTC suspended the illegal activities and pronounced the above disposition pursuant to Article 41 of the Fair Trade Act.

Chairman of the Taichung County Lunchbox Guild Violated the Fair Trade Act



During its 921st Commissioners' Meeting on July 1, 2009, the FTC resolved the case on the Chairman of the Taichung County Lunchbox Guild (a Representative of the Jiexiang Lunchbox Food Plant). The Chairman enforced members to sign checks or affidavits by issuing member certificates in order to

restrict price competition between members. Such acts caused members to refrain from price competition through threats or other unfair approaches, which restricted competition and may have impeded fair competition; these acts violated Article 19(iv) of the Fair Trade Act. The unlawful activities were to be suspended from the moment that this disposition was to be delivered, and an administrative fine of NT \$600,000 was imposed pursuant to Article 41 of the said Act.

The FTC was informed that the Chairman of the Taichung County Lunchbox Guild notified members NT\$ 43 dollars in 3 bids, the Chairman of the Taichung County Lunchbox Guild also asked members to issue a check for NT\$400,000 or sign an affidavit as a guarantee. Only after a member consented would the membership certificate for the first half of the year 2009 be issued. If a member members of its resolution that members may not participate in auctions for school meals (lunchboxes, lunches) if the bid price was lower than NT\$ 43 for 3 bids; besides, members were required to sign checks or affidavits to abide by the resolution, otherwise they would not receive a membership certificate for the first half of the year 2009. Even though the Chairman of the Taichung County Lunchbox Guild denied asking members to sign checks or affidavits as a requirement for the issuance of member certificates, after investigations, the FTC found out that more than half of the schools in Taichung County required that bidding firms submit a Lunchbox Guild membership certificate. If the Chairman refused to issue a member a certificate, this may have affected members' bidding rights. Furthermore, the Guild did not reach such a resolution in its meeting. However, the Chairman falsely claimed such a resolution in order to maintain the price of a school meal above NT\$ 43 and force compliance. In order to obtain a membership certificate, members had no choice but to sign the affidavit. Some members were refused such a certificate because they did not sign checks or affidavits, and their bidding right may therefore have been affected.

The FTC further indicated that the auction period for school meals usually extends from the middle of May to the end of August. In order to monitor bids made by members, besides

forbidding bids under did not comply (for example, it did not issue a check or sign the affidavit, or a member participated in an auction with a bid price lower than \$43 in May or June), the member certificate for the first and second halves of 2009 would not be issued as a punishment, or the check would be cashed and the affidavit reviewed by other members. Members were worried that their right to bid might be affected if they did not receive the membership certificate, checks might be cashed, or might be criticized by other members. Therefore, they were forced to comply with the Chairman's instructions. The FTC also indicated that even though the price of a school meal was specified in a school's auction notice, by restricting members by not allowing them to participate in auctions with a bid price below NT\$ 43 in 3 bids, the Chairman forced its members to act consistently. A bid might have failed and forced a school to change the bid price because there were not enough bidders. The final price for school meals was thus affected.

After considering the Chairman's motive, objectives, expected benefits resulting from illegal behavior, the damage to trading order, the period of damage to the trading order, gains from unlawful activities, the size, operation, and market status, whether the central competent authority had corrected or warned of such violations, the type/times/interval/penalty for violations of the law, the Chairman's attitude after committing illegal activities and manner of cooperation, and other factors, the FTC ordered the Chairman to suspend the illegal activities and imposed a fine of NT\$ 600,000 pursuant to Article 41 of the Fair Trade Act.

Zhanfulong Co., Ltd. Violated the Fair Trade Act

During its 537th Commissioners' Meeting on February 21, 2002, the FTC resolved the case of Zhanfulong Co., Ltd. (hereinafter called Zhanfulong). Zhanfulong used the name of a gas security check to create gas equipment sales. Such activity was obviously deceptive and able to affect trading order; it violated Article 24 of the Fair Trade Act. The illegal activities were suspended, and an administrative fine of NT \$300,000 was imposed.

The FTC indicated that it has been reported that Zhanfulong used the name of a gas security check to prompt gas equipment sales; then, Zhanfulong ignored a consumer's request for a contract termination and product refund. When investigating whether Zhanfulong had engaged in improper marketing, the FTC discovered that Zhanfulong, in order to attract the public's attention, announced that those who participated in its Workshop on Gas Safety could enter a lottery. The contents of the broadcast emphasized safety regulations, and when asked about what it was organizing, Zhanfulong vaguely answered that it was simply an organization hosting a workshop on fire, electricity, and gas safety. It misled the public by hiding its objective to sell relevant products as well as the fact of being a gas equipment

社區家庭安全防範說明會邀請單

附
件

由於近年來社會變遷快速，在大家共同追求生活品質提昇的同時，卻忽略了安全的重要性，造成生命、財產嚴重的損失，使大家感到擔憂。為了要加強與配合社區的安全防範措施，特舉辦此“安全促進說明會”。

請注意事項：

日期： 月 日
時間：
地點：

憑本通知單兌換摸彩券一張
趣味性有獎問答、獎品數十種家庭用品
舉辦摸彩活動，每張通通有獎。



有獎徵答題目



1. 如何維護社區安全？
2. 家庭中最容易發生的災害有那些？
3. 受傷分為幾種？如何處理？
4. 家庭中小孩子遊戲的禁區是什麼地方？
5. 家庭中造成火災的原因是什麼？

enterprise. Later on, it used the name of a gas security check to enter an individual's residence, without consent, forcibly installed the gas valve and tricked the residence by means of the promotion “by one, get one free” (note that, a single product of Zhanfulong costs NT\$ 3,500, and a purchase of two costs NT\$ 6,900; in other words, there is only a NT\$ 100 discount, and it is not a case of buy one and get one free). Zhanfulong did not mention that the product removal, refund, or contract termination within 7 days after the installation would be free of charge. In addition, even though Zhanfulong said the products could be refunded if not satisfactory, when a consumer asked for a

refund, it perfunctorily ignored such a request. The entire marketing scheme was misleading and deceptive.

The FTC indicated that Zhanfulong used the name of a government or charitable organization to hold a “Workshop on Gas Security” and mislead the public. Furthermore, it disguised its sales activity in the form of a gas safety check to affect the people's free decision on whether to trade. Such an activity was obviously deceptive and able to affect trading order; it violated Article 24 of the Fair Trade Act. The illegal activities were suspended, and an administrative fine of NT \$300,000 was imposed pursuant to Article 41 of the said Act.

Pai Chian Fined for False Advertisements

During its 897th Commissioners' Meeting on January 14, 2009, the FTC resolved the case on Pai Chian Tzu Kuang Technology Co., Ltd. (hereinafter called Pai Chian). Pai Chian published an advertisement in the Merit Times for the product on February 1, 2008 which it referred to as its “Water Purification Machine of Life-force Bamboo Charcoal & Pearl Energy,” claiming that “the machine is antiseptic and deodorizing, contains alkaline calcium ions and micronutrients which balance the pH value in a human body and improve diseases suffered by people in modern days due to lack of exercise, overeating and the deteriorating quality of the environment.” The representations of the quality and the contents of the product were false, untrue, and misleading. The company violated Article 21(1) of the Fair

Trade Act. The illegal activities were suspended, and an administrative fine of NT\$ 80,000 was imposed.

The FTC indicated that the grounds for Pai Chian's advertisement were based on water quality reports for water immersed with its product components, namely, activated charcoal (i.e., bamboo charcoal) and energy stone/pottery, relevant books such as "Energy Water is Growing in Popularity," and extracts from the book "An Ancient Panacea – The Pearl Legend" on the website (<http://www.wretch.cc/blog>). However, the test reports for materials such as activated charcoal (i.e., bamboo charcoal) and energy stone/pottery were not clinically tested; they were not sufficient to prove the effects claimed in the advertisement. Even though, after using the product, such water was found to contain iron, manganese, calcium, magnesium, sodium and other trace elements, the causal relationship as to whether the said product served to mitigate the diseases confronting our civilization could not be established. Pai Chian failed to provide sufficient evidence based on medical theory or clinical tests concerning the effects claimed in the advertisement.

Finally, the FTC indicated that, after considering Pai Chian's motive, the damage caused, illegal behavior, business scale, and attitude after the violation, the illegal activities were suspended, and an administrative fine of NT\$ 80,000 was imposed pursuant to Article 41 of the Fair Trade Act.

員工最佳的禮品
生命力竹炭珍珠能量水器
增加礦物元素 能量高氧活水

7.5折

功能：抗菌、除臭、鹼性鈣離子、微量元素平衡體內酸鹼值改善文明病痛。

專利產品

最經濟每天需要用的產品
上班上課旅遊最好的飲用水壺。

Merger Statistics

1. Definition of Merger

According to Article 6 of the Fair Trade Act, a merger occurs under any one of the following circumstances:

- (1) where an enterprise and another enterprise are merged into one;
- (2) where an enterprise holds or acquires the shares or capital contributions of another enterprise to an extent of more than one-third of the total voting shares or total capital of such other enterprise (in computing the shares or capital contributions, the shares or capital contributions of another enterprise held or acquired by an enterprise(s) controlled by, controlling, or affiliated with the acquiring enterprise shall be included);
- (3) where an enterprise is assigned by or leases from another enterprise the whole or the major part of the business or properties of such other enterprise;
- (4) where an enterprise operates jointly with another enterprise on a regular basis or is entrusted by another enterprise to operate the latter's business; or
- (5) where an enterprise directly or indirectly controls the business operation or the appointment or discharge of personnel of another enterprise.

2. FTC Merger Statistics

From February 2002 to the end of June 2009, a total of 411 mergers were filed, among which 408 cases are closed, with a 99.3% rate of finalization. Of this total, 227 cases were not prohibited, 6 were prohibited, 174 reviews were terminated (42.6% of closed cases), and 1 case was consolidated to another case. The 6 prohibited cases (1.5% of closed cases) were in the KTV, cable TV, food manufacturing, and basic metal manufacturing industries, respectively. As for termination of review cases, most of them (137 cases, accounting for 78.7%, were mostly in the electronic parts & components, chemical materials, computer or electronic product, and optical product industries) and did not need to be filed (a foreign merger that does not affect the domestic market or does not reach the threshold for merger filing). Finally, there were those that failed to comply with procedural formalities (8 cases).

From January to June 2009, 13 mergers filed with the FTC were not prohibited. In terms of merger types (if more than two are applicable, we double count), first, there were 9 mergers (69.2%) where an enterprise held or acquired the shares or capital contributions of another enterprise (Subparagraph 2, paragraph 1, Article 6); secondly, 6 mergers (46.2%) where an enterprise directly or indirectly controlled the business operations or the appointment or discharge of the personnel of another enterprise (Subparagraph 5); thirdly, 3 mergers (23.1%) where an enterprise and another enterprise were merged into one (Subparagraph 1); lastly, 2

mergers (15.4%) where an enterprise was assigned by or leased from another enterprise the whole or the major part of the business or properties (Subparagraph 3). For other merger statistics, please visit the FTC website's "Statistics/Cases Received."

Notifications for Merger

Unit: Case

Year & Month	Mergers Filed	Cases Closed	Major Industries for Filed Mergers						
			Mergers not Prohibited	Mergers Prohibited	Termination of Review	Electronic Parts and Components Manufacturing	Computers, Electronic and Optical Products Manufacturing	Financial Intermediation	Broadcasting and Programming
Total	411	408	227	6	174	78	38	33	31
2002	43	42	24	1	17	2	9	8	6
2003	50	50	31	-	19	10	3	4	4
2004	33	31	18	-	13	9	1	1	2
2005	54	54	34	-	20	19	1	7	3
2006	79	77	34	-	42	19	4	4	6
2007	69	67	37	1	29	8	10	6	2
2008	61	65	36	2	27	7	9	3	6
Jan. 2009 ~ June 2009	22	22	13	2	7	4	1	-	2

Notes: 1. On February 6, 2002, the Fair Trade Act, in regard to merger cases, was amended to reflect a change from an application-approval system to a notification-objection system. This table is for notifications for merger.

2. There was one prohibited merger case in 2007 and one in 2008; the Petitions and Appeals Committee of the Executive Yuan revoked the original disposition in 2008 and 2009, respectively.

Mergers not Prohibited - By Types of Mergers

Unit: Case

Year & Month	Mergers	Mergers – by types under paragraph 1, Article 6 of the Fair Trade Act				
		Merged with another Enterprise (Subpara. 1)	Holds or Acquires Shares or Capital Contributions of Another Enterprise (Subpara 2.)	Assigned by or Leases from Another Enterprise the Whole or Major Part of the Business or Properties (Subpara. 3)	Operates Jointly with Another Enterprise on a Regular Basis or is Entrusted by Another Enterprise (Subpara. 4)	Directly or Indirectly Controls the Business Operation or the Appointment or Discharge of Personnel (Subpara. 5)
Total	227	38	156	26	14	87
Feb. 2002 – Oct. 2002	24	5	18	1	-	6
2003	31	9	18	4	1	5
2004	18	3	13	2	-	4
2005	34	6	23	4	3	12
2006	34	6	25	1	2	22
2007	37	4	21	8	4	18
2008	36	2	29	4	4	14
Jan. 2009 – Jun. 2009	13	3	9	2	-	6

Notes: 1. On February 6, 2002, the Fair Trade Act, regarding merger cases, was amended to reflect a change from an application-approval system to a notification-objection system. This table is for notifications for merger.

2. Some mergers fall into two or more types, and so the total number of mergers by merger types may exceed the number of prohibited cases.

FTC Activities in July 2009

- On July 3 & 7, the FTC invited Assistant Professor, Ting-Ton Yen, of the Financial Law Department of Ming Chuan University to lecture on “The Foreign Competition Authority’s Regulation on Licensing and its Restrictions” and “A Review of Stocking Goods and Price-Jacking under the Fair Trade Act,” respectively.
- On July 13, the FTC hosted the “Conference on whether Using Samples as a Promotion Violated the Fair Trade Act.”
- On July 27, the FTC held the “2009 Introduction to the Fair Trade Act Workshop for Administrative Organizations” in Taipei City.
- On July 28, the FTC held the “Workshop on Restrictive Competition in the Technology Industry” in Hsinchu.



FTC International Exchanges in July 2009

- On July 23 & 24, the FTC participated in the APEC Economic Committee 2 in Singapore.
- On July 28, the FTC participated in a conference call for the ICN Merger Working Group.