

Fair Trade Commission Notification No. 1997-19

**NOTIFICATION ON THE CRITERIA FOR UNFAIR BUSINESS PRACTICES
RELATING TO THE FRANCHISE**

Enacted by Fair Trade Commission Notification No. 1997-4
Feb. 1, 1997

Amended by Fair Trade Commission Notification No. 1997-19
April 7, 1997

Amended by Fair Trade Commission Notification No. 1998-19
Dec. 31, 1998

We hereby notify the criteria for unfair business practices relating to the franchise pursuant to Article 23 (Prohibition on Unfair Business Practices) Paragraph (2) of the Monopoly Regulation and Fair Trade Act and Article 36 (Designation of Unfair Business Practices) Paragraphs (1) and (2) of its Enforcement Decree.

December 31, 1998
Fair Trade Commission

Criteria for Unfair Business Practices Relating to the Franchise

Article 1 Purpose

The purpose of this Notification is to take into account the unique characteristics of the franchise in applying the stipulations of unfair business practices under the provisions of Article 23 (Prohibition on Unfair Business Practices) Paragraph (1) of the Monopoly Regulation and Fair Trade Act (hereinafter, the Act,) and to present the criteria for determining unfair business practices in relation to the franchise, thereby promoting rational trading practices and preventing unfair trade.

Article 2 Definition of Terms

1. Franchise, means an on-going trade relationship between franchisor and franchisee in which the franchisor gives a number of franchisees the right to use its trademark, trade name, service mark, insignia, etc. (hereinafter, business mark,) and to engage in certain sales activities, such as selling products or rendering services, with the same image as

the franchisor, and the franchisor gives sales assistances and exercises controls in accordance. In return for the rights and sales assistance received, the franchisee pays a certain amount of economic profit to the franchisor.

2. Franchisor, means the person granting the rights associated with a franchise described in Subparagraph 1.
3. If a Subfranchisor, who has acquired from the franchisor the right to grant a blanket license for a franchise to a third party, gathers a number of franchisees according to his/her calculation and operates a separate franchise, he/she becomes the Franchisor, provided for in Subparagraph 2 in relation to his/her franchisees.
4. Franchisee, means the person acquiring the rights associated with a franchise provided for in Subparagraph 1.
5. Prospective Franchisee, means a person who has subscribed to the franchisor's invitation to subscription for franchise with a view to engaging in a franchise in the future and who seeks advice on the specifics of the franchise.
6. Franchise Fee, means fees paid by the franchisee to the franchisor in return for the rights and sales instructions received, regardless of the name or the method of payment.

Article 3 Scope of Application

The business practices deemed unfair in this Notification are those listed as major activities that warrant consideration of the unique characteristics of the franchise; therefore, this does not mean that the acts which are not listed herein are exempted from the application of the Enforcement Decree of the Act or other notifications and guidelines.

Article 4 Basic Principle

Taking into account the unique trading characteristics of the franchise, before the signing of a contract, the franchisor is to make sufficient disclosure of the necessary materials and relevant information so that the Prospective Franchisees can make the right judgment regarding membership to the franchise; Regarding the franchisor's intervention in the sales activities of the franchisee, its unfairness shall be determined based on sufficient examination of the need for intervention in the relevant franchise.

Article 5 Failure to Provide Information and Materials in Advance

(1) In the process of signing a contract with a Prospective Franchisee who has subscribed to the franchisor's invitation to the franchise and prepared for it, if the

franchisor engages in an act falling into one of the following subparagraphs, it shall constitute Unreasonably take advantage of one's bargaining position in transacting with others, under Subparagraph 4 of Article 23 (Prohibition on Unfair Business Practices) Paragraph (1) of the Act:

1. Despite the Prospective Franchisee's written request to the franchisor to furnish, in writing, necessary materials relating to the franchisor's financial situation regarding the franchise, business performance in the last 5 years, and pending lawsuits relating to the franchise, the franchisor fails to comply with the request and signs or intends to sign the contract;
2. The franchisor fails to furnish in advance written materials regarding pecuniary matters, such as franchise fee, security deposit, and other public imposts which the franchisee will need to pay immediately upon joining the franchise or after the joining of the franchise; or the franchisor fails to give sufficient time for the franchisee to examine the terms or standardized terms of contract and signs or intends to sign the contract;
3. The franchisor fails to fulfill the franchisee's written request to furnish, in writing, necessary matters relating to the conditions for supply of products or services, sales supervision and methods of payment therefor, controls on sales activities, and specific terms of termination, rescission, and renewal of contracts, which are difficult to fully understand solely through contracts or oral descriptions, and signs or intends to sign a contract;
4. If the franchisor presents a description of the situation of the franchise in an area near the area in which the Prospective Franchisee plans to engage in the franchise and the turnover outlook, and the Prospective Franchisee finds it difficult to understand matters relating to the estimation of the turnover outlook with simple oral explanation and requests a written description, but the franchisor fails to fulfill the request of the franchisee and signs or intends to sign the contract.

(2) The franchisor shall make the effort to keep on file the formats for the documents relating to the information and materials in Paragraph (1) so that the Prospective Franchisee can freely make requests for relevant documents.

Article 6 Coercing the Purchase of the Facilities of the Franchise Shop

In making the franchisees or the Prospective Franchisees install facilities for the interior and exterior decoration of the shop for purposes of maintaining a unified image of a franchise, if the franchisor forces the franchisees or Prospective Franchisees to purchase and install the facilities of the shop from itself or a person designated by itself, although there is no damage to the unified image of the facilities of the shop as long as the specifications or the quality standards presented by itself are adhered to, such act shall constitute Unreasonably coerce customers of competitors to deal with oneself, in the last half of Subparagraph 3 of Article 23 (Prohibition on Unfair Business Practices)

Paragraph (1) or ☐Unreasonably take advantage of one,,s bargaining position in transacting with others, in Subparagraph 3 of Article 23 (Prohibition on Unfair Business Practice) Paragraph (1) of the Act.

Article 7 Restriction on Products and Sales Activities

If the franchisor restricts the products and services of the franchisees or their sales activities beyond the range necessary for attaining the purposes of the franchise, it shall constitute ☐Unreasonably take advantage of one,,s bargaining position in transacting with others, under Subparagraph 4 of Article 23 (Prohibition on Unfair Business Practices) Paragraph (1) or ☐Transact with others on terms and conditions which unreasonably restrict their business activities" in the first half of Subparagraph 5 of Article 23 (Prohibition of Unfair Business Practices) Paragraph (1) of the Act.

Article 8 Restriction on the Source of Product Purchase

If the franchisor forces the franchisee to purchase products for sale (including raw materials) or services from itself or a person designated by itself, or restricts the franchisee from shifting the source of purchase, beyond what is necessary to attain the purposes of the franchise, it shall constitute ☐Unreasonably take advantage of one,,s bargaining position in transacting with others, in Subparagraph 4 of Article 23 (Prohibition on Unfair Business Practices) Paragraph (1) or ☐Transact with others on terms and conditions which unreasonably restrict their business activities or engage in acts which unreasonably disrupt business activities of other enterprises, in the first half of Subparagraph 5 of Article 23 (Prohibition of Unfair Business Practices) Paragraph (1) of the Act.

Article 9 Refusal to accept Sales Assistance, Etc.

In the absence of a justifiable reason, such as a material situation that is attributable to the franchisee which makes the continuation of the trade relationship very difficult, if the franchisor suspends or refuses the supply of products for sale (including raw materials) and services and sales assistance, or substantially restricts the volume or content of the products and services under transaction, it shall constitute ☐Unreasonably refuse to transact, in the first half of Subparagraph 1 of Article 23 (Prohibition on Unfair Business Practices) Paragraph (1) of the Act.

Article 10 Unilateral Decision of Activity <Deleted Dec. 31, 1998>

Article 11 Coercion of Disadvantageous Method of Settlement

<Deleted Dec. 31, 1998>

Article 12 Unilateral Modification of Contract Stipulations

<Deleted Dec. 31, 1998>

Article 13 Prohibition of Competitive Business following Termination of Business Relationship

Without justifiable reason, if the franchisor restricts the franchisee from engaging in sales activities in a similar business for a certain period following termination of contract or restricts the franchisee from transacting with its competitors, it shall constitute □acts which unreasonably disrupt business activities of other enterprises, in the second half of Subparagraph 5 of Article 23 (Prohibition on Unfair Business Practices) Paragraph (1) of the Act.

ADDENDUM < April 7, 1997 >

Article 1 Effective Date

This Notification shall take effect on the date of notification.

Article 2 Interim Regulations

(1) With respect to any acts performed prior to this Notification, the regulations under the Notification on the Criteria for Special Unfair Business Practices Relating to Franchise (Fair Trade Commission Notification No. 1997-4) shall apply.

(2) Article 5 of this Notification shall not apply to franchise contracts signed prior to February 1, 1997.

ADDENDUM < December 31, 1998 >

Article 1 Effective Date

This Notification shall take effect on January 1, 1999.

Article 2 Interim Regulations

With respect to any acts performed prior to this Notification, the regulations under the Notification on the Criteria for Special Unfair Business Practices Relating to Franchise (Fair Trade Commission Notification No.1997-19) shall apply.