

รายการอ้างอิง

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ภาษาอังกฤษ

คำพิพากษาระดับที่นำมาศึกษาเป็นภาคภาษาอังกฤษ(เป็นคำพิพากษาที่ถึงที่สุดแล้ว) ซึ่งแปลโดย
กลุ่มนักศึกษาของบัณฑิตวิทยาลัยด้านนิติศาสตร์และรัฐศาสตร์ของมหาวิทยาลัยโตเกียว
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ภาคผนวก

ภาคผนวก ก.

กฎหมายและบทความของประเทศสหรัฐอเมริกา

FEDERAL TRADE COMMISSION ACT 1914

Section 5 (a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

(2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 57a (f)(3) of this title, Federal credit unions described in section 57a (f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to part A of subtitle VII of title 49, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 U.S.C. 181 et seq.], except as provided in section 406(b) of said Act [7 U.S.C. 227 (b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.

(4)

(A) For purposes of subsection (a), the term “unfair or deceptive acts or practices” includes such acts or practices involving foreign commerce that—

(i) cause or are likely to cause reasonably foreseeable injury within the United States; or

(ii) involve material conduct occurring within the United States.

(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.

(b) Proceeding by Commission; modifying and setting aside orders

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such

proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this subchapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require, except that

(1) the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section; and

(2) in the case of an order, the Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part. The Commission shall determine whether to alter, modify, or set aside any order of the Commission in response to a request made by a person, partnership, or corporation under paragraph ⁽¹⁾(2) not later than 120 days after the date of the filing of such request.

(c) Review of order; rehearing

Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Commission until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgement to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either

party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(d) Jurisdiction of court

Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

(e) Exemption from liability

No order of the Commission or judgement of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

(f) Service of complaints, orders and other processes; return

Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either

- (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or
- (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or
- (c) by mailing a copy thereof by registered mail or by certified mail addressed to such person, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered mail or by certified mail as aforesaid shall be proof of the service of the same.

(g) Finality of order

An order of the Commission to cease and desist shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b).

(2) Except as to any order provision subject to paragraph (4), upon the sixtieth day after such order is served, if a petition for review has been duly filed; except that any such order may be stayed, in whole or in part and subject to such conditions as may be appropriate, by—

(A) the Commission;

(B) an appropriate court of appeals of the United States, if

(i) a petition for review of such order is pending in such court, and

(ii) an application for such a stay was previously submitted to the Commission and the Commission, within the 30-day period beginning on the date the application was received by the Commission, either denied the application or did not grant or deny the application;

or

(C) the Supreme Court, if an applicable petition for certiorari is pending.

(3) For purposes of subsection (m)(1)(B) of this section and of section 57b (a)(2) of this title, if a petition for review of the order of the Commission has been filed—

(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.

(4) In the case of an order provision requiring a person, partnership, or corporation to divest itself of stock, other share capital, or assets, if a petition for review of such order of the Commission has been filed—

(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.

(h) Modification or setting aside of order by Supreme Court

If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(i) Modification or setting aside of order by Court of Appeals

If the order of the Commission is modified or set aside by the court of appeals, and if

(1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(2) the petition for certiorari has been denied, or

(3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(j) Rehearing upon order or remand

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the Commission for a rehearing, and if

(1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or

(2) the petition for certiorari has been denied, or

(3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission had been rendered.

(k) "Mandate" defined

As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(l) Penalty for violation of order; injunctions and other appropriate equitable relief

Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in a case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission.

(m) Civil actions for recovery of penalties for knowing violations of rules and cease and desist orders respecting unfair or deceptive acts or practices; jurisdiction; maximum amount of penalties; continuing violations; de novo determinations; compromise or settlement procedure

(1)

(A) The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this chapter respecting unfair or deceptive acts or practices (other than an interpretive rule or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of subsection (a)(1) of this section) with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation.

(B) If the Commission determines in a proceeding under subsection (b) of this section that any act or practice is unfair or deceptive, and issues a final cease and desist order, other than a consent order, with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice—

(1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and

(2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section.

In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation.

(C) In the case of a violation through continuing failure to comply with a rule or with subsection (a)(1) of this section, each day of continuance of such failure shall be treated as a separate violation, for purposes of subparagraphs (A) and (B). In determining the amount of such a civil penalty, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) If the cease and desist order establishing that the act or practice is unfair or deceptive was not issued against the defendant in a civil penalty action under paragraph (1)(B) the issues of fact in such action against such defendant shall be tried de novo. Upon request of any party to such an action against such defendant, the court shall also review the determination of law made by the Commission in the proceeding under subsection (b) of

this section that the act or practice which was the subject of such proceeding constituted an unfair or deceptive act or practice in violation of subsection (a) of this section.

(3) The Commission may compromise or settle any action for a civil penalty if such compromise or settlement is accompanied by a public statement of its reasons and is approved by the court.

(n) Standard of proof; public policy considerations

The Commission shall have no authority under this section or section 57a of this title to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

DECEPTIVE ADVERTISING

Advertising has a great influence on our lives. We are exposed to countless commercial messages every day persuading us to buy brand name products, creating images for us to adopt, and convincing us that we need and want more. Because of this, it's important for us to carefully examine ads to determine exactly what they are saying. While most advertisements honestly inform and educate us, some are false or deceptive and illegal.

The law : Advertising aimed at Wisconsin consumers is subject to the state's deceptive advertising law. The law forbids statements that are "untrue, deceptive or misleading," and applies to written ads in newspapers, magazines, and promotional brochures, as well as radio and TV commercials. The law also covers oral misrepresentations, including verbal misstatements about a product or service. The following are questionable advertising practices which consumers should be aware of: Oral or written misrepresentations. There is no guarantee that performance will always match ad promises. A promotional ad for one-coat house paint may state that one gallon will cover 600 square feet. When you get home, the paint covers only 450 square feet and you need two coats. This ad is but one of countless examples of advertising misrepresentations. Because of the limitless possibilities for misrepresentations, Wisconsin law is intentionally broad to cover any untrue, misleading, or deceptive statement used to sell merchandise.

Pictorial; misrepresentations: Read ads carefully to find out what is really being offered. A newspaper ad shows a living room set on sale for \$599. Although six pieces of furniture are shown, in reality only a four-piece set is on sale, and the style shown is different. A tiny disclosure in the corner of the ad explains this. Compare the ad copy to the picture and read everything. When shopping, take ads with you in case you have questions about the advertised price, brand, or quality. Display items often show attachments or accessories that are not included in the sale price. Ask exactly what is included before you buy. Unavailable sale items A store should stock enough sale items to meet the reasonably anticipated demand. If a

store has less items in stock, its advertising should indicate that only a limited number of advertised items are available. If you go to a store on the second morning of a four-day sale only to find that the product you want is already sold out (and the sale ad doesn't say there are limited quantities), ask for a rain check which will allow you to get the product at the sale price at a later date. Retail food stores must abide by Federal Trade Commission(FTC) rules when they fail to have adequate supplies available in the store. Other merchants are not covered by FTC rules, but many do provide rain checks or other compensation to customers that will allow you to get the product at the sale price at a later date.

Deceptive advertising : If you see an ad stating that merchandise is 50 percent off, don't assume that it's necessarily a bargain. One store's prices may be consistently lower than its competitors for items of comparable quality. Other stores may raise their prices merely to make sale prices seem more appealing. If you are in the market to buy an item, first check out the prices and reputations of several stores in your area. Don't take for granted that a sale price is the cheapest.

Warranties : A warranty or guarantee is only as good as the firm that stands behind it. Blanket statements are meaningless; there are usually conditions or limitations to any guarantee. If a company goes out of business or a door-to-door seller is here today and gone tomorrow, their guarantees are worthless. Deal only with reputable firms. Don't rely on verbal guarantees; try to get all promises in writing.

Free gift offers : Consumers should be wary of free gift offers such as "free headphones with the purchase of our A-1 stereo system!" Some businesses raise their regular prices to cover the cost of free gift offers. An ad must inform you if something else must be purchased in order to get the free gift, as well as how much it will cost you.

Bait and switch : In this illegal advertising practice, a store makes an attractive offer for a product it has no intention of selling. For example: You see an ad stating "19-inch color TV for only \$250!" Once you get to the store, after swallowing the bait, the seller informs you that the TV's are sold out or are of very poor quality and then tries to switch you to a higher-priced product. Irregulars or seconds If a merchant offers an item that is an irregular or second, it should be disclosed in the advertisement and on the product itself. Inspect low and sale-priced merchandise carefully before you buy.

UNIFORM COMMERCIAL CODE

§ 2-302. Unconscionable contract or Clause.

(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

CONSUMER PRODUCT SAFETY ACT 1972

(Codified at 15 U.S.C. __ 2051–2089)

(Public Law 92-573; 86 Stat. 1207, Oct. 27, 1972)

SEC. 3. [15 U.S.C. _ 2052]

(a) IN GENERAL.—In this Act : (1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate Congressional committees” means the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2) CHILDREN’S PRODUCT.—The term “children’s product” means a consumer product designed or intended primarily for children 12 years of age or younger. In determining whether a consumer product is primarily intended for a child 12 years of age or younger, the following factors shall be considered: (A) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable. (B) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger. (C) Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger. (D) The Age Determination Guidelines issued by the Commission staff in September 2002, and any successor to such guidelines.

(3) COMMERCE.—The term “commerce” means trade, traffic, commerce, or transportation— (A) between a place in a State and any place outside thereof, or (B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(4) COMMISSION.—The term “Commission” means the Consumer Product Safety Commission, established by section 4 of this Act [15 U.S.C. _ 2053].

(5) CONSUMER PRODUCT.—The term “consumer product” means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include— (A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer, (B) tobacco and tobacco products, (C) motor vehicles or motor vehicle equipment (as defined by sections 102(3) and (4) of the National Traffic and Motor Vehicle Safety Act of 1966, sections 30102(a)(6) and (7) of Title 49), (D) pesticides (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act), [7 U.S.C. _ 136, et seq.] (E) any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1986 [26 U.S.C. _ 4181](determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article, **{firearms and ammunition}**

(F) aircraft, aircraft engines, propellers, or appliances (as defined in section 101 of the Federal Aviation Act of 1958, section 40102(a) of title 49)

(G) boats which could be subjected to safety regulation under the Federal Boat Safety Act of 1971, Chapter 43 of Title 46; vessels, and appurtenances to vessels (other than such

boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in section 3(8) of the Federal Boat Safety Act of 1971, section 2101(1) of Title 46, to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by action taken under any statute referred to in this subparagraph, (H) drugs, devices, or cosmetics (as such terms are defined in sections 201 (g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act),

(I) food. The term "food", as used in this subparagraph means all "food", as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act, [21 U.S.C. _ 321(f)] including poultry and poultry products (as defined in sections 4 (e) and (f) of the Poultry Products Inspection Act), [21 U.S.C. _ 453(e), (f)] meat, meat food products (as defined in section 1(j) of the Federal Meat Inspection Act), [21 U.S.C. _ 601(j)] and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act). [21 U.S.C. _ 1033(f)(g)]

Such term {"consumer product"} includes any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, which is customarily controlled or directed by an individual who is employed for that purpose and who is not a consumer with respect to such device, and which is not permanently fixed to a site. Such term does not include such a device which is permanently fixed to a site. Except for the regulation under this Act or the Federal Hazardous Substances Act [15 U.S.C. _ 1261 et seq.] of fireworks devices or any substance intended for use as a component of any such device, the Commission shall have no authority under the functions transferred pursuant to section 30 of this Act [15 U.S.C. _ 2079] to regulate any product or article described in subparagraph (E) of this paragraph or described, without regard to quantity, in section 845(a)(5) of title 18, United States Code. See sections 30(d) and 31 of this Act, [15 U.S.C. _ 2079(d) and 2080] for other limitations on Commission's authority to regulate certain consumer products. (6) CONSUMER PRODUCT SAFETY RULE.--The term "consumer product safety rule" means a consumer products safety standard described in section 7(a), 2056(a) of this title, or a rule under this Chapter declaring a consumer product a banned hazardous product. (7) DISTRIBUTOR.--The term "distributor" means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product. (8) DISTRIBUTION IN COMMERCE.--The terms "to distribute in commerce" and "distribution in commerce" means to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce. (9) IMPORT.--The terms "import" and "importation" include reimporting a consumer product manufactured or processed, in whole or in part, in the United States. (10) MANUFACTURED.--The term "manufactured" means to manufacture, produce, or assemble. (11) MANUFACTURER.--The term "manufacturer" means any person who manufactures or imports a consumer product. (12) (A) PRIVATE LABELER.--The term "private labeler" means an owner of a brand or trademark on the label of a consumer product which bears a private label. (B) A consumer product bears a private label if (i) the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label. (13) RETAILER.--The term "retailer" means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person

to a consumer. (14) RISK OF INJURY.--The term "risk of injury" means a risk of death, personal injury, or serious or frequent illness. (15) STATE.--The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands. {For termination of

Trust Territory of the Pacific Islands see note set out preceding 48 U.S.C.A. _ 1681.}

(16) THIRD-PARTY LOGISTICS PROVIDER.--The term "third-party logistics provider" means a person who solely receives, holds, or otherwise transports a consumer product in the ordinary course of business but who does not take title to the product.

(17) UNITED STATES.--The term "United States", when used in the geographic sense, means all of the States (as defined in paragraph (10)).

(b) COMMON CARRIERS, CONTRACT CARRIERS, AND FREIGHT FORWARDERS.-- A common carrier, contract carrier, third party logistics provider, or freight forwarder shall not, for purposes of this Act, be deemed to be a manufacturer, distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business as such a carrier or forwarder.

ภาคผนวก ข.

กฎหมายและบทความของประเทศญี่ปุ่น

PREMIUM AND REPRESENTATION ACT 1962
ACT AGAINST UNJUSTIFIABLE PREMIUMS AND MISLEADING
REPRESENTATIONS (Law No. 134 of 1962)

(Tentative Translation)

Sec. 1 [Purpose] This Act, in order to prevent inducement of customers by means of unjustifiable premiums and misleading representations in connection with transactions of a commodity or service, by establishing special provisions for the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Law No. 54 of 1947), aims to secure fair competition, and thereby to protect the interests of consumers in general.

Sec. 2 [Definitions] (1) The term "premiums" as used in this Act shall mean any article, money or other kinds of economic benefits which are given as means of inducement of customers, regardless of whether a direct or indirect method is employed, or whether or not a lottery or prize competition method is used, by an entrepreneur to another party in connection with a transaction involving a commodity or service (transactions relating to real estate shall be included; hereinafter the same), and which are designated by the Fair Trade Commission as such. (2) The term "representations" as used in this Act shall mean advertisement or any other descriptions which an entrepreneur makes or uses as means of inducement of customers, with respect to the substance of the commodity or service which he supplies or the terms of sale or any other matter concerning the transaction, and which are designated by the Fair Trade Commission as such. Note: Subsec.1 and 2 --"designation"-- Designation of Premiums and Representations Under the Provisions of Section 2 of the Act Against Unjustifiable Premiums and Misleading Representations (FTC Notification No. 3 of 1962)

Sec. 3 [Restriction or prohibition of premiums] The Fair Trade Commission may, when it finds it necessary to prevent unjust inducement of customers, restrict the maximum value of a premium or the aggregate amount of premiums, the kind of premiums or method of offering of a premium or any other matter relating thereto, or may prohibit the offering of a premium. Note: "restriction or prohibition" 1. Restriction on Premium Offers by Lotteries or Prize Competition (FTC Notification No. 3 of 1977) 2. Restriction on Premium Offers to General Consumers (FTC Notification No. 5 of 1977) 3. Restriction on Premium Offers in Magazine Industry (FTC Notification No. 3 of 1992) 4. Restriction on Premium Offers to General Consumers in Real Estate Industry (FTC Notification No. 37 of 1997) 5. Restriction on Premium Offers in Ethical Drug, Medical Equipment and Hygienic Inspection Laboratories Industries (FTC Notification No. 54 of 1997) 6. Restriction on Premium Offers in Newspaper Industry (FTC Notification No. 5 of 1998)

Sec. 4 [Prohibition of misleading representations] (1) No entrepreneur shall make such representation as provided for in any one of the following paragraphs in connection with transactions regarding a commodity or service which he supplies: (i) Any representation by which the quality, standard or any other matter relating to the substance of a commodity or service are shown to consumers in general to be much better than the actual one or much better than that of other entrepreneurs who are in competitive relationship with the entrepreneur concerned contrary to the fact and thereby which is found likely to induce customers unjustly and to impede fair competition; (ii) Any representation by which price or any other terms of transaction of a commodity or service will be misunderstood by consumers in general to be much more favorable to the consumer in general than the actual one or than those of other entrepreneurs who are in competitive relationship with the entrepreneur concerned, and thereby which is found likely to induce customers unjustly and to impede fair competition; or (iii) In addition to

those stipulated in the preceding two paragraphs, any representation by which any matter relating to transactions as to a commodity or service is likely to be misunderstood by consumers in general and which is designated by the Fair Trade Commission as such, finding it likely to induce customers unjustly and to impede fair competition. (2) The Fair Trade Commission may, where it finds it necessary in order to evaluate whether any representation constitutes paragraph (i) of the preceding subsection, designate a period and require the entrepreneur concerned to submit data as reasonable grounds for the representation he makes. In such cases, if the entrepreneur fails to submit the data, the representation concerned shall be deemed to fall under the said paragraph for the purpose of applying the provisions of Section 6 (1) and (2). Note: para. 3-- "designation" 1. Misleading Representations on Soft Drinks without Juice, etc. (FTC Notification No. 4 of 1973) 2. Misleading Representations on Country of Origin of Goods (FTC Notification No. 34 of 1973) 3. Misleading Representations on Cost of Consumer Credit (FTC Notification No. 13 of 1980) 4. Misleading Representations on Bait Advertising of Real Estate (FTC Notification No. 14 of 1980) 5. Misleading Representations on Bait Advertising (FTC Notification No. 17 of 1993) 6. Misleading Representations on Fee-Charging Homes for the Elderly (FTC Notification No. 3 of 2004)

Sec. 5 [Public hearing and notification] (1) When the Fair Trade Commission takes action to effect designation under the provisions of Section 2 [definitions] or subsection 1 (iii) of the preceding section [designation of misleading representations], or to restrict or prohibit under the provisions of Section 3 [restriction or prohibition of premiums], or to change or abolish them, it shall hold a public hearing in accordance with the Rules of the Fair Trade Commission and shall hear the opinion of the related entrepreneurs and the public. (2) Designation, restriction, prohibition as well as amendment and abolition thereof under the provisions of the preceding subsection shall be made by notifications. Note: Subsec. 1 --"Rules of Fair Trade Commission"-- Rules Concerning Public Hearing Under the Provision of Section 5 (1) of the Act Against Unjustifiable Premiums and Misleading Representations (FTC Rules No. 2 of 1962).

Sec. 6 [Cease and desist order] (1) The Fair Trade Commission may, in the event there is an act violating the restriction or prohibition under the provisions of Section 3 [restriction or prohibition of premiums] or violating the provisions of Section 4 (1) [prohibition of misleading representations], order the entrepreneur concerned to cease such an act, or to take the measures necessary to prevent the resurgence of the said act, or to take any other necessary measures including publicizing the matters relating to the implementation of such measures. Such an order (hereinafter referred to as "cease and desist order") may be issued even when the said violation has already ceased to occur. (2) Acts in violation as provided for in Subsection (1) of the preceding section shall be deemed as acts in violation of Section 19 [prohibition of unfair trade practices] of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (in the case where trade associations cause entrepreneurs to employ such acts as constitute the said acts, such acts shall be deemed to be unfair trade practices as provided for in the said Act), and cease and desist order shall be deemed as cease and desist order (order to take elimination measures), for the purpose of applying the provisions of Section 8-2 [elimination measures against prohibited acts of trade associations], Section 20 [measures against unfair trade practices], Section 25 [absolute liability], Section 26 [restriction on exercise of the right to claim for damages in court, prescription] and provisions of Division 2 [procedures] of Chapter VIII (Excluding Section 46, Section 49 (3) through (5), Section 50, Section 51, Section 53, Section 55 (2), (5) and (6), Section 59 (2), Section 65, Section 67, Section 69 (3), Section 70-2 (4), Section 70-9 through 70-11, and Section 70-12 (1)). In this case, the term "the written order (to take elimination measures)"

appearing in Section 49 (1) shall be read as "the written (cease and desist) order", the term "the measures necessary to eliminate the violation or to ensure that the violation is eliminated" appearing in the said Subsection shall be read as "the measures necessary to cease such an act, or to prevent the resurgence of the said act, or to take any other measures including publicizing the matters relating to the implementation of such measures", the term "An (written) order to take elimination measures" appears in the Subsection (2) of the said Section shall be read as "a written cease and desist order", the term "the order to take elimination measures" appearing in Subsection (6) of the said Section shall be read as "the cease and desist order", the term "sixty days" appearing in the said Subsection shall be read as "thirty days", the term "the order to take elimination measures" appearing in Section 70-15 of the said Act shall be read as "the cease and desist order", and the term "Chapter III" appearing in Section 70-21 of the said Act shall be read as "Chapter III (Excluding Section 13 (1) and Division 3). (3) With respect to the application of the provisions of Section 90 (3), Section 92, Section 95 (1) (ii), (2) (ii) and (3), Section 95-2 and Section 95-3 (each of the provisions are limited to the segments concerning Section 90 (3) of the Act concerning Prohibition of Private Monopolization and Maintenance of Fair Trade), elimination order shall be deemed as cease and desist order (order to take elimination measures). Note: Subsec. 1 --The Rules on Cease and Desist Order under the Provisions of Section 6 (1) of the Act Against Unjustifiable Premiums and Misleading Representations (FTC Rules No. 15 of 2005).

Sec. 7 [Instruction by prefectural governors] A prefectural governor may, where he finds an act violating the restriction or prohibition prescribed in the provisions of Section 3 [restriction or prohibition of premiums] or Section 4 (1) [prohibition of misleading representations], instruct the entrepreneur concerned to cease and desist such violation, or to take the measures necessary to prevent the resurgence of such violation, or to take any other necessary measure including publishing the matters relating to the implementation of such measures. Such an instruction may be issued even when the said violation has already ceased to occur.

Sec. 8 [Request for measures to the FTC] (1) A prefectural governor may, in case where the entrepreneur concerned does not comply with the instruction issued under the provisions of the preceding section, or in case where a prefectural governor finds it necessary in order to put an end to any violation as prescribed in the said section, or to prevent the resurgence of such violation as prescribed in the said section, request the Fair Trade Commission to take appropriate measures in accordance with the provisions of this Act. (2) The Fair Trade Commission shall, when requested under the provisions of the preceding subsection, notify the said prefectural governor of the measures which the Fair Trade Commission has taken with respect to the said violation.

Sec. 9 [Collection of reports and inspection, etc.] (1) A prefectural governor may, where he finds it necessary for an instruction under the provisions of Section 7 [instruction by prefectural governors] or a request under the provisions of subsection (1) of the preceding section, ask the entrepreneur concerned or other entrepreneurs who have business relationship with him to submit a report on the premiums he offers or the representations he makes, or may have his staff enter offices or other places of business of the entrepreneur concerned or other entrepreneurs who have business relationship with him, inspect accounting books, documents and other matters, or ask questions of the persons concerned. (2) The staff who conduct an inspection or ask questions in accordance with the provisions of the preceding subsection shall carry their identification cards and show them to the persons concerned. (3) The authority under the provisions of subsection (1) shall not be construed as one granted for the purposes of criminal investigation.

Sec. 10 [Technical advice, recommendations, and requests to submit information]

(1) The Fair Trade Commission may give a prefectural governor appropriate technical advice or recommendations as to his administrative operation and other related matters conducted under the provisions of the preceding three sections, or request his information necessary in order to give the advice or recommendations or to provide information regarding his appropriate administrative operation. (2) A prefectural governor may request from the Fair Trade Commission its technical advices, recommendations, or provisions of information necessary for the management and the execution of his/her administrative operation conducted under the provisions of the preceding three sections.

Sec. 11 [Request for Corrections] (1) The Fair Trade Commission, where it finds that on administrative operation by a prefectural governor under the provisions of the Section 7 through 9 violates the relevant laws and regulations or that it is significantly inappropriate and prejudicial to public interests for a certainty, may request him/her to take necessary measures in order to correct the violation or to improve his/her administrative operation. (2) The prefectural governor, when requested under the preceding subsection, shall take necessary measures to correct the violations or to improve his/her administrative operation.

Sec. 12 [Fair Competition Codes] (1) Entrepreneurs or a trade association may, upon obtaining authorization from the Fair Trade Commission in accordance with the Rules of the Fair Trade Commission, with respect to the matters relating to premiums or representations, conclude or establish an agreement or a code, aiming at prevention of unjust inducement of customers and maintaining fair competition. The same shall apply in the event alterations there are attempted. (2) The Fair Trade Commission, unless it finds that an agreement or a code under the preceding subsection (hereinafter referred to as "fair competition code") meets each of the following paragraphs, shall not grant authorization under the preceding subsection: (i) That it is appropriate to prevent unjust inducement of customers and to maintain fair competition; (ii) That it is not likely unreasonably to impede the interests of consumers in general or the related entrepreneurs; (iii) That it is not unjustly discriminatory; and (iv) That it does not restrict unreasonably the participation in or withdrawal from the fair competition code. (3) The Fair Trade Commission, when it finds that the fair competition code as authorized under subsection 1 has ceased to meet each paragraph of the preceding subsection, shall cancel the said authorization. (4) The Fair Trade Commission, in case it has taken a measure under the provisions of subsection 1 or the preceding subsection, shall make the said measure public by a notification in accordance with the Rules of the Fair Trade Commission. (5) The provisions of Section 7 [Elimination measures] (1) and (2); (including cases applicable mutatis mutandis under Section 8-2 [Elimination measures against prohibited acts of trade associations] (2) and Section 20 [Measures against unfair trade practices] (2)), Section 8-2 (1) and (3), Section 20 (1), Section 70-13 [Urgent injunction] (1) and Section 74 [Accusation, report on non-prosecution] of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade shall not be applied to the fair competition code that has been authorized under subsection (1), and to such acts of entrepreneurs or a trade association as have been done in accordance therewith. (6) Any person who complains about a measure taken by the Fair Trade Commission under the provisions of subsection 1 or 3 may file an objection with the Fair Trade Commission within thirty days from the day on which the notification has been made under the provisions of subsection 4. In this case the Fair Trade Commission shall dismiss the said objection, or shall cancel or alter the said measure by a decision after taking hearing procedures. Note: Subsec. 1 and 4 -- "Rules of the Fair Trade Commission"--The Rules Concerning Application, etc. for Authorization of Fair Competition Code Under

Provisions of Section 12 of the Act Against Unjustifiable Premiums and Misleading Representations (FTC Rules No. 4 of 1962).

Sec. 13 [Exemption from the Administrative Complaint Review Act] (1) With respect to a measure taken by the Fair Trade Commission in accordance with the provisions of this Act, an appeal under the Administrative Complaint Review Act (Law No. 160 of 1962) shall not be made. (2) A matter that a person may complain about under subsection 6 of the preceding section may only be brought against a decision.

Sec. 14 [Penalties] (1) Where any witness or expert witness who under oath, in accordance with the provisions of Article 54 or Article 166 of the Code of Criminal Procedure (Law No. 131 of 1948) which are applied *mutatis mutandis* in Section 62 of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Section 6 (2) of this Act, made a false statement or expert testimony, he or she shall be punished by penal servitude from not less than three months to not more than ten years. (2) Where a person committing an offense under the preceding subsection confesses his or her crime prior to the termination of the hearing procedures and before the discovery of such crime, the penalty for such offense may be commuted or remitted.

Sec. 15 Any person committing any one of the following offenses shall be punished by penal servitude of not more than one year or by a fine of not more than three million yen: (i) Any person concerned with a case or any witness who, in violation of the measures issued to him or her under the provisions of Section 47(1)(i) or (2) or Section 56(1) of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Section 6 (2) of this Act, fails to appear or to give a statement, or gives a false statement, or fails to submit a report, or submits a false report; (ii) Any expert witness who, in violation of the measures issued to him or her under the provisions of Section 47(1)(ii) or (2) or Section 56(1) of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Section 6 (2) of this Act, fails to appear or to give expert testimony, or gives a false expert testimony; (iii) Any holder of the matters who, in violation of the measures issued to him or her under the provisions of Section 47(1)(iii) or (2) or Section 56(1) of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Section 6 (2) of this Act, fails to submit the same; or (iv) Any person who refuses, obstructs, or evades the inspection as provided for in Section 47(1)(iv) or (2) or Section 56(1) of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Section 6 (2) of this Act.

Sec. 16 Any person who failed to submit a report or submitted a false report, or refused, obstructed or evaded inspection, or failed to answer or made false answers to the questions, as provided in Section 9 (1) [collection of reports and inspection, etc.], shall be penalized by a fine not more than five hundred thousand yen.

Sec. 17 Any witness or expert witness who refuses to take the oath, in violation of the order issued to him or her under the provisions of Article 154 or Article 166 of the Code of Criminal Procedure which are applied *mutatis mutandis* in Section 62 of the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade applied under the provision of Section 6 (2) of this Act, shall be punished by a fine of not more than two hundred thousand yen

Sec. 18 (1) When a representative of a juridical person, or an agent, an employee, or any other person in the service of a juridical person or of an individual has, with regard to the business or property of the said juridical person or individual, committed a violation stipulated in Section 15 or Section 16, the said juridical person or the said individual shall

be punished by such fine as provided for in the said Sections in addition to the punishment of the offender. (2) Where a representative, a manager, an agent, an employee, or any other person in the service of a non-juridical organization has, with regard to the business or property of the said organization, committed a violation stipulated in Section 15 or Section 16, the said non-juridical organization shall be punished by such fine as provided for in the said Sections in addition to the punishment to the offender. (3) In the case of the preceding subsection, the representative or manager shall represent the said organization in related acts of procedure and the provisions of the Code of Criminal Procedure related to acts of procedure where the juridical person is the defendant or the suspect shall apply.

GUIDELINES FOR THE INTERPRETATION OF THE NOTIFICATION ON PREMIUM OFFERS BY LOTTERIES OR PRIZE COMPETITION

April 1, 1977 Secretary General Notice No. 4 (Amendments : Secretary General Notice No. 11 of October 1, 1988, Secretary General Notice No.1 of February 16, 1996)

Upon a decision of the Fair Trade Commission (hereinafter referred to as "the FTC"), the Notification Concerning Designation of Premium, Etc. (FTC Notification No. 4 of 1977) should be interpreted in accordance with the following guidelines;
Guidelines for the Interpretation of the Notification on Premium Offers by Lotteries or Prize Competition

I. Interpretation of "methods of determining by chance such as lotteries" in Section 1, Subsection 1 of the Notification
 The following examples illustrate "methods of determining by chance such as lotteries" :

- A. Methods involving the use of winning tickets;
- B. Methods involving the use of receipts, product containers or wrapping or the like as winning tickets;
- C. Methods in which premiums are attached to certain commodities only and where the purchaser is unable to know which one contains the premium at the time of purchase;
- D. Methods in which premiums are attached to all products but with variation in terms of value or other factors of the attached premiums, and where the purchaser is unable to know the value at the time of purchase; and
- E. Methods involving treasure hunts, scissors-paper-rock games and the like.

II. Interpretation of "methods of determining through superiority or correctness in a particular performance" in Section 1, Subsection 2 of the Notification
 The following examples illustrate "methods of determining through superiority or correctness in a particular performance":

- A. Methods of soliciting predictions about matters that are not generally known at the point of application (e.g. the top ten news stories of the year) and determining through the superiority or correctness of responses;
- B. Methods of soliciting catch-phrases, photographs, ideas for improving products and the like, and determining through the superiority of the same;
- C. Methods of soliciting answers to puzzles, quizzes and the like and determining through the correctness of the same; and

D. Methods of determining superiority with respect to contests such as bowling or fishing, performance, sports or other areas (excluding sales contests, exhibition contests, and other methods of determining through superiority on the basis of transaction volume or other transaction figures among entrepreneurs).

III. Interpretation of order of placement Determination on the basis in order of entry into a premise or order of application received shall not be considered "lottery or prize competition" (this may be subject to the provisions of "Notification on Premium Offers to General Consumers" or other Notifications).

IV. Interpretation of Section 5 of the Notification (card combinations)

The following shall not be deemed to constitute methods involving card combinations under Section 5 of the Notification:

A. The party to transactions is required to present a certain combination of various different cards, where the combination can be acquired by making certain choices at the time of purchase (this does not constitute a "lottery or prize competition other than card combination" either, but may be subject to the provisions of "Notification on Premium Offers to General Consumers" or other Notifications);

B. Cards bearing various point values (such as one-point, two-point and five-point coupons) are issued to purchasers and premiums are offered in accordance with the number of points once a given points total has been accumulated (while this does not constitute a card combination, it will constitute a lottery or prize competition when the purchaser cannot know the point value of the cards at the time of purchase (see also Section 1, Subsection 4 of these Guidelines). If the purchaser can know the point value at the time of purchase, then this may be subject to the provisions of "Notification on Premium Offers to General Consumers" or other Notifications); and

C. Two or more different cards are issued, and premiums are offered in return for presentation of a given number of the same type of card rather than a combination of different cards (while this does not constitute a card combination, it will constitute a lottery or prize competition when the purchaser cannot know the type of card included at the time of purchase (see also Section 1, Subsection 3 of these Guidelines). If the purchaser can know the type of card at the time of purchase, then this may be subject to the provisions of "Notification on Premium Offers to General Consumers" or other Notifications).

V. Interpretation of "value of transaction in connection with a lottery or prize competition" in Section 2 of the Notification

A. Section 1, Subsection 1 through 4 of "the Guidelines for the Interpretation of the Notification on Premium Offers to General Consumers" shall apply to the value of transactions involving a lottery or prize competition.

B. Where premiums are offered through two or more lotteries or prize competitions in connection with the same transaction, the following shall apply: 1. Where the premiums are provided by the same entrepreneur but even if under different schemes, the value of premiums provided shall be the sum total of the value of the respective premiums; 2. Where the premiums are provided in conjunction with other entrepreneurs but under different schemes, each entrepreneur is deemed to have provided premiums equivalent to the value of the sum total of the respective premiums; and 3. Where an entrepreneur provides the winner of a lottery or prize competition with additional premiums through an additional lottery or prize competition but not in conjunction with other entrepreneurs, the entrepreneur which provides additional premiums is deemed to have provided premiums equivalent to the value of the sum total of the respective premiums.

VI. Interpretation of the limit on premiums provided by a lottery or prize competition The value of premiums provided in a single transaction involving a lottery or prize

competition must not exceed the maximum limit stipulated for the transaction, including cases where a single lottery or prize competition affords multiple opportunities to obtain premiums (e.g. where a lottery ticket is drawn and a premium provided and then the same lottery ticket is drawn again and another premium provided, the total value of premiums obtained must not exceed the maximum limit).

VII. Interpretation of "estimated total value of transactions involving a lottery or prize competition" in Sections 3 and 4 of the Notification. This shall be defined as the estimated total retail value of the relevant commodities during the period of the lottery or prize competition sale.

VIII. Interpretation of "certain district" in Section 4, Subsection 1 and 3 of the Notification

A. "Certain district" shall be the municipal region (in Tokyo, the KU (special word) or municipality) in which are located the stores and/or business premises of the retailers and service suppliers involved in the joint lottery or prize competition defined in Section 4, Subsection 1 and 3.

Where a considerable number of retailers and/or service suppliers are involved in a joint scheme within a region smaller than a single municipality (in Tokyo, KU or municipality), the definition of "certain district" shall be based on a consideration of factors such as the competition circumstances in the relevant industry and district.

B. Where a joint lottery or prize competition staged by entrepreneurs other than retailers and service suppliers involves a considerable number of entrepreneurs who provide the same type of commodities in the district where the lottery or prize competition sale is being staged, this shall be deemed to fall under Section 4, Subsection 3 of the Notification.

IX. Interpretation of joint lottery and prize competition schemes in Section 4, Subsection 2 of the Notification

Lotteries or prize competitions staged by shopping district cooperatives set up in accordance with the provisions of the Shopping District Promotion Association Law

shall be treated as joint lotteries or prize competitions under Section 4, Subsection 2 of the Notification.

X. Interpretation of "considerable number" in Section 4 of the Notification Where the participants in a joint lottery or prize competition constitute a majority of "retailers or service suppliers" or "entrepreneurs in a specific industry" in the district and also the greater part of the ordinary participants in lotteries and prize competitions, this shall be deemed to be a "considerable number."

XI. Interpretation of "specific industry" in Section 4, Subsection 3 of the Notification As a general rule, "specific industries" shall correspond to sub-classifications given under the Standard Industrial Classification for Japan (e.g. 1311 soft drink manufacturing, 7231 hairdressing, 7663 golf courses). Where determination cannot readily be made on the basis of these sub-classifications, determination shall be based on consideration of factors such as the competition circumstances in the industry in

question as well as in related industries. XII. Interpretation of unjust restriction on participation in a joint lottery and prize competition Given the provisos stipulated in Section 4 of the Notification, a lottery or prize competition sale cannot be held in accordance with the provisions of Section 4 in the following cases:

- A. Eligibility for participation in the joint lottery or prize competition is determined on the basis of sales volume or the like, or is restricted to, for instance, members of a specific trade association or trading partners of a specific entrepreneur; and
- B. The apportionment of economic costs, the promotional methods used, the distribution of winning tickets or other aspects associated with staging the lottery or prize competition are disadvantageous to certain parties in a way that effectively prevents their participation in the joint lottery or prize competition.

CONSUMER CONTRACT LAW 2001

Consumer Contract Act 2000 - Act No. 61 of 2000

This English translation of the Consumer Contract Act has been translated (through the revisions of Act No. 129 of 2001 (Effective April 1, 2002)) in compliance with the Standard Bilingual Dictionary (March 2006 edition). This is an unofficial translation. Only the original Japanese texts of laws and regulations have legal effect, and the translations are to be used solely as reference material to aid in the understanding of Japanese laws and regulations. The Government of Japan shall not be responsible for the accuracy, reliability or currency of the legislative material provided in this Website, or for any consequence resulting from use of the information in this Website. For all purposes of interpreting and applying law to any legal issue or dispute, users should consult the original Japanese texts published in the Official Gazette.

The Consumer Contract Act

Chapter 1 General Provisions

Article 1 (Purpose)

The purpose of this Act is to protect the interests of consumers, and thereby to contribute to the stabilization and improvement of the general welfare of the life of the citizens and to the sound development of the national economy by permitting, in consideration of the discrepancy in quality and quantity of information and in the negotiating power between consumers and business operators, the rescission of manifestation of intentions to offer or accept contracts made by consumers when they are mistaken or distressed by certain acts of business operators, and by invalidating, in part or in whole, clauses that exempt the business operators from their liability for damages or otherwise unfairly harm the interests of consumers.

Article 2 (Definitions)

(1) The term "consumer" as used in this Act shall mean an individual (excluding, however, any individual who becomes a party to a contract in the course of, or for the purpose of, his/her business).

(2) The term "businesses operator" as used in this Act shall mean a juridical person, and other type of association, and an individual who becomes a party to a contract in the course of, or for the purpose of, his/her business.

(3) The term "consumer contract" as used in this Act shall mean a contract concluded between a consumer, on the one hand, and a business operator, on the other.

Article 3 (Efforts of business operators and consumers)

(1) Business operators drafting clauses of a consumer contract shall endeavor to ensure that the rights and duties of consumers and such other things set forth in the consumer contract are clear and plain to consumers and, in order to further the understanding of the consumers when they are solicited to enter into consumer contracts, to provide information necessary with respect to the contents of the consumer contracts including, but not limited to, rights and duties of the consumers.

(2) When a consumer enters into a consumer contract, he/she shall endeavor to utilize the information provided by the business operator and to understand his/her rights and duties and such other things set forth in the consumer contract.

Chapter 2 Rescission of the Manifestation of Intention to Offer or Accept a Consumer Contract

Article 4 (Rescission of the Manifestation of Intention to Offer or Accept a Consumer Contract)

(1) A consumer may rescind his/her manifestation of intention to offer or accept a consumer contract if such manifestation was made by making the mistake set forth in any of the following items as a result of the act of the business operator set forth correspondingly in such item which was committed as it solicited the consumer to enter into such consumer contract:

(i) Act to make any misrepresentation with respect to material matters: Mistake that the content of said misrepresentation constitutes a fact.

(ii) Act to provide, with respect to any subject matter of such consumer contract, including the goods, rights, and services thereof, any conclusive judgment with respect to any matter which has uncertainty of change in the future including, but not limited to, the value of the subject matter in the future and the amount of money such consumer will be entitled to receive in the future: Mistake that the content of the conclusive judgment so provided is certain

(2) Consumers may rescind their manifestation of intentions to offer or accept a consumer contract if such manifestation was made as a result of the combination of (i) any statement by the business operator to the consumer which is advantageous to the consumer with respect to a certain material matter, or any matter relating to such material matter, AND (ii) the intentional omission by such business operator to disclose any fact which is disadvantageous to such consumer with respect to such material matter (limited, however, to such fact that the consumer should ordinarily believe would not exist if so disclosed), whereby such acts were committed as it solicited the consumer to enter into such consumer contract and induced the consumer to make a mistake that such fact does not exist: Provided, however, that the above provision shall not apply if, regardless of the attempt by the business operator to disclose such fact to such consumer, such consumer refuses to accept such disclosure.

(3) Consumers may rescind their manifestation of intentions to offer or accept a consumer contract if such manifestation was made because he/she was distressed by any of the acts of the business operation set forth in the following items which was committed as it solicited the consumer to enter into such consumer contract:

(i) Act not to withdraw from a residence of a consumer, or a place where the consumer engages in his/her business, even though the consumer has manifested to such business operator his/her intent that he/she should withdraw therefrom.

(ii) Act not to allow a consumer to withdraw from a place where the business operator is making solicitation with respect to such consumer contract, even though the consumer has manifested his/her intent to withdraw therefrom.

(4) The "material matter" mentioned in item (i) and item (ii) of paragraph 1 hereof refers to the following matter relating to any consumer contract which normally should affect the judgment of the relevant consumer of whether or not to enter into such consumer contract.

(i) Quality, purpose and other content of the subject matter of such consumer contract, such as goods, right and service.

(ii) Consideration and other conditions for transaction of the subject matter of such consumer contract, such as goods, right and service.

(5) The rescission of a manifestation of intention to offer or accept a consumer contract pursuant to the provisions of paragraph 1 to 3 inclusive may not be asserted as a defense against a third party without knowledge.

Article 5 (Third parties entrusted to intermediate and agents)

(1) The preceding article shall apply mutatis mutandis to cases where a business operator entrusts a third party to intermediate a consumer contract between the business operator and a consumer (which shall be referred to simply as "entrustment" for purposes of this paragraph), and the third party (which includes persons entrusted by such third party (including any person who is entrusted through more than two layers of entrustment) who shall be referred to as "trustee etc." for purposes of the following paragraph) commits an act set forth in paragraphs 1 to 3 of the preceding article with respect to a consumer. In this case, "the business operator" referred to in the proviso of the second paragraph of the preceding article shall be deemed to be replaced with "the business operator or the trustee etc. provided in the first paragraph of the following article".

(2) Any agent of a consumer, agent of a business operator and agent of a person entrusted as above etc. involved in the execution of a consumer contract shall be deemed to be the consumer, business operator and the person entrusted etc., respectively, in application of paragraphs 1 to 3 of the preceding article (which includes the cases where it is applied mutatis mutandis pursuant to the preceding paragraph. The same shall apply in the next article and article 7).

Article 6 (Interpretation Provision)

The provisions of paragraphs 1 to 3 inclusive of article 4 shall not be interpreted to exclude the application of article 96 of the Civil Code (Act No. 89, 1896) as it applies to a manifestation of intention to offer or accept a consumer contract provided in these paragraphs.

Article 7 (Period for the Exercise of Right to Rescind, etc.)

(1) The right to rescind as provided in paragraphs 1 to 3 inclusive of article 4 shall be extinguished by prescription if not exercised within six months from the time when ratification first becomes possible. The same shall apply if five years have elapsed from the time of the execution of a consumer contract.

(2) Article 191 and 280-12 of Commercial Code (Act No. 48, 1899) (including the cases where such provisions are applied mutatis mutandis in other Acts) shall apply to the rescission of subscription for shares or new shares to the extent it constitutes a consumer contract pursuant to paragraph 1 to 3 of article 4. In this case, "no person who has taken shares may claim the invalidation of his (her) subscription on grounds of mistake or non-compliance with any of the requirements relating to the share application certificate in paper form, nor may any person avoid his (her) subscription on the grounds of fraud or duress" in article 191 of the Act and "no person who has subscribed for new shares may claim the invalidation of his (her) subscription on grounds of mistake or non-compliance with any of the requirements as to the written share application certificate or the certificate of a right to subscribe for new shares, nor may any person avoid his (her) subscription on the ground of fraud or duress" in article 280-12 of the Act shall be deemed to be replaced with "no person may rescind his (her) subscription provisions of application of paragraphs 1 to 3 inclusive of article 4 of Consumer Contract Act (which includes cases where article 5 of the same Act shall apply)".

Chapter 3 Invalidation of Consumer Contract Clauses

Article 8 (Invalidation of clauses which exempt a business operator from liability for damages)

(1) The clauses set forth below shall be invalid.

(i) Clauses which totally exempt a business operator from liability to compensate damages incurred by a consumer as a result of the breach of contract by the business operator.

(ii) Clauses which partially exempt a business operator from liability to compensate damages incurred by a consumer as a result of the default of the business operator (limited to instances where the same arises from intentional act or gross negligence on the part of the business operator, the business operator's representative or employee).

(iii) Clauses which totally exempt a business operator from liability to compensate the damages incurred by a consumer under the Civil Code as a result of a tort committed on occasion of business operator's performance of a consumer contract.

(iv) Clauses which partially exempt a business operator from liability to compensate the damages incurred by a consumer under the Civil Code as a result of a tort (such tort shall be limited to instances where the same arises by intentional act or gross negligence on the part of the business operator, the business operator's representative or employee) committed on occasion of business operator's performance of a consumer contract.

(v) When a consumer contract is a contract for value, in case there exists a latent defect in the subject matter of a consumer contract (in case where a consumer contract is a contract for work, a defect should exist in the subject of the work. The same shall apply in the following paragraph), clauses which totally exempt a business operator from liability to compensate the damages incurred by a consumer as a result of such defect

(2) The clause provided in the fifth item of the preceding paragraph shall not apply in cases enumerated in the following sections.

(i) In case the relevant consumer contract provides that, in case there is any latent defect in the subject matter of such consumer contract, the relevant business operator shall assume the responsibility to replace the same with a substitute which is free of defect or to repair such defect; or

(ii) In case it is provided, in a contract which is executed between the relevant consumer and a business operator other than the relevant business operator (where the latter business operator entrusts the former business operator), or in a contract executed between the relevant business operator and other business operator for the benefit of the relevant consumer, which is concluded before or simultaneously with the consumer contract that in case there is any latent defect in the subject matter of the relevant consumer contract, such other business operator shall assume either the responsibility, in whole or in part, to compensate the damages suffered by such consumer as a result of such defect, the responsibility to replace the same with a substitute which is free of defect, or the responsibility to repair such defect.

Article 9 (Invalidation of Clause which Stipulates the Amount of the Damages to be Paid by Consumer)

The clauses of a consumer contract set forth in the following items shall be void to the extent specified in the respective item:

(i) Any provision which liquidates in advance the amount of damages, or defines the penalty, associated with any termination of the relevant consumer contract where the aggregate sum of such amounts exceeds the average amount of damages which, depending on the category established in such provision such as the cause or timing of termination, should normally be suffered by the relevant business operator in association with the consumer contract similar to such consumer contract. To the extent of the amount which so exceeds.

(ii) Any provision which liquidates in advance the amount of damages, or defines the penalty, in case the relevant consumer fails to pay any money due and payable under the relevant consumer contract, in whole or in part, by the due date of payment (in case of

any payment in two or more installments, hereinafter in this Item referring to the due date of the respective date of installment payment) where the aggregate sum of such amounts exceeds the amount which is calculated on a daily pro-rata basis by multiplying (a) the amount to be paid on such due date of payment less such portion of the amount to be paid on such due date of payment as has been already paid by (b) the rate of 14.6% per annum, covering the period from (and including) the date immediately following such due date of payment through the date when such payment is actually made: To the extent of the amount which so exceeds.

Article 10 (Invalidation of Clauses that Harm the Interests of Consumers One-sidedly)

Any provision which, in comparison with the case applied by the provision of the Civil Code, Commercial Code and other laws which do not relate to the public order, restricts the right of the consumer, or aggravate the duties of the consumer, and harms the interest of the consumers one-sidedly in contravention of the basic principle provided in the second paragraph of article 1 of the Civil Code shall be void.

Chapter 4 Miscellaneous Provisions

Article 11 (Application of Other Acts)

(1) The rescission of the manifestation of intention to offer or accept a consumer contract and validity of any provision of a consumer contract shall be subject to the provision of this Act and the relevant provisions of the Civil Code and Commercial Code, as well.

(2) If there is any provision in any law other than the Civil Code and Commercial Code with respect to the rescission of the manifestation of intention to offer or accept a consumer contract and validity of any provision of a consumer contract, the provision of such law shall prevail.

Article 12 (Exclusion from application)

This Act shall not apply to labor contracts.

Supplementary Provisions

This Act shall be enforced from April 1st, in 2001, and apply to consumer contracts concluded thereafter.

PRODUCT LIABILITY LAW No.85, 1994

The Product Liability Law (Law No.85, 1994)

Article 1: Purpose

The purpose of this Law is to relieve the injured person by setting forth liability of the manufacturer, etc. for damages when the injury on a life, a body, or property is caused by a defect in the product, and thereby to contribute to the stabilization and improvement of the people's life and to the sound development of the national economy.

Article 2: Definitions

(1) As used in this Law, the term "product" means movable property manufactured or processed.

(2) As used in this Law, the term "defect" means lack of safety that the product ordinarily should provide, taking into account the nature of the product, the ordinarily foreseeable manner of use of the product, the time when the manufacturer, etc. delivered the product, and other circumstances concerning the product.

(3) As used in this Law, the term "manufacturer, etc." means any one of the following: any person who manufactured, processed, or imported the product as business (hereinafter called just "manufacturer"); any person who, by putting his name, trade

name, trade mark or other feature (hereinafter called "representation of name, etc.") on the product presents himself as its manufacturer, or any person who puts the representation of name, etc. on the product in a manner mistakable for the manufacturer; apart from any person mentioned in the preceding subsections, any person who, by putting the representation of name, etc. on the product, may be recognized as its manufacturer-in-fact, in the light of a manner concerning manufacturing, processing, importation or sales, and other circumstances.

Article 3:Product Liability

The manufacturer, etc. shall be liable for damages caused by the injury, when he injured someone's life, body or property by the defect in his delivered product which he manufactured, processed, imported or put the representation of name, etc. as described in subsection 2 or 3 of section 3 of Article 2 on. However, the manufacturer, etc. is not liable when only the defective product itself is damaged.

Article 4:Exemptions

In cases where Article 3 applies, the manufacturer, etc. shall not be liable as a result of Article 3 if he proves; that the state of scientific or technical knowledge at the time when the manufacturer, etc. delivered the product was not such as to enable the existence of the defect in the product to be discovered; or in the case where the product is used as a component or raw material of another product, that the defect is substantially attributable to compliance with the instruction concerning the specifications given by the manufacturer of the said another product, and that the manufacturer, etc. is not negligent on occurrence of the defect.

Article 5:Time Limitations

(1) The right for damages provided in Article 3 shall be extinguished by prescription if the injured person or his legal representative does not exercise such right within 3 years from the time when he becomes aware of the damage and the liable party for the damage. The same shall also apply upon the expiry of a period of 10 years from the time when the manufacturer, etc. delivered the product.

(2)The period in the latter sentence of section 1 of this Article shall be calculated from the time when the damage arises, where such damage is caused by the substances which are harmful to human health when they remain or accumulate in the body, or where the symptoms for such damage appear after a certain latent period.

Article 6:Application of Civil Code

In so far as this law does not provide otherwise, the liability of the manufacturer, etc. for damages caused by a defect in the product shall be subject to the provisions of the Civil Code (Law No.89, 1896).

ประวัติผู้เขียนวิทยานิพนธ์

นายชัย ลีมสุวัฒน์ เกิดเมื่อวันที่ 23 สิงหาคม พ.ศ.2524 สำเร็จการศึกษานิติศาสตรบัณฑิตจากมหาวิทยาลัยธรรมศาสตร์ เมื่อปีการศึกษา 2546 และเข้าศึกษาต่อในหลักสูตรนิติศาสตรมหาบัณฑิตที่จุฬาลงกรณ์มหาวิทยาลัย เมื่อปี พ.ศ.2548

