

## **Fair Trade Commission Disposal Directions (Guidelines) on the Business Practices of Franchisors**

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2015

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1. In order to maintain the trading order in the franchise market, ensure free and fair competition among franchise businesses, and effectively handle business practice of franchisors that could be considered in violation of the Fair Trade Law, the Fair Trade Commission thus established the Guidelines.
2. The terms in the Guidelines are defined as follow:
  - (1) The term "franchisor" refers to an enterprise in a franchise relationship that licenses the trademark or operational techniques, assists or counsels the management of franchisee business, and collects the corresponding charges for such services from the franchisee.
  - (2) The term "franchisee" refers to the enterprise in the franchise relationship that uses the trademark or operational techniques licensed by the franchisor, receives assistance or counsel from the franchisor, and pays the franchisor the corresponding charges for such services.

- (3) The term "franchise relationship" refers to an ongoing relationship in which a franchisor licenses a franchisee through a contract to use its trademark or operational techniques, and assists or counsels the franchisee to manage the business, while the franchisee pays the corresponding charges for such services. However, the purchase of products or services (hereinafter referred to as "the products") at wholesale or lower rates for resale or leasing is not included under this arrangement.
- (4) The term "preparation to enter into a franchise relationship" refers to the payment of certain fees by the trading counterpart, and the signing of documents related to entry into a franchising relationship such as a draft agreement, appointment, or letter of intent before the franchisor and its trading counterpart enter into a franchise relationship, as well as the agreement that withdrawal from the relationship shall result in forfeiture of all fees paid or liability for compensation.
- (5) The term "payment of corresponding charges " refers to the franchise fee, licensing fee, training charges, as well as expenses for the products, capital equipment, and decoration that a franchisee is required to pay the franchisor or the person designated by the franchisor to establish the franchise relationship.

### 3. Information Disclosure Guidelines

Franchisors shall provide their trading counterparts, prior to their entering into the franchise operation relationship, important franchise information in writing within 10 days, or a reasonably determined timeframe in the specific case, or agreed time by both parties; otherwise it will constitute obvious unfair practices. However, those who withhold important information with justification shall be exempted:

- (1) startup costs: such as the cost or estimated fees paid to the franchisor or the person designated by the franchisor, for training, merchandise purchases, raw materials, capital equipment, interior decoration, and so on.
- (2) operating expenses: such as calculation and payment of licensing fee, and the cost or estimated fees paid to the franchisor or the person designated by the franchisor, for management guidance, marketing and promotion, purchase of merchandise or raw materials, and so on.
- (3) the contents, periods of validity, extent of authorization, and corresponding restrictions of trademark rights, patents and copyrights involved;
- (4) contents and methods of operational assistance, training, and guidance;
- (5) plans for setting up other franchisees of the same franchise system in a franchisee's existing area of operation;

- (6) restrictions applied to the franchise relationship during the contract period:
- A. the supply of merchandise or raw materials from the franchisor or the supplier designated by the franchisor, and designated brands and specifications;
  - B. the items and minimum quantities of merchandise or raw materials should be purchased each time;
  - C. the supply of capital equipments from the franchisor or the supplier designated by the franchisor, and designated specifications;
  - D. interior decoration that should be conducted by a contractor designated by the franchisor, and designated specifications;
  - E. other restrictions on franchise operation relationships.
- (7) Conditions and ways of handling for the alteration, termination and cancellation of a franchise contract.

The franchisor may provide the preceding information in print, via email, in electronic storage, through social media or communication software. The proof of provision of the aforesaid information shall be provided by the franchisors.

Justifications described in the first paragraph are as follows:

- (1) the continuation or expansion of existing franchise operation relationship;
- (2) the franchisor is indeed in lack of such information objectively;
- (3) other circumstances where information asymmetry does not exist between franchisors and the trading counterparts.

4. When entering into contracts with trading counterparts concerning their franchise operation relationship, such obviously unfair conduct as follows shall not be conducted by franchisors:

- (1) Prior to entering into a written contract regarding franchise operation, franchisors do not provide at least 5 days or a reasonable timeframe determined in line with each specific case for trading counterparts to review the contract.
- (2) In cases under which the contract document is not given to the trading counterpart within 30 days the contract is signed. However, where a delay is caused by circumstances not attributable to the franchisor (e.g. that the franchisee is located on an outlying island or remote area, delays in real estate mortgage procedures not attributable to the franchisor, or delays that are attributable to the franchisee, resulting in failure to produce the contract document), shall not be exempted.

5. An enterprise whose violations of the terms and conditions of Point 3 and Point 4 are sufficient to affect the trading order of the franchise market shall be considered violations of Article 25 of the Fair Trade Law.

6. In addition to being subject to the Directions, franchisor businesses shall also abide by the "Fair Trade Commission Disposal Directions (Guidelines) on Handling Cases Governed by Article 21 of the Fair Trade Law," "Fair Trade Commission Disposal Directions (Guidelines) on Handling of Cases of Comparative Advertising," and "Fair Trade Commission Disposal Directions (Guidelines) on the Application of Article 25 of the Fair Trade Law."