

Fair Trade Commission Notification No. 1998-11

NOTIFICATION ON THE TYPES OF AND CRITERIA FOR UNFAIR BUSINESS PRACTICES RELATING TO THE OFFERING OF GIFTS

Enacted by Economic Planning Board Notification No. 56
March 19, 1982

Amended by Economic Planning Board Notification No. 1985-2
June 29, 1985

Amended by Fair Trade Commission Notification No. 1990-11
Nov. 2, 1990

Amended by Fair Trade Commission Notification No. 1993-12
June 17, 1993

Amended by Fair Trade Commission Notification No. 1995-1
March 20, 1990

Amended by Fair Trade Commission Notification No. 1997-24
March 27, 1997

Amended by Fair Trade Commission Notification No. 1998-11
Dec. 12, 1998

We hereby designate and notify the types of and criteria for unfair business practices relating to the offering of gifts pursuant to Article 23 (Prohibition on Unfair Business Practices) Paragraph (3) of the Monopoly Regulation and Fair Trade Act and Article 36, Paragraphs (2) of its Enforcement Decree.

December 12, 1998
Fair Trade Commission

**Types of and Criteria for Unfair Business Practices
Relating to the Offering of Gifts**

CHAPTER 1 General Provisions

Article 1 Purpose

The purpose of this Notification is to establish the types of and criteria for unfair business practices that fall under the "unreasonable inducement of customers of competitors to deal with oneself", which are prohibited under the first half of Subparagraph 3 of Article 23 (Prohibition on Unfair Business Practices) Paragraph (1) of the Monopoly Regulation and Fair Trade Act (hereinafter, the "Act").

Article 2 Definition of Gift

The term "Gift" as used herein means any economic benefit the seller or another company that is engaged in transactions with the seller (hereinafter, the "seller") provides to the general consumers, together with the goods or services which the seller provides.

Article 3 Types of Gifts

The types of gifts set forth in this Notification are as follows:

- (1) Consumer Gifts (Gifts which the seller offers to general consumers together with its goods or services; hereinafter, the same.)
- (2) Consumer Prize Gifts (Gifts which the seller offers to general consumers together with its goods or services as a prize; hereinafter, the same.)
- (3) <Deleted Jun. 1, 1997>

Article 4 Economic Benefit

- (1) The term "Economic Benefit" referred to in Article 2 (Definition of Gift) means-
 - a. commodities, cash, discount coupons, merchandise coupons or other securities;
 - b. invitation tickets to entertainment shows, movies, sports games or tours, etc.;
 - c. provision of convenient facilities and other services; or
 - d. other economic benefits which are regarded as means to lure customers.
- (2) The term "Economic Benefit" referred to in Paragraph (1) includes goods that can be offered by a seller without any special cost to him or goods, etc. that have not marketed but that the buyer cannot ordinarily obtain without paying a price;
- (3) Followings shall not be the economic benefits as defined in the preceding Paragraphs (1) and (2);
 - a. lowering or discounting of prices or returning a part of the money received, which are regarded as normal commercial practice;
 - b. after-sales services which are regarded as normal commercial service;
 - c. reward for the transacting partner's labor which is regarded as normal commercial practice;
 - d. when the seller provides goods or services that is incidentally necessary for the sale or use of the seller's goods or provision of services and this is regarded as a normal commercial practice;
 - e. when selling two or more goods together is customary that one of the goods is not recognized as given free;

f. when the sales price of each product is separately indicated and the buyer may purchase only one item if he/she so desires; or

g. when the offering of gift is considered a normal commercial practice in light of the nature or the content of the goods or services concerned.

Article 5 Scope of Transaction

The term "transaction" referred to in this Notification includes transactions in all distribution stages until the goods or services manufactured or sold reach end-users, including sales, leases, exchanges, receiving money on deposit, extending credit, and invitations to become a credit card holder, etc.

Article 6 Definition of Prize

(1) The term "Prize" as used herein means selecting a person who will receive a gift or determining the price of a gift to be offered by means of lottery or other methods based on chance, superiority or correctness of certain activities.

(2) "Lottery or other methods based on chance" referred to in Paragraph (1) means-

a. to use lottery tickets;

b. to draw lots using a receipt, container, or package of the goods;

c. to keep purchasers from knowing which item contains the gifts or prize tickets after having placed gifts or prize tickets in only some of the goods;

d. to keep purchasers from knowing the value of gifts or prize tickets after having placed gifts or prize tickets that are different in value in the goods;

e. to set a certain condition in relation to natural phenomena or other events that will happen in the future and if the condition is satisfied, to provide gifts to all or some purchasers as promised at the time of the sale.

(3) "Superiority or correctness of certain activities" referred to in Paragraph (1) means -

a. collecting consumers' predictions about a subject that is temporarily uncertain at the time of the entry and picking winners according to the correctness or superiority of the answers sent by the consumers;

b. collecting consumers' answers to questions concerning the seller or its goods, or about hobbies, entertainment or culture, etc. and picking winners according to the correctness or superiority of such answers; or

c. picking winners according to the consumers' superiority in games, acting or cheering, etc.

(4) "Prize to Consumers" referred to in this Notification include -

a. placing entry forms in a container or package of the goods;

- b. asking questions on the container or on the package of the goods;
- c. asking questions through advertisements, etc. which can be solved easily by purchasing the goods; or
- d. making the consumer conduct certain acts such as playing games, acting, etc.

CHAPTER 2. Types of and Criteria for Unfair Offering of Gifts

Article 7 Unfair Offering of Consumer Gifts

(1) In case the value of Consumer Gifts offered or promised to be offered exceeds 10% of the transaction price of the good or service, it shall be considered an unfair offering of gifts; provided, however, that this shall not apply when the price of the gift is less than 3,000 Won.

(2) Paragraph (1) shall not apply to the offering of gifts which are considered normal in light of general commercial practices and fall under one of the following subparagraphs:

- a. if the same goods or services are provided as samples or for advertisement;
- b. a discount coupon or a certificate of the seller's intent to provide a discount, which can be used only once in a transaction with the seller who provides the coupon; or
- c. if the goods or services are provided in a ceremony of the start-up or opening of business, or in a ceremony for launching new product following the establishment of a new area of business.

Article 8 Unfair Offering of Consumer Prize Gifts

(1) If the seller offers or suggests to offer a Consumer Prize Gift whose aggregate value exceeds 1% of the estimated turnover of the gift good or service, it shall be regarded as an unfair offering of gifts.

(2) Notwithstanding the provision of Paragraph (1), the threshold shall be 5% of the estimated turnover of the gift good or service in the case of a seller engaged in periodicals publication business, sports event sponsoring business or broadcasting business.

(3) "Estimated Turnover" referred to in Paragraph (1) is computed by the means set forth below; provided, however, that if the turnover of the goods or services changed by more than 30% compared to the same period of the previous year or if it is impossible to compute the turnover of the previous year because the concerned company is newly established or started new businesses, it shall be based on the estimated annual turnover which is converted from the total turnover from Jan. 1st of the concerned year or business starting day to the final day of the preceding month when the gift is to be offered.

- a. In case of a business other than the sports event sponsoring business and broadcasting business:

Estimated Turnover =

$$\frac{\text{Total Turnover of the preceding year X}}{365} \times \frac{\text{Estimated number of days to offer gifts}}{\text{-----}}$$

b. In case of the sports event sponsoring business and broadcasting business:

Estimated Turnover =

$$\frac{\text{Total Turnover of the preceding year X}}{\text{Number of days that the services are rendered in the year concerned}} \times \frac{\text{Estimated number of days to offer gifts}}{\text{-----}}$$

(4) Any labeling and advertising activities that do not contain details of the following item shall be regarded as unfair business practices.

1. Duration of gift offering events.
2. Conditions and contents of gift offering, etc.

Article 9 Frequency and Period in the Offering of Gifts <Deleted>

Article 10 Assessment of Transaction Value

(1) The transaction value of goods or services accompanying gifts is calculated as follows:

- a. it shall be based on the price at which a general consumer actually pays for such goods or services sold on condition to providing gifts;
- b. if a seller offers gifts to a buyer who purchases two or more goods in his store, or when a unit of the transaction consists of two or more goods, the basis shall be the sum of the prices of two or more goods; and
- c. if the buyer purchases goods equivalent to a certain amount or more regardless of the kinds of goods, the basis shall be the certain amount.

(2) The value of the gift shall be calculated as follows:

- a. if a party that offers a gift of its own manufacturing, the value of the gift shall be the manufacturing cost + 25% of the manufacturing cost; and if the gift is purchased from another enterprise, it shall be the purchase price + 25% of the purchase price;
- b. if two or more gifts are offered, they shall be based on the aggregate sum of the prices of gifts.

Article 11 Standard for Assessing the Consumer Prize Gift Offering Period
<Deleted Dec. 12, 1998>

CHAPTER 3 Supplementary Provisions

Article 12 Exclusion of Application

This Notification shall not apply where the gift is offered by a manufacturer whose annual turnover is less than 10 billion Won or by other enterprises whose annual turnovers amount to less than 1 billion Won; provided, however, that the foregoing shall not apply to the provisions of Article 13 (Prohibited Offering of Gifts) and Article 14 (Prohibited Consumer Prize Gift).

Article 13 Prohibited Offering of Gifts

No seller shall offer a gift that is likely to undermine public morals or the sound growth of minors or deceive consumers.

Article 14 Prohibited Consumer Prize Gift

Notwithstanding Article 8 (Unfair Offering of Consumer Prize Gift), it shall be banned to offer a Consumer Prize Gift to consumers through a method requiring the consumers to apply for the consumer Prize Gift by purchasing two or more goods to complete a character, picture, sign or card, or conditioning the application for Consumer Prize Gift on the purchase of goods on two or more different occasions.

Article 15 Criteria for Computation of Period, etc.

The period of the offering of gifts referred to in this Notification shall be estimated on a calendar year basis.

Article 16 Relationship to Other Laws

When a seller offers gifts as a prize, if such prize is aimed at profit-taking using facilities or methods that may stir up speculations, then the Speculation, Control Act shall apply.

Article 17 Offering Gifts through an Agent, Etc.

Offering gifts through an agent, etc., which deals exclusively with products of a certain manufacturing company, shall be deemed to be that of the said manufacturing company if the said manufacturing company is directly or indirectly involved in the offering of gifts of the said agency.

ADDENDUM

Article 1 Effective Date

This Notification shall take effect on June 1, 1997.

Article 2 Interim Measure

Any acts performed before the Effective Date hereof shall be governed by the prior Notification on the Types of and Criteria for Unfair Business Practices Relating to the Offering of Gifts (Fair Trade Commission Notification 1995-1).

ADDENDUM

Article 1 Effective Date

This Notification shall take effect on January 1, 1999.

Article 2 Interim Measure

Any acts performed before the Effective Date hereof shall be governed by the prior Notification on the Types of and Criteria for Unfair Business Practices Relating to the Offering of Gifts (Fair Trade Commission Notification 1997-24).