

Future Measures against Violations under the Act against Unjustifiable Premiums and Misleading Representations (the “Act”) Including Introduction of a Surcharge System, Etc. in Order to Ensure the Effectiveness of Regulations over Misleading Representations under the Act (Replies to the Consultation) [Summary]

June 2014, Consumer Commission

Points of issue, etc.	Replies to the Consultation
1. Need for introduction of a surcharge system	○ <u>It is highly necessary to introduce a surcharge</u> system to impose economic disadvantage on violators and <u>discourage their incentives</u> for the violations.
2. Purport and purpose of the system	○ To <u>deter misleading representations in advance</u> in order to protect consumer benefit.
3. Surchargeable cases <ul style="list-style-type: none"> <li data-bbox="132 651 504 943">(1) Surchargeable acts <li data-bbox="132 949 504 1128">(2) Subjective factors <li data-bbox="132 1135 504 1180">(3) Criteria based on size <li data-bbox="132 1187 504 1249">(4) Statutory exclusive period 	<ul style="list-style-type: none"> ○ <u>Representation of the better quality and the representation of the advantageous quality</u> should be <u>surchargeable</u>. ○ It is <u>unnecessary to consider representation designated by public notice to be surchargeable</u> under the present circumstances. ○ <u>A surcharge should be imposed</u> on the <u>representation regulated as unproved advertisement</u> unless the business operator submits reasonable supporting materials, and it is advisable to establish the procedural provisions setting forth that the entity undergoing punishment can <u>challenge the imposition of the surcharge</u> by producing reasonable supporting materials in the subsequent litigation to establish that the <u>representation at issue is not misleading</u>. ○ <u>A surcharge will be imposed, in principle</u>, on any misleading representation. If the violator <u>who did not intentionally make the misleading representation presents any reasonable counterevidence that it had exercised the certain duty of care, it would be exceptionally refrain from imposing a surcharge</u>. ○ A certain <u>cutback is necessary</u>. ○ There should be a <u>certain reasonable period of time</u>.
4. Calculation of surcharge amounts <ul style="list-style-type: none"> <li data-bbox="132 1310 504 1400">(1) Basic concept <li data-bbox="132 1406 504 1541">(2) Addition to the surcharge, subtraction from the surcharge or exemption of the surcharge <li data-bbox="132 1547 504 1592">(3) Applicable period 	<ul style="list-style-type: none"> ○ A surcharge should be calculated based on the amount equal to unfair profits earned by the relevant business operator, <u>which should also be calculated, without exception</u>, using a certain formula. ○ In designing the system, <u>additions should be considered in parallel with verification of whether it is necessary</u>. ○ <u>Subtraction from the surcharge or exemption of the surcharge also deserves consideration</u>. ○ Should <u>be restricted to</u> a certain <u>reasonable period of time</u>.
5. Whether or not the administrative authorities should have discretionary power	○ <u>The system should not be designed in such a way that the administrative authorities may have the discretion</u> .
6. Procedure for imposition of a surcharge	<ul style="list-style-type: none"> ○ Should consider <u>any similar procedural security to that under the cease and desist order</u>. ○ The <u>collection procedure</u> should be <u>designed in accordance with the existing surcharge systems</u>.
7. Future measures for damage recovery	<ul style="list-style-type: none"> ○ The mechanism for promoting consumer damage recovery should be introduced. ○ <u>A system should be adopted in such a way that a certain amount will be deducted from the surcharge amount, taking voluntary actions taken by the violator</u>, such as reimbursement to consumers. ○ <u>“Voluntary action”</u> should <u>basically take the form of reimbursement</u> to consumers who have purchased the subject products and services. ○ Although <u>a donation mechanism</u> should be permitted to <u>supplement reimbursement</u>, the <u>purpose of use of donation</u> should be <u>defined in a limited extent</u>, in part because the deduction system is structured to promote consumer damage recovery.