

# **THE ENFORCEMENT DECREE OF THE FAIR LABELLING AND ADVERTISING ACT**

Enacted by President Decree No. 16430, June 30, 1999

## **Article 1 Purpose**

The purpose of this Decree is to prescribe matters delegated by and necessary for the enforcement of the Fair Labelling and Advertising Act.

## **Article 2 Advertisement Methods**

"Others set forth in the Presidential Decree" as defined in Article 2, Paragraph 2 of the Fair Labelling and Advertising Act (hereinafter, the "Act") refers to advertisements using any of the following media or means.

1. leaflets, pamphlets, samples or tickets
2. Internet or PC communications
3. Poster, signboard, neon sign, advertising balloon, or electric sign
4. video tapes, discs, publications, periodicals, movies or plays
5. other products than its own
6. other media or means in similarity to the preceding 1 to 5

## **Article 3 Unfair Labelling and Advertising**

(1) False and exaggerating labelling and advertising as provided in Article 3, Paragraph 1, Subparagraph 1 of the Act refers to untrue labelling or advertising or labelling or advertising that exaggerates facts.

(2) Deceptive labelling and advertising as provided in Article 3, Paragraph 1, Subparagraph 2 of the Act refers to labelling or advertising that are made in a way that covers up or downplays facts.

(3) Unduly comparative labelling and advertising as provided in Article 3, Paragraph 1, Subparagraph 3 of the Act refers to labelling or advertising which claims that its goods or services (hereinafter, "goods, etc.") is superior or advantageous to other businessmen /trade associations (hereinafter, "enterprise, etc.") or goods, etc. of other enterprises, etc. by making comparisons without presenting criteria for and objects of comparison or by make comparisons without objective criteria.

(4) Slandorous labelling and advertising as provided in Article 3, Paragraph 1, Subparagraph 4 of the Act refers to labelling or advertising that discredit other businessmen, etc. or goods, etc. of other enterprise, etc. without objective ground or by highlighting only unfavorable facts of such goods, etc.

(5) Detailed types of or criteria for unfair labelling and advertising pursuant to the preceding paragraphs 1 to 4 may be determined and notified thereof by the Fair Trade Commission. In such event, the Fair Trade Commission shall seek prior consultation with heads of relevant ministries.

## **Article 4 Method of Substantiation, etc.**

(1) Enterprises, etc. who desire to carry out a test or research in order to substantiate factual matters contained in labels or advertisements placed by enterprises, etc. pursuant to Article 5, Paragraph 1 of the Act shall comply with the following provisions.

1. Methods to be employed in such test or research shall be objective and appropriate and generally accepted by academia or the industry.
2. Test or research shall be carried out by a test or research institute either designated by the Decree or independently managed from the enterprises, etc.; provided, however, that when it is deemed impossible or inappropriate for test or research to be carried out by a test or research institute either designated by the Decree or independently managed from the enterprises, etc., this shall not apply.

(2) "Independently managed a test or research institute" as stated in the preceding Paragraph 1, Subparagraph 2 means test or research institutes that do not fall under any of following categories.

1. test or research institutes run by an affiliated company of the enterprises, etc. (meaning the affiliated companies as prescribed in Article 2, Paragraph 3 of the Monopoly Regulation and Fair Trade Act)
2. test or research institutes run by a company which belongs to a Business group of the enterprises, etc. (the scope of the business group as defined in Article 3 of the Enforcement Decree of the Monopoly Regulation and Fair Trade Act) but is deemed as being independently operated from the said business group pursuant to Article 3-2, Paragraph 1, Subparagraph 2 of the Monopoly Regulation and Fair Trade Act.

## **Article 5 Substantiating Documents**

In submitting substantiating documents pursuant to Article 5, Paragraph 3 of the Act, papers specifying the followings along with documents verifying the truthfulness thereof shall be attached.

1. Substantiation methods
2. The title of the test or research institute, the name, address, telephone number of the representative of such institute (limited to cases where test or research is conducted)
3. Substantiated contents or results
4. Corporations not wanting to disclose certain substantiating documents that are business confidentiality shall submit documents explaining the contents of documents and reasons for refusing to disclose information

## **Article 6 Disclosure of Substantiating Documents**

(1) When the Fair Trade Commission opens or discloses to the public the submitted substantiating documents pursuant to Article 5, Paragraph 4 of the Act, it may do so in the forms of summary or excerpt necessary for the purchase choice of consumers.

(2)  "Business confidentiality" as stated in the proviso of Article 5, Paragraph 4 of the Act is of the same definition as in Article 2, Subparagraph 2 of the Act on Preventing Unfair Competition and Protecting Confidential Business Information.

## **Article 7 Granting Permission to Trade Associations' Restriction of labelling and Advertising by Member Corporations**

(1) Any trade association which desires to get authorization from the Fair Trade Commission to restrict labelling and advertising of its members pursuant to the proviso of Article 6, Paragraph 1 of the Act shall submit request form to the KFTC explaining the reasons therefor and contents thereof.

(2) The Fair Trade Commission, upon receiving such request in accordance with the preceding Paragraph, shall reach a decision within 60 days of the receipt of the request and notify in writing thereof.

## **Article 8 Method, etc. of Making Public of the Law Violations**

(1) When the Fair Trade Commission makes public the fact of law violation or order the violating corporations to place a rectifying advertisement pursuant to either Article 7, Paragraph 1, Subparagraph 2 or Subparagraph 3 of the Act, it shall determine, taking into consideration the following facts, the contents, frequency, size, media, etc. of the public announcement or corrective advertisement.

1. The nature and severity of the violation
2. The duration and frequency of the violation

(2) The Fair Trade Commission, when making public or issuing an order to place a rectifying advertisement pursuant to the immediately preceding Paragraph 1, may have the perpetrator consult with it with regard to the draft, etc. thereof.

## **Article 9 Groups and Organizations Requesting a Cease and Desist Order**

"Consumer groups and other organizations set forth in the Presidential Decree" as defined in Article 8 (2) of the Act means -

1. Information and Communications Ethics Commission pursuant to Article 53-2, Paragraph 1 of the Telecommunications Business Act;
2. Korean Publication Ethics Commission pursuant to Article 45- of the Juvenile Protection Act;
3. Korea Consumer Protection Board pursuant to Article 26 of the Consumer Protection Act;
4. Korean Newspapers Ethics Commission or Korea Advertising Review Board, an incorporated body pursuant to Article 32 of the Civil Code; or
5. Other groups or organizations whose main objective is to review labelling and advertising of enterprises, established pursuant to other statutes.

## **Article 10 How to Request a Temporary Cease and Desist Order**

When a consumer group or an organization as prescribed in the immediately preceding article makes a request to issue a temporary cease and desist order in accordance with Article 8 (2), it shall submit to the Fair Trade Commission the written request form containing following information.

1. the title of the requesting consumer group or organization, the name, address, and telephone number of its representative
2. the name of the enterprise which placed the concerned labelling or advertising
3. the nature of the labelling or advertising subject to a temporary cease and desist order
4. the reasons for requesting such temporary cease and desist order

#### **Article 11 Filing an Objection to a Temporary Cease and Desist Order**

Any party who desires to file an objection to the temporary cease and desist order in accordance with Article 8 (3) shall submit to the Fair Trade Commission a duly completed objection form specifying against whom and on what and why an objection is raised, along with documents necessary to prove the reasons therefor and the contents thereof.

#### **Article 12 Method of Surcharge Computation**

(1) "Enterprises' turnover as set forth in the Presidential Decree" as prescribed in Article 9 (1) means the average turnover of the immediately preceding 3 business years of the concerned enterprise; provided, however, that if the business years fall short of 3 years as of the first day of the concerned business year, the turnover from the business initiation day up to the closing day of the immediately preceding business year is used in assessing surcharge amount; and if the enterprise started business in the business year concerned, the turnover from the business initiation day to the date when the concerned violation occurred shall be converted into an annual average.

(2) Method of surcharge computation, surcharge criteria and other necessary matters pursuant to the immediately preceding Paragraph 1 shall be determined by the Fair Trade Commission.

#### **Article 13 The Scope of Enterprises using Operating Income**

"Enterprises and their turnover as set forth in the Presidential Decree" as prescribed in Article 9 (1) mean any enterprise entering the aggregate amount of product sales, etc. as operating income in the financial statements, etc.

#### **Article 14 Enterprises without Turnover, etc.**

"An enterprise or trade association set forth in the Presidential Decree" as defined in the proviso of Article 9 (1) refers to an enterprise, etc. that fall under the followings;

1. when there is no operational gains because operation is yet to begin or is suspended;
2. when it fails to submit documents or submits false documents on turnover computation;
3. when it is deemed difficult or impossible to have an objective computation of turnover.

#### **Article 15 Surcharge Assessment Criteria**

(1) Surcharge assessment criteria pursuant to Article 9 (1) and (2) of the Act are as provided in the Appendix.

(2) The surcharge amount assessed pursuant to the immediately preceding Paragraph may be adjusted upward or downward in consideration of the matters provided in Article 9 (3) of the Act

(3) The Fair Trade Commission shall determine and notify detailed criteria for assessing surcharges other than what is provided in this Decree.

#### **Article 16 Surcharge Collection and Delinquency Charge**

(1) When imposing surcharge pursuant to Article 9 of the Act, the Fair Trade Commission shall clearly state the type of violation and surcharge amount and notify the violative party thereof in writing.

(2) The party, upon receiving the notification pursuant to Paragraph 1, shall pay the surcharge at the collection agency designated by the Fair Trade Commission within 60 days; provided, however, that if the party cannot pay the surcharge within the set period due to natural disasters and other unavoidable reasons, he/she shall pay the surcharge within 30 days after the reasons disappear.

#### **Article 17 Fines for Negligence**

(1) In imposing fine for negligence in accordance with Article 20 (1) and (2) of the Act, the Fair Trade Commission shall probe and confirm the wrongdoing and state clearly the nature of the violation and the amount of fine and notify the violating party thereof in writing.

(2) The Fair Trade Commission shall give ten or more days of period to the parties subject to fines for negligence for them to make verbal or written statement. If they do not produce any statement within the given period, they shall be deemed to have no intention to make a statement.

(3) The Fair Trade Commission, in assessing the amount of fines, shall take into account the motives for and the effects of the violation concerned.

#### **Article 18 Implementation Details**

Detailed matters relating to implementing this Decree shall be determined and notified by the Fair Trade Commission.

### **ADDENDA**

(1) Effective Date

This Decree will take effect on July 1, 1999.

(2) Amendment made to the Enforcement Decree of the Monopoly Regulation and Fair Trade Act

Following amendments shall be made to the Enforcement Decree of the Monopoly

Regulation and Fair Trade Act.

The phrase in the first part of Article 8 of the Decree "a correction advertisement or a public announcement of violation" shall read "a public announcement of violation."

No. 9 of the Appendix 1 of the Decree shall be deleted.

[Appendix]

**Surcharge Assessment Criteria (Concerning Article 15 (1) )**

| Violations  | Pertinent Statutory Provision | Surcharge Assessment Criteria   |
|---|-------------------------------|---|
| 1. Undue Labelling and Advertising by Enterprises, etc.         | Article 3 (1) of the Act      | Base sales amount for imposing surcharge is divided into five categories; one billion Won or less; More than 1 billion Won up to and including 10 billion Won; More than 10 billion Won up to and including 100 billion Won; Less than 1 trillion Won; and More than 1 trillion Won. In case the company's sales amount is one billion Won or less, surcharges shall not exceed 2% of the Base sales amount for imposing surcharge and as for the sales amount which is more than 1 billion won, surcharges shall not exceed combined amount calculated by the ratio set forth in the following note for each category. |
| 2. Trade Associations' Restriction of Labelling and Advertising | Article 6 (1) of the Act      | Surcharges shall not exceed 5% of the budget of the year in which the violation of the trade associations end. In such case, the total surcharge amount shall be less than 500 million Won.   |

Note:

1. The surcharge imposition ratio for each category as defined above shall be determined and notified by the Fair Trade Commission.
2. In case the budget is yet to be drawn up for the year in which the illegal act of the trade associations ends, surcharge is assessed on the basis of the budget amount of the immediately preceding business year.