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Franchise Guidelines and Court Case on Protecting Store Appearance

1. Introduction

According to a 2023 survey by the Japan Franchise Association, the Japanese franchise market comprises 1,285 chains, approximately 250,000 outlets, and total sales of around JPY28 trillion. All three indicators—chains, stores, and sales—showed growth compared to the previous year¹, and further expansion is expected.

Unlike some jurisdictions, Japan has no dedicated legislation, such as a Franchise Act, that directly regulates franchise relationships. Instead, franchise agreements are governed by statutes such as the Small and Medium Retail Business Promotion Act and the Antimonopoly Act, depending on their content. In particular, the *Guidelines on the Application of the Antimonopoly Act to Franchise Systems* (the "**Franchise Guidelines**"), issued by the Japan Fair Trade Commission ("**JFTC**"), provide detailed interpretive guidance. The Franchise Guidelines underwent a major revision in April 2021². They are essential reading for businesses considering entry into the franchise sector.

Another defining feature of franchising is the standardized appearance of franchise outlets, which serves as a key symbol of the brand. A recurring legal question in Japan is whether such store appearances can be protected under intellectual property or other legal frameworks. A Japanese court has established an important precedent on this issue in Komeda Coffee case³. Entrepreneurs planning to open stores that compete with existing franchise chains should pay close attention to these legal developments.

This article therefore examines the 2021 revision of the Franchise Guidelines and discusses the Komeda Coffee case, which addressed the legal protection of store appearance.

2. Franchise Guidelines

(1) Franchise Agreements and the Antimonopoly Act

The Franchise Guidelines define a franchise system as *"a business model in which the headquarters grants franchisees the right to use specific trademarks, trade names, etc., while also supervising, guiding, and assisting franchisees in their sale of goods, provision of services, and other business operations in a uniform manner, with franchisees paying the headquarters money as consideration for these services."*

The central legal framework for this system is the franchise agreement, generally structured as a standardized contract that includes:

- a. Permission for the franchisee to use the headquarters' trademark, trade name, etc.
- b. Provisions for control and guidance to maintain a unified brand image and ensure proper operations
- c. Payment of fees as compensation
- d. Terms governing termination of the agreement

For such systems to function fairly, decisions about franchise membership must be made based on adequate information. During recruitment, franchisors are expected to disclose sufficient details to

prospective franchisees. Once an agreement is signed, the terms of trade must not unilaterally disadvantage the franchisee or impose unreasonable restrictions.

Violations may constitute unfair trade practices under the Antimonopoly Act. In such cases, JFTC may issue a cease-and-desist order to eliminate the violation, or impose surcharges, particularly for abuses of superior bargaining position. Moreover, in today's environment, where information spreads rapidly through social media and other channels, reputational risk can cause serious harm. In some instances, the damage from reputational fallout may exceed the impact of the legal violation itself.

Key categories include:

- **Deceptive Customer Inducement** – Article 2(9)(6)(c), General Designation Item 8, defines as an unfair trade practice the act of *"unfairly inducing competitors' customers to transact with oneself by causing them to mistakenly believe that the content of one's own goods or services, transaction terms, or other matters related to such transactions are significantly superior or more advantageous than the actual ones or those pertaining to competitors"* in violation of the Act.
- **Abuse of Superior Bargaining Position** – Article 2(9)(5) defines as an unfair trade practice the act of *"engaging in any act specified in one of the following by making use of one's superior bargaining position over the counterparty unjustly, in light of normal business practices:*
 - a. *causing the counterparty in continuous transactions (including a party with whom one newly intends to engage in continuous transactions; the same applies in (b) below) to purchase goods or services other than those to which the relevant transactions pertain*
 - b. *causing the counterparty in continuous transactions to provide money, services or other economic benefits*
 - c. *refusing to receive goods in transactions with the counterparty, causing the counterparty to take back such goods after receiving them from the counterparty, delaying payment to the counterparty or reducing the amount of payment, or otherwise establishing or changing trade terms or executing transactions in a way disadvantageous to the counterparty"*
- **Tying Arrangements** – Article 2(9)(6)(c), General Designation Item 10, prohibits as an unfair trade practice the act of *"compelling the other party to purchase other goods or services from oneself or a business designated by oneself, in conjunction with the supply of goods or services, or otherwise forcing the other party to transact with oneself or a business designated by oneself."* Such practices may also fall under the comprehensive category of "transactions with restrictive conditions" (General Designation Item 12).
- **Resale Price Maintenance** – Article 2(9)(4) prohibits as an unfair trade practice the act of *"supplying goods to another party who purchases the relevant goods from oneself while imposing, without justifiable grounds, one of the restrictive terms listed below:*
 - a. *causing the party to maintain the selling price of the goods that one has determined, or otherwise restricting the party's free decision on the selling price of the goods*
 - b. *having the party cause an enterprise that purchases the goods from the party to maintain the selling price of the goods that one has determined, or otherwise causing the party to restrict the relevant enterprise's free decision on the selling price of the goods."*

Because these statutory provisions are highly abstract, their application depends on case-specific interpretation, which reduces predictability. To provide clearer guidance, the JFTC issued the Franchise Guidelines in 1983. They were significantly revised in 2002 to enhance disclosure obligations and clarify scope, and again in 2021—marking the first major update in almost 20 years.

(2) Overview of the Franchise Guidelines

After outlining the general principles of the Antimonopoly Act as they apply to franchise systems, Franchise Guidelines are structured into two parts:

1. **Recruitment stage** – focusing on the prohibition of *deceptive customer inducement*; and
2. **Post-agreement transactions** – addressing *abuse of superior bargaining position, tying arrangements and restrictive conditions, and resale price restrictions*.

For each scenario, the Franchise Guidelines provide illustrative examples of both problematic and desirable practices, helping franchisors and franchisees identify legal risks in advance.

For example, in the context of recruiting franchisees, the Guidelines list specific items that should be accurately disclosed to enable prospective members to make informed decisions. These include, inter alia, the conditions for the supply of goods, the content of business operation guidance, the nature and amount of fees collected, and the scope of management support provided.

With respect to transactions after contract execution, the Guidelines cite examples that may constitute abuse of a superior bargaining position. These include restrictions on the choice of business partners, unilateral changes to contract terms after the agreement has been signed, and the imposition of non-compete clauses after contract termination.

(3) The 2021 Revisions

In September 2020, the JFTC published its *Report on the Survey of Actual Conditions Concerning Transactions Between Convenience Store Headquarters and Franchisees* (the “**Survey Report**”)⁴. It identified five recurring issues:

1. Insufficient explanation of projected earnings during recruitment
2. Forced purchase quantities due to unauthorized orders
3. Pressure to maintain 24-hour, year-round operations without adequate disclosure or negotiation
4. Lack of clarity or compliance regarding “consideration” for dominant store openings in specific areas
5. Restrictions that effectively prevented discount sales of unsold or near-expiry goods

The 2021 revision of the Guidelines responded as follows⁵:

- **Recruitment Explanations** – The Survey Report revealed that interviews showed actual conditions were often worse than the explanations given by headquarters regarding projected sales and profits at the time of recruitment. Even when headquarters presented profit-and-loss models based on revenue simulations or averages merely as “reference,” prospective franchisees tended to interpret them as “projected sales” or “projected profits.” Accordingly, particularly careful explanations are required. From the perspective of preventing *deceptive customer inducement*, a new note was added: It provides that when presenting data that does not predict the sales of a planned store, appropriate measures must be taken to ensure that prospective franchisees clearly understand that such data is not a strict revenue forecast, thereby avoiding any misunderstanding.
- **Forced Purchases** – The Survey Report indicated that a considerable number of franchisees had experienced orders being placed without their consent. Because such practices may raise concerns under the Antimonopoly Act, the Report added an illustrative example of *abuse of superior bargaining*

position in the form of orders imposed against the franchisee's will.

- **Year-Round, 24-Hour Operations**

- The Survey Report indicated that some franchisees had either not received explanations from headquarters regarding operating hours or found that actual conditions were worse than explained prior to joining. It also noted that recruitment materials, such as pamphlets, often failed to disclose important matters proactively—for example, the impact of severe labor shortages. Failure to adequately disclose such matters, or making false or exaggerated statements that mislead franchisees into believing the system is significantly more advantageous than it is, thereby unfairly inducing competitors' customers to transact with the franchisor, may constitute *deceptive customer inducement*. From this perspective, a new provision was added stating that disclosure of adverse information affecting management—such as labor shortages and rising labor costs—is desirable.
- The Survey Report further showed that while many franchisees wished to “temporarily shorten operating hours due to labor shortages,” “experiment with shorter hours,” or “switch permanently to reduced hours,” some reported that headquarters either refused to negotiate or declined to discuss the matter at all. Although transitioning to shorter operating hours is permissible if agreed upon by headquarters and the franchisee, unilateral refusal to negotiate, where headquarters exploits its dominant position and thereby unfairly disadvantages the franchisee contrary to normal business practices, may constitute *an abuse of a superior bargaining position*. Accordingly, refusal to negotiate shortened operating hours has been newly identified as a potential violation of *abuse of a superior bargaining position*.

- **Dominant Store Openings**

- The Survey Report also noted that, although headquarters explained there would be “consideration” for dominant store openings in surrounding areas, some franchisees reported that no support measures were offered and that the actual situation was worse than initially explained. When stipulating “consideration” for such openings in a franchise agreement, it is important that the specific details be disclosed to prospective franchisees in advance. From the perspective of preventing *deceptive customer inducement*, a new note was added requiring explicit disclosure of the details of such consideration.
 - In addition, even where headquarters has promised not to open stores within a certain radius, breaching that promise may constitute *an abuse of a superior bargaining position*. Accordingly, the following have been newly added as illustrative cases of such abuse:
- Where, despite a prior agreement not to engage in dominant store openings, headquarters proceeds with such openings in violation of that agreement, causing deterioration in the franchisee's profits and losses.
 - Where, despite a prior agreement that headquarters would provide support if dominant store openings occur and negatively affect the franchisee's profits and losses, headquarters fails to provide the agreed support, thereby acting in violation of the agreement.
 - **Discount Sales Restrictions** – The Survey Report revealed that although discount sales were, in principle, permitted, the procedures involved were so burdensome that most stores were unable to implement them in practice. This situation risks functioning as an effective restriction on discount sales. From the perspective of preventing *abuse of superior bargaining position*, a new note was added stating that it is desirable to establish a system that enables flexible price adjustments.

(4) Practical Considerations

As discussed above, the Franchise Guidelines serve as an important reference point in practice. For franchisors, operating in accordance with the Guidelines helps avoid cease-and-desist orders or surcharge payment orders from JFTC, as well as reputational risks that may arise if violations become publicly known.

For franchisees, the Guidelines provide a benchmark for assessing whether they are being subjected to unfair contractual terms. If there is a risk that certain practices may constitute a violation, franchisees can raise the issue with the franchisor and negotiate on a more equal footing.

That said, although the Guidelines have been issued, the ultimate assessment depends on the facts of each individual case. Therefore, in actual matters, it is advisable to consult with legal professionals such as attorneys, or to seek guidance directly from the JFTC's Trade Practices Division, which is responsible for these issues.

3. Komeda Case

(1) The Issue

As discussed above, a franchise system rests on two key elements:

- a. the franchisor grants franchisees the right to use its trademarks, trade names, and other identifiers in their business operations; and
- b. the franchisor ensures a consistent brand image in the eyes of third parties.

Maintaining a uniform appearance is therefore critical to brand identity. The franchisor could rely on trademark registration of a store name and/or mark to prohibit the use of identical or confusingly similar names and/or marks. However, this protection does not extend to situations where only the *appearance* of a store is copied, while the name and/or mark differs.

This raises the question: can a franchisor seek relief under the Unfair Competition Prevention Act, not by asserting trademark rights, but on the ground that imitation of a store's appearance (trade dress) constitutes unfair competition?

The Komeda case marked the first time in Japan that a court granted an injunction under the Unfair Competition Prevention Act.

(2) Case

The claimant, a corporation operating a coffee shop business under the name "*Komeda Coffee Shop*", runs its stores through a franchise system. Its outlets share a distinctive suburban-style exterior, including exterior cladding, interior structure, and interior décor, that is consistently applied across locations.

The respondent, also a corporation, operates a coffee shop business under the name "*Masaki Coffee*." The claimant sought a provisional disposition order to enjoin the respondent from using a store design that, in its entirety, closely resembled the appearance of Komeda Coffee shops.

The claimant argued that this store appearance constituted an "*indication of goods or business*" under Article 2, Paragraph 1, Item 1 of the Unfair Competition Prevention Act, and that the respondent's imitation amounted to unfair competition.

The similarity between the two establishments can be seen in contemporary media coverage⁶, while photographs of the respondent's store exterior and interior were made available as attachments to the Tokyo District Court's decision⁷. Readers may refer to these sources for visual confirmation of the case background.

(3) Requirements under Article 2, Paragraph 1, Item 1 of the Unfair Competition Prevention Act

Article 2, Paragraph 1, Item 1 of the Unfair Competition Prevention Act defines the following as acts of unfair competition, against which an injunction may be sought:

"the act of creating confusion with another person's goods or business, by using an indication of goods or business (meaning a name, trade name, trademark, mark, container or packaging of goods, or any other indication of a person's goods or business) that is identical or similar to another person's indication of goods or business which is well-known among consumers as belonging to that person, or by transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through telecommunications lines goods that use such indication."

To establish unfair competition under this provision, the following requirements must be satisfied:

1. **Indication of goods or business** – the subject matter qualifies as an "indication" within the meaning of the Act;
2. **Well-known status** – the indication is widely recognized among relevant consumers as identifying the goods or business;
3. **Similarity** – the disputed indication is identical or sufficiently similar to the well-known indication; and
4. **Likelihood of confusion** – there is a risk that consumers may confuse the two businesses or their goods.

(2) Court Ruling

The central issue in this case was whether the store exterior could qualify as an "*indication of ...business*" under Article 2, Paragraph 1, Item 1 of the Unfair Competition Prevention Act. Accordingly, the discussion below is limited to the court's ruling on requirement 1.

A. Criteria for Determining Whether Store Appearance Constitutes a Product Indication

With respect to whether a store's appearance qualifies as an "*indication of ... business*," the court reasoned as follows:

"While a store's exterior (including its exterior cladding, interior structure, and interior décor) is not typically selected for the purpose of identifying the business operator (i.e., as an indication of source of business), it may sometimes be chosen to embody the store image of the business operator. Furthermore, where (i) the store exterior objectively possesses distinctive features that set it apart from the exteriors of other similar stores, and (ii) that exterior has been used exclusively by a specific business operator (including its universal successor) over a continuous period, together with the extent of advertising of the business practices associated with that appearance, consumers may come to widely perceive

the business conducted at such stores as indicating the source of a specific business operator. In such cases, the store's appearance as a whole acquires the character of a business indication identifying that operator, and should therefore be deemed to fall within the 'indication of goods or business' set forth in Article 2, Paragraph 1, Items 1 and 2 of the Unfair Competition Prevention Act."

B. Application of the Ruling

The court first examined the requirement (i)—the distinctive character of the store's exterior—and recognized the distinctiveness of Komeda Coffee's suburban-style store design.

"Claimant Indication..., through the combination of the features ..., can be perceived as the unified exterior of a single store building, forming a consistent visual impression. The exterior resulting from this combination cannot be regarded as adopted solely for architectural functionality or utility. Rather, it may be said to have been selected to embody the image of a soft, relaxing space—similar to a home living room—as the standard suburban store image for Komeda Coffee Shops...."

The exterior composed of the combined features...—beginning with the prominent protruding bay-window brick wall extending from top to bottom beneath the gable roof—is thus appropriately distinctive. When combined with the interior structure and finishes featuring elements such as the semi-circular arched trim partition..., the distinctiveness is further enhanced. In comparison with the exteriors of other suburban coffee shop outlets shown in the documentary evidence..., the exterior with the aforementioned combined features objectively possesses prominent characteristics that distinguish it from other similar outlets.

Therefore, Claimant Indication...should be deemed to possess distinctive features that objectively set it apart from the exteriors of other comparable stores."

Furthermore, the court also recognized the requirement (ii) of public awareness. It found that Komeda Coffee had standardized the exterior appearance of its suburban stores during its nationwide expansion, that numerous stores with the same appearance had opened in the Kansai region where the respondent's store was located, and that Komeda Coffee had been widely promoted through television programs, newspapers, and magazines. These factors were cited as grounds for the court's determination.

Based on the foregoing, the court concluded that the exterior design of Komeda Coffee's suburban-style stores constituted an *"indication of ...business"* within the meaning of Article 2, Paragraph 1, Item 1 of the Unfair Competition Prevention Act.

(5) Practical Considerations

As noted earlier, this case marks the first time in Japan that a store's exterior was recognized as a product or service indication. However, disputes on this point had arisen previously. In the *Maido Ooki ni Meshiya Shokudo* case⁸, the Osaka District Court acknowledged, as a general principle, that a store exterior could constitute a product or service indication. The court stated:

"It is not impossible that, through long-term use of a distinctive store exterior, the entire store exterior may secondarily acquire the distinctiveness of a business indication identifying a specific business entity."

At the same time, the court emphasized:

"Even if the entire store exterior were recognized as a well-known business indication, when examining the similarity of the entire store exterior based on this premise, it is not sufficient merely to find similarities in the vague overall impression"

or atmosphere, or similarities in the concept behind the storefront. Rather, it must be interpreted that at least the distinctive or primary components that catch the consumer's eye must be identical or highly similar. Consequently, there must be an objective likelihood that consumers, specifically users of restaurants, would be misled into believing the business entities operating the stores are the same."

Applying this principle, the court ultimately denied that the storefront in question qualified as a product or service indication.

By contrast, in the *Komeda Coffee* case, the different outcome can be attributed to the fact that the petitioner successfully established both the distinctiveness and the well-known status of its store exterior, as contemplated in the above precedent.

Following the filing of this petition, Komeda Coffee obtained a three-dimensional trademark registration for its store exterior⁹. At first glance, one might assume that if such registration had been secured from the outset, the company could have prevented the use of similar store exteriors without resorting to the Unfair Competition Prevention Act. However, three-dimensional trademarks—such as store exteriors—generally lack inherent distinctiveness. Registration therefore requires acquired distinctiveness through use, meaning that an exceptionally high degree of consumer recognition must be demonstrated. In practice, the very evidentiary showing made in the unfair competition proceedings in this case was also necessary to obtain trademark protection. Accordingly, protection under the Act serves a vital role until such time as a store design can be registered as a three-dimensional trademark.

4. Summary

Japan's franchise market continues to grow each year, and ensuring its sound development requires careful adherence to the Antimonopoly Act and the Franchise Guidelines. The 2021 revision of the Guidelines provided clearer direction on practical issues arising in the field, including disclosure of projected earnings, pressure to maintain 24-hour operations, and considerations in cases of dominant store openings. For both franchisors and franchisees, compliance with these standards is essential.

The *Komeda Coffee* case marks a landmark ruling as the first in Japan to recognize that a store exterior may qualify as a "indication of ...business" under the Unfair Competition Prevention Act. This development offers franchisors an additional tool to protect their brand identity against imitators.

Taken together, these developments highlight the importance of operating franchise systems in a manner that not only complies with competition law but also actively safeguards the distinctive features that underpin brand value.

Footnote(s):

¹ Japan Franchise Association, *Franchise Chain Statistical Survey 2023 (April 2023 – March 2024)*, <https://www.jfa-fc.or.jp/folder/1/img/20241022175855.pdf>

² Japan Fair Trade Commission, *Antitrust Law Considerations Regarding Franchise Systems*, <https://www.jftc.go.jp/dk/guideline/unyoukijun/franchise.html>

³ Tokyo District Court Decision of December 19, 2016, https://www.courts.go.jp/app/files/hanrei_jp/545/086545_hanrei.pdf

⁴ Report on the Survey of Transactions between Convenience Store Headquarters and Franchisees", https://www.jftc.go.jp/houdou/pressrelease/2020/sep/kitori0902/200902_02.pdf
/span>

⁵ Fair Trade Commission, "Outline of the Revised Franchise Guidelines", <https://public-comment.e-gov.go.jp/pcm/download?seqNo=0000218485>

⁶ Nikkei Newspaper, December 28, 2016: "Warning Against 'Imitation Culture' in the Restaurant Industry: Komeda-Like Shops Ordered to Cease Operations", https://www.nikkei.com/article/DGXLASFD28H06_Y6A221C1000000/

⁷ Tokyo District Court Decision of December 19, 2016, Attachments 1 and 2, https://www.courts.go.jp/app/files/hanrei_jp/545/086545_option1.pdf;
https://www.courts.go.jp/app/files/hanrei_jp/545/086545_option2.pdf

⁸ Osaka District Court Decision of July 3, 2007,, https://www.courts.go.jp/app/files/hanrei_jp/889/034889_hanrei.pdf

⁹ Trademark Registration No. 5851632

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