



Korean Consumer Goods & Retail Newsletter

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Shin & Kim's Consumer Goods & Retail practice group focusses on providing legal services to fast-moving consumer goods (FMCG) clients, in particular those who deal with alcohol, tobacco, food & beverage, cosmetics, and luxury goods. The CGR practice group has experts with decades of experience in assisting clients in issues relating to compliance, approvals/permits, intellectual property, tax, labor, product liability, data privacy, competition/unfair trade practices, environment and such other relevant areas of law.

Our practice group aims to provide regular updates to clients on important regulatory changes in Korea.

I. Introduction of Voluntary Braille Labeling for Food

The amendment to the Act on Labeling and Advertising of Foods was recently passed at the plenary of the National Assembly on May 25, 2023. This amendment mandates the indication of braille and voice-to-sign language conversion codes for various food products (including food, food additives, health functional food, etc.) for the purpose of providing the visually impaired with food information accessibility and preventing misuse accidents. During the amendment process, the requirement for displaying braille, etc. has been revised from being a "mandatory matter" to an "autonomous matter" when it was passed before the Health and Welfare Committee of the National Assembly on February 14. This amendment will come into effect on the day that is six months after the promulgation date of June 13, 2023.

Unlike medicines, which have been mandated to display braille, etc. and are scheduled to be enforced in July 2024, braille labeling for food, have been made voluntary, instead of being mandatory. During deliberation by the National Assembly, this decision was made considering various factors, including limitation of labeling area, technical constraints depending on the type of packaging material, increased burden on SMEs, and trade barriers for imported products. However, companies will be actively encouraged to implement voluntary braille labeling through incentives (such as administrative and financial support).

Domestic food companies have already started voluntarily implementing more braille marking on their products. Before

the enforcement of the revised law, the Ministry of Food and Drug Safety will soon prepare and distribute a detailed guideline that specifies “subjects (types of food) to be marked with braille along with standards and methods for implementation”. While this amendment has introduced voluntary regulations, it is important to monitor regulatory trends in the future, considering the possibility of incremental increases in mandatory braille labeling as done under the Pharmaceutical Affairs Act.

II. Fair Trade Act Amendment Passes the National Assembly

An amendment to the Monopoly Regulation and Fair Trade Act (hereinafter referred to as the “Fair Trade Act”) was passed at the National Assembly’s plenary session held on March 25, 2023. This amendment contains provisions to strengthen the discipline of fair competition, such as encouraging self-compliance, greater damage relief for small and medium-sized businesses, etc.

The core of this amendment includes: (i) establishing a legal basis for fair trade compliance program (hereinafter referred to as “CP”), (ii) suspending the statute of limitations upon the application for a consent resolution, (iii) introducing a system of stay of proceedings by the courts for dispute mediation cases, and (iv) establishing a legal basis for managing the implementation of corrective measures. Among these, the provisions related to the improvement of the CP system will come into effect from the first anniversary of the promulgation date, while the remaining amendments will be effective after 6 months have elapsed from the promulgation date. The specifics of these provisions are as follows:

1. Establishment of legal basis for CP

- Since the CP system¹ has been operated based on the rules established by the Fair Trade Commission without a specific legal basis, there have been limitations in facilitating the system, such as difficulties in providing incentives to actively induce the introduction and operation of CPs.
- To address this issue, the amendment establishes a legal basis for the CP system. Additionally, it authorizes the Fair Trade Commission to evaluate the CP operation of companies that adopts the CP system, and reduce corrective actions or penalties, or grant rewards or assistance, etc. depending on the evaluation results.

2. Suspension of the statute of limitations upon application for consent resolution

- As the current law does not grant the legal effect of suspending the statute of limitations upon the initiation of a consent resolution² procedure, it has raised concerns that the consent decision system could be misused as a means of avoiding sanctions as the statute of limitations could expire during the process of the consent resolution procedure.
- To address this issue, the amendment stipulates that if a consent resolution is requested, the statute of limitations of the original case shall be suspended, and the statute of limitations shall proceed again from the time the consent decision resolution is terminated or performance has been fulfilled.

3. Introduction of Stay of Proceedings by the Courts for Dispute Mediation Cases

- The current law stipulates that the Fair Trade Dispute Mediation Council (hereinafter referred to as “Mediation Council”) terminates the mediation procedure if one of the parties files a lawsuit regarding the dispute under mediation. This deprives the parties of the opportunity to resolve the dispute through the mediation procedure.
- To address this issue, in the event the dispute mediation procedure at the Mediation Council is concurrently proceeded in parallel with the lawsuit, this amendment allows the court to suspend the litigation procedure at its discretion, so as to enable the disputing parties to resolve the dispute by mediation depending on their circumstances.
- Additionally, if a lawsuit for the same or similar case is in progress for the same cause, the Mediation Council can suspend the mediation procedure so that the results of the lawsuit can be reflected in the results of dispute mediation.

4. Establishment of Legal Basis for Corrective Action Implementation Management

- The management of implementation of corrective actions was previously carried out in accordance with the Fair Trade Commission notification without a clear legal basis. This made it difficult to effectively inspect the implementation of corrective actions.
- Accordingly, the Fair Trade Act established a legal basis for corrective action management tasks which allows the Fair Trade Commission to entrust the task to the Korea Fair Trade Mediation Agency.

III. Revision of Examination Guidelines for Environmental Labeling and Advertising to Prevent Greenwashing

In line with the greensumer trend, which emphasizes eco-friendly consumption, companies are expanding eco-friendly marketing. However, due to the spread of greenwashing, which disguises non-environmental products or activities as eco-friendly sourced, the Fair Trade Commission prepared an amendment to the Review Guidelines for Environmental Labeling and Advertising. The purpose of this amendment is to prevent greenwashing by specifying the screening criteria for judging unfair labeling and advertisements related to the environment and present specific examples of greenwashing. The amendment will be put on administrative notice from June 8, 2023 to June 28, 2023.

The details of the amendment include: (1) subdividing the screening criteria for determining the unfairness of labeling and advertisements related to the environment, (2) classifying the product life cycle into three stages (composition of raw materials or resources – production and use – disposal and recycling) and providing specific terms and expressions of greenwashing that are prohibited or highly likely to violate the law for each stage, and (3) creating a checklist for business operators to lower the risk of greenwashing in their intention to display and advertise their efforts, goals, and plans related to environmental protection.

¹ A fair trade compliance program(CP) refers to an internal compliance system, such as in-house training and supervision, that companies independently establish and operate to comply with fair trade laws and regulations. The Fair Trade Commission has supported this practice by operating a CP rating system.

² A consent resolution is a system that promptly closes a case without determining whether there was a violation of the law if

corrective measures proposed to the Fair Trade Commission by the company under investigation or deliberation for violating the labeling and advertising law are recognized as appropriate.

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