

KOREA

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Is there case law or any statutory regulation governing advertising and promotion incentives? Are there any special consumer protection laws? What role do free gifts, tie-in offers, sweepstakes, rebates and other benefits, play in this context?

In Korea, the Monopoly Regulation and Fair Trade Law ("FTL") prohibits the unfair solicitation of customers, such as by offering excessive gifts, which may impede or harm merits-based competition in the market. The "Notification on the Types of and Criteria for Unfair Business Practices relating to the Offering of Gifts" ("Notification") issued by the Fair Trade Commission ("FTC") provides detailed guidelines on such unfair gift offerings. In addition, there are industry-specific statutes which contain certain provisions that may prohibit or restrict advertising and promotion incentives (below). Under the FTL/Notification, free gifts, bonuses, tie-ins, merchandise coupons, sweepstakes, rebates/refunds, and other discounts may constitute illegal anticompetitive practices, if they are found to confer disproportionate or unfair economic benefits to customers, or if construed as an abuse of market dominant position (in rare cases), among others.

In your jurisdiction, are there any industry sectors which are subject to special regulations for advertising and promotion incentives (for instance the health products and pharmaceutical industries in some countries)? Please name applicable statutes and self-regulatory codes.

Advertising or promotion incentives by means of gifts, sweepstakes, etc. in the individual industries such as food, medicine, processing of livestock, tobacco, or alcohol, etc. are regulated by the following statutes: Food Sanitation Act, Pharmaceutical Affairs Act, Processing of Livestock Products Act, Tobacco Business Act, and National Health Promotion Act, etc. Further, enterprisers or enterprisers' organizations may create a "fair competition code" or "self-regulatory code" voluntarily and request the FTC to examine whether such code violates statutory prohibitions against unreasonable inducement of customers or unfair advertising under the FTL and the Fair Statement and Advertising Act, respectively.

At present, there are 8 fair competition codes (issued by the Korean Hospital Association, Korea Department Store Association, Korea Pharmaceutical Manufacturers Association, Korean Association of Pharmaceutical Wholesalers, Korean Research-Based Pharmaceutical Industry Association, Korea LPG Industry Association, Korea Newspaper Association, and the Korea Dental Technologists Association) and 7 self-regulatory codes (issued by the Korea Cosmetic Industry Association, Korea Pharmaceutical Manufacturers Association, Korean Research-Based Pharmaceutical Industry Association, Korea Optometric Association, Korea Film Industry Cooperatives Federation, Korea Alcohol & Liquor Industry Association, and the Korea Bed Association) that have been approved by the FTC.

Does industry self-regulation replace or supplement government and legislative regulation of advertising and promotion incentives? Is self-regulation an effective tool?

Self-regulation supplements, but does not replace, Korean laws and regulations on advertising and promotion incentives, and can often serve as an effective tool in terms of overall efficiency, time, and adaptiveness to the particulars of a given industry. Also, enterprisers' organizations promote and encourage self-regulation by and among their members in accordance with both legislative and industry codes.

To what extent do promotional incentives extended to staff in public institutions pose legal issues in your jurisdiction (i.e., paying for travel and accommodation costs on the occasion of conferences, personal entertainment, hidden education sponsoring, sponsoring of school snacks for promotional purposes)?

Any benefits granted to public officials are strictly regulated under the following laws and regulations: the Korean Criminal Code, the Act Concerning Aggravated Punishment of Specific Crimes, the Act Concerning Aggravated Punishment of Specific Economic Crimes, the Anti-Corruption Act and the Code of Conduct for Public Officials. For example, the Code of Conduct for Public Officials prohibits a public official from receiving any cash or cash equivalent, real estate, gift and/or entertainment from any interested persons within his/her sphere of control in the course of executing his/her public duties, except as otherwise specifically permitted.

Are there any formal disclosure requirements for promotional incentives (i.e., rule of separation of procurement from personal dealings, rules of employer consent requirements, written form requirements, adequacy of consideration granted for a service)?

Pursuant to some fair competition codes, member enterprisers may be obligated to report certain types of promotional activities to their respective associations.