

Fair Trade Commission Disposal Directions (Guidelines) on Handling Cases Governed by Article 21 of the Fair Trade Act

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Points 22 and 23 amended, and Point 26 deleted by the 311th Commissioners'
Meeting on October 15, 1997
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1999
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Meeting on February 8, 2012
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1. The Fair Trade Commission ("the Commission") has adopted these Guidelines for purposes of ensuring fair competition among enterprises, protecting the rights and interests of consumers, effectively enforcing Article 21 of the Fair Trade Act ("the Act"), and prohibiting enterprises from making or using false or misleading representations or symbols on goods (or in connection with services), in advertisements, or by any other means of making known to the public.
2. The term "other related matters which have a soliciting effect" used in Paragraph 2, Article 21 of the Act means any subject matter of trade having economic value and other trade-related matters that are not directly related to the subject matter of trade but having an impact on trade decisions, including an enterprise's identity, qualification, business condition, relationship to other enterprises, non-profit organizations, or government agencies, gifts or prizes attached to such trade by the enterprise, and probabilities or the nature of prizes and awards (including goods and services) won by chance; comparison in product and service to other enterprises.
3. The term "other means of making known to the public" set out in Article 21 of the Act refers to any act of disseminating information via online or physical channels that may directly or indirectly allow the specific groups, or non-specific, general public, or the relevant public to collectively see or hear of it. Examples of "other means of making known to the public" include the following: group chats on social media platforms or messaging apps; products and/or services related seminars/presentations; provision of information by an enterprise for publication by the media in the form of reportage verbal promotion and introduction of goods and/or services by on-site salespeople and the like whereby information is disseminated to the public.
4. The term "representation or symbol" used in Article 21 of the Act refers to an act sufficient to express or disseminate information or ideas having commercial value by means of written or spoken language, sound, graphics, marks, numbers, images, colors, shapes, actions, objects, or other means.
5. The word "false" used in Article 21 of the Act refers to a representation or symbol that is inconsistent with the previously stated facts, where the discrepancy is deemed unacceptable to the general public or the relevant public, and sufficient to cause concern about misunderstanding or erroneous decisions.
6. The word "misleading" used in Article 21 of the Act refers to a representation or symbol, whether or not consistent with the previously stated facts sufficient to cause concerns about misunderstanding or erroneous decisions of the general or the relevant public.
7. The factors to be considered in determining whether a representation or symbol is false or misleading are as follows:

(1) The determination of whether a representation or symbol is false or misleading shall be based on the basis of the general public exercising an ordinary degree of care.

(2) Where the content of a representation or symbol is manifested by comparison or especially distinctive means, and where the major part that is especially distinctive could easily form the primary factor contributing to a consumer's transaction decision, the especially distinctive major part may be observed independently in making the determination.

(3) Where a representation or symbol, observed in isolation, is factual, but the overall impression and effect it delivers, when observed in combination, is sufficient to cause concern about misunderstanding or erroneous decisions by counterparts involved in a relevant transaction, it shall be deemed misleading.

(4) The representation or symbol with respect to the content of critical transaction information is disproportionally arranged in its layout, position, and font size, as to cause concern on the misunderstanding or erroneous decisions by counterparts in a relevant transaction.

(5) The representation or symbol with respect to the conditions of burden or limitation does not fully disclose such conditions as to cause concern on the misunderstanding or erroneous decisions by counterparts in a relevant transaction.

(6) A representation or symbol objectively having multiple reasonable interpretations shall not be deemed false as long as one of the meanings is true. However, this shall not apply when the intent to mislead is plainly obvious.

(7) The degree of discrepancy between the representation or symbol and the actual conditions.

(8) Whether the content of the representation or symbol is sufficient to affect the trading counterparts possessing ordinary knowledge and experience to make reasonable judgment and trading decisions.

(9) Effect on the economic interests of competing enterprises and trading counterparts. Opinions from relevant government authorities or impartial and objective professional bodies could be considered when determining the degree of discrepancy between the representation or symbol and the actual conditions.

8. A complaint shall be made in written or electronic form by a complainant specifying the details of the complaint and providing his or her full name and address. Where an oral complaint is made, the Commission shall make a written record of the complaint and, after reciting it to or having it read by the complainant to verify the accuracy of the content, shall annotate the year, month, and day, and then have the complainant sign or chop it.

An authorization letter is required when the complainant asks someone to file the

complaint on behalf of him/her.

Following the complaint, the Commission may request the complainant to amend or make a new complaint in the case where the Commission is unable to obtain critical evidence including the relevant goods, packages and advertising, or to comprehend the specific details of the complaint and the content after its preliminary review.

9. The Commission and other competent authorities allocate cases with regard to Article 21 of this Act in accordance with the principle of special law prevails over general law.

According to the allocation of responsibilities mentioned in the previous paragraph, the case types administered by competent authorities are as Table 1.

10. As for the examples that representation or symbol is "false or misleading", please refer to Table 2.

Table 1 Case Types Administered by Competent Authorities

	Conduct	Competent Authority
1	The advertising contents of the goods or services that claims, implies or insinuates medical effectiveness.	Ministry of Health and Welfare
2	Labels and advertisements for food, health food, retail dairy products, cosmetic products and medicine.	Ministry of Health and Welfare
3	Advertisements for medical treatment	Ministry of Health and Welfare
4	Advertisement for human organ preservation databases	Ministry of Health and Welfare
5	Labeling of general merchandise	Ministry of Economic Affairs
6	Labels for selling seedlings	Council of Agriculture, Executive Yuan
7	Labels and advertisements for pesticides, fertilizers, feed, livestock and poultry breeding and genetic resources, drugs for animals, and pet food.	Council of Agriculture, Executive Yuan
8	Agricultural product labels for the wholesale market, retail packaged rice labels, product traceability labels, and organic food labels	Council of Agriculture, Executive Yuan

	and advertisements.	
9	Agricultural product advertisements, agricultural product labels for the retail market, and advertisements of retail packaged rice	Ministry of Health and Welfare
10	Veterinarians' advertisements for the promotion of their businesses	Council of Agriculture, Executive Yuan
11	Tobacco and alcohol labels, advertisements for alcohol	National Treasury Administration, Ministry of Finance
12	Advertising by government authorized continuing education schools	Competent educational authority in special municipality, county or county-level city governments
13	False advertisements with respect to employment placement or employee recruitment	Ministry of Labor
14	False recruitment advertisements or brochure contents of vocational training institutions	Ministry of Labor
15	Travel services advertisements	Tourism Bureau of the Ministry of Transportation and Communications
16	False or misleading advertisements by securities or futures enterprises	Financial Supervisory Commission
17	Advertisements causing people to wrongly assume that an advertiser who has not duly obtained certified public accountant credentials has such credentials	Financial Supervisory Commission
18	Finance-related advertisements	Financial Supervisory Commission
19	Immigration Advertisements	Ministry of the Interior

20	Real Estate brokerage Advertisements regulated by the Real Estate Broking Management Act	Ministry of the Interior
21	Cross-nation marriage matching advertisements	Ministry of the Interior
22	Cases that have been determined to be handled by other government agencies after coordinating with other agencies, or applying the "special law takes precedent over common law" principle	Other competent Authorities

Table 2 Examples of Types of False or Misleading Representation or Symbol Cases

	Types of Conducts
1	A representation or symbol causes people to wrongly assume the enterprise is the (sole) agent, (sole) distributor, branch, maintenance center, or service station of another enterprise, or so forth, and so has certain qualifications, credibility, or other qualities sufficient to persuade trading counterparts to do business with it.
2	A representation or symbol causes people to wrongly assume that a government agency or non-profit organization is a sponsor or co-sponsor or that it is related to a government agency or non-profit organization.
3	A representation or symbol causes people to wrongly assume that a name of another enterprise or brand name of a good has changed.
4	A representation or symbol exaggerates the scale of business operations, the time of founding, or duration of existence of an enterprise or brand of goods (services), where the discrepancy is excessive.
5	A representation or symbol falsely claims the technological cooperator, or the licensee, of another person.
6	A representation or symbol causes people to wrongly assume an enterprise has been awarded a certain prize, to enhance the status of its goods (or services).
7	A representation or symbol causes people to wrongly assume an enterprise

	has been licensed patent or trademark or other intellectual property rights.
8	A representation or symbol causes people to wrongly assume an enterprise is the sole vendor of specific goods (or services).
9	A representation or symbol causes people to wrongly assume an enterprise's goods (or services) are covered by liability insurance.
10	A representation or symbol of list price differs for an extended period from actual selling price, where the discrepancy is excessive.
11	Price is labeled long-term as "discounted," or a similar pretense, where the marked price is actually the original price.
12	Minimum prices or favorable price are represented, where there are no, or too few, goods (or services) available at the minimum price or favorable price, and where such circumstances would be unacceptable for the general or relevant public.
13	A representation or symbol causes people to wrongly assume that the goods (or services) claimed can be obtained upon payment of a certain price.
14	A representation or symbol contains specific numbers inconsistent with the actual numbers, where the degree of discrepancy exceeds the acceptable level for the general or relevant public.
15	A representation or symbol claims to provide service items or grades inconsistent with those actually provided, where the degree of discrepancy exceeds the acceptable level for the general or relevant public.
16	A representation or symbol claims goods (or services) of a certain quality, where the degree of discrepancy exceeds the acceptable level for the general or relevant public.
17	A representation or symbol causes people to wrongly assume goods (or services) have been awarded certification or approval by a government agency or a professional organization.
18	A representation or symbol cites the content of an official document, causing people to wrongly assume the quality of the goods (or services).
19	A representation or symbol causes people to mistake the identity of the actual presenter or author of publications or persons involved in the work of preparing them.

20	A representation or symbol causes people to wrongly assume goods are of specific functions, where the degree of discrepancy exceeds the acceptable level for the general or relevant public.
21	A representation or symbol fails to clearly indicate the conditions, burdens, expiry, or other restrictions that actually apply.
22	A representation or symbol describes collectively goods (or services) having different qualifications, natures, or qualities, causing people to wrongly assume that the goods (or services) mentioned all possess the same qualifications, natures, or qualities.
23	Labeling/indications representing or symbolizing a place (country) of origin of a product cause people to wrongly assume it was produced or manufactured in such place (country) of origin; provided, this shall not apply where the name of the place of origin is already in general use as a description of such products.
24	A representation or symbol provided by an enterprise engaged in the marketing of investment products or services which causes people to wrongly assume its franchisees or distributors earn high incomes.
25	A representation or symbol claims the effect of a product (or service) without any scientific theory or experimental basis.
26	A representation or symbol of a rate of interest/yield is inconsistent with rates of interest/yield in actual transactions, where the degree of discrepancy exceeds the acceptable level for a typical trading counterpart.
27	A representation or symbol causes people to wrongly identify the producer or supplier of the goods (or services).
28	A representation or symbol causes people to wrongly assume that the government will hold examinations for specific credentials, examinations for the selection of public servants, or certification tests for specific professions.
29	Advertisements that use the descriptive terms of superlative, such as "No. 1", "Champion", "the maximum", or "the biggest", without sales numbers or surveys to support them, or pointing out the source in the advertisements.
30	A representation or symbol that does not disclose the trading risks, or the method of the disclosure causes people to wrongly assume that the provisions of such goods (services) are legal.

31	A representation or symbol, in which the description of the rules of participation in a gift-give-away (or a prize or a sweepstakes) event, is inconsistent with the actual event; or, its conditions, burdens or other limitations are not clearly indicated.
32	A representation or symbol claiming probabilities or the nature of prizes and awards (including goods and services) won by chance, that is inconsistent with those actually provided, where payments are required and the degree of discrepancy exceeds the acceptable level for the general or relevant public.