



Korean Consumer Goods & Retail Newsletter (December 2023)

2023.12.28

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.

1. Regulatory trends for disposable products: Ban on paper cups withdrawn; extended grace period for plastic straws

In Korea, the increase of delivery foods, and consumption of coffee have been pointed out as the reasons for the increasing use of disposable products. To respond to the environmental damage caused by using the disposable products, the Ministry of Environment (MOE) has been expanding the scope of businesses and products subject to the disposable products regulations. For example, in 2019, the government banned the use of plastic bags in large stores and supermarkets.

In 2021, the Enforcement Rule of the Act on the Promotion of Saving and Recycling of Resources (the "Recycling Act") was amended to expand the list of disposable products, adding paper cups, plastic straws, stirring sticks, and plastic umbrella covers. The amended Enforcement Rule became effective on November 24, 2022, with a one-year grace period.

The key amendments include the ban on (i) paper cups, plastic straws, and stirring sticks in food service businesses or meal service establishments, (ii) plastic bags in general retail stores, (iii) disposable cheering goods in sports facilities, and (iv) plastic umbrella covers in large stores.

The most notable change was the ban on the use of the paper cups, plastic straws, and stirring sticks in the food service

businesses and meal service establishments, including restaurants and cafes. After the amended Enforcement Rules of the Recycling Act became effective, many restaurants and cafes started using paper straws instead of plastic straws.

However, on November 7, 2023, as the one-year grace period was coming to an end, the MOE announced the withdrawal of the ban on paper cups and the extension of the grace period for plastic straws with no specific deadline. The MOE explained that the decision was made to alleviate the hardships faced by small business owners.

Despite MOE's recent move, the Korean government maintains its disposable product reduction policy, and is preparing for the 2024 UN policy on plastic pollution. The government also mentioned it will announce further improvement measures considering the global trends as well as the market for replacement products. How the MOE's policy on disposable products will change remains to be seen.

2. Crackdown on unfair terms and conditions for online D2C sales

On November 29, 2023, the Korea Fair Trade Commission (KFTC) announced that it reviewed the terms and conditions of certain large brands that apply to a purchase from their online websites, and corrected 10 types of unfair terms and conditions. During the review period, the brands voluntarily corrected their terms and conditions. The KFTC reviewed and corrected the terms and conditions to protect the consumers' rights in the expanding direct-to-consumer (D2C) and resale markets. This shows that the KFTC is paying attention to the expansion of the D2C market for consumer products, and any related consumers harms and claims. The representative examples of unfair terms and conditions are as follows:

① Resale prohibition clause

- The KFTC found that a resale prohibition clause unduly restricts the consumers' right to dispose of a product they purchased and to contract with third parties, in violation of the Act on the Regulation of Terms and Conditions (the "Terms and Conditions Act").

Before correction	After correction
Cancel contracts or revoke memberships of a customer who purchases a product with the intent to resell it (effectively prohibits the resale of the product).	Delete the resale prohibition clause, or limit the application of the clause to the purchase using unjust method. Revise the terms and conditions so that the business operators may refuse the purchase by the merchants with the intention to resell (but not individual end user).

② Copyright infringement clause

- Provisions allowing business operators to use consumer-generated contents, such as product reviews, without consent which may otherwise constitute copyright infringement is an unfairly unfavorable term to the consumers,

violating the Terms and Conditions Act.

Before correction	After correction
The business operator has a perpetual right to the consumer-generated contents and is granted a broad license to use, revise, and edit such contents without the consent of the consumers (including the revision, sublicense, and assignment of the contents).	Must obtain consent for the use of the consumer-generated contents, or only use within the scope allowed by the regulations. Delete the clause allowing perpetual use of the contents.

③ Business operator exemption clause

- Clauses exempting business operators from liability, and making the consumers bear the risks of the business operators violate the Terms and Conditions Act.

Before correction	After correction
Business operators not liable for damages incurred by the consumers due to the business operators' or its affiliate's action, such as interruption of services for maintenance or inspection, or due to the delivery of a product to a third party.	Delete the relevant clause or revise so that the business operator is held liable for damages incurred by the consumers due to the negligence or intention of the business operator.

④ Purchase cancellation prohibition clause

- The purchase cancellation prohibition clause excluding the consumers' right to cancel a purchase within 7 days in violation of the consumer protection regulations violates the Terms and Conditions Act.

Before correction	After correction
A purchase can be cancelled within 30 minutes of the purchase. A pending order cannot be cancelled.	A purchase can be cancelled within 14 days from the purchase, depending on the status of the order/purchase/delivery.

3. Regulatory trends for meat alternatives

As the market for meat alternatives is growing fast in Korea, the Ministry of Food and Drug Safety (MFDS) is taking steps to establish regulatory frameworks for meat alternatives to ensure safety throughout the manufacturing and distribution processes.

Plant-based meat alternatives

Plant-based meat alternatives can be easily found in the supermarkets these days. However, the regulations were silent on whether the term “meat” can be used on the plant-based meat alternatives. To respond to such problem, the MFDS released the “Alternative Food Labeling Guideline” (the “Guideline”) on November 27, 2023.

The Guideline provides the standards on how to label alternative foods on its packaging or container. The Guideline requires indicating on the packaging or the container (i) that it is an “alternative food”, and (ii) whether any animal ingredients are included, and in case no animal ingredient is included, it is possible to add an indication highlighting such fact (e.g., “meat free”). It is also possible to label a product to be “plant-based” and indicate the name of the ingredient that replaced the animal ingredient (e.g., soy based), along with the name of the dish (e.g., plant-based *steak*), but the use of animal ingredient is prohibited (e.g., plant-based *beef*).

Although the Guideline is not legally binding, whether a label or advertising complied with the Guideline will be an important factor to be considered in case there is a false labeling and advertising issue in violation of the Act on Labeling and Advertising of Foods. Since the Guideline has been released, issues have been raised over the use of labels that do not comply with the Guideline for the products already produced, and whether the Guideline also applies to the registered marks. To address such confusion, the MFDS will hear the opinions from the interested parties and supplement the Guideline and further amend the relevant regulations.

Cultivated meat

Cultivated meat is also a type of meat alternative, which is animal protein grown in a lab from animal stem cells. However, under the current regulatory scheme, it is not possible to sell cultivated meat, as cultivated meat does not fall within the scope of food ingredients under the Food Standards and Specifications. On June 14, 2022, the MFDS announced the amendment to the Temporary Standards and Specifications for Foods, etc. (the “Temporary Standards”), including cultivated meat within the scope of food ingredients subject to temporary recognition. In October 2023, a Korean company sought the first approval from the MFDS for temporary recognition of their use of shrimp cell culture as a food ingredient.

Under the current Animal Protection act, it is prohibited to take cells from a living animal. In response to the request from the industry, the government also announced the plan for amendment of the Animal Protection Act in 2024, to provide a legal ground for effective production of cultivated meat.

For now, South Korea does not have a comprehensive regulatory scheme for meat alternatives. However, the government is making efforts to create a new food regulatory environment in response to the growing meat alternatives market and consumer needs. The industry players will have to keep an eye on the development of the regulatory environment and prepare accordingly.

4. Lower tax for domestically produced alcoholic beverages

The government will lower taxes for domestically produced alcoholic beverages, which will be applicable to products released from January 1, 2024. Under the current tax system, domestically produced liquors are taxed based on the total production costs as well as the sales and management expenses (i.e., distribution costs, and sales profits), while imported liquors are taxed solely based on the import declaration price. For such reason, it has been pointed out that the domestically produced liquors were subject to a higher tax burden.

	Tax Base	① Production Costs (Import Declaration Price)	② Distribution Costs	③ Sales Profits
Domestic Liquors	①+②+③			
Imported Liquors	①			

Starting next year, the tax base for domestically produced liquors will be calculated by subtracting the “standard sales ratio” from the “sales price at the production site”. The “sales prices at the production site” includes the sales and management expenses, and the “standard sales ratio” is an amount equal to the sales and management expenses, which will further be determined by the Standard Sales Ratio Review Committee at the National Tax Service (NTS).

Before Amendment	After Amendment
(sales price at the production site) × (tax rate)	$\{(\text{sales price at the production site}) - [(\text{sales price at the production site}) \times (\text{standard sales ratio})]\} \times (\text{tax rate})$

The introduction of the standard sales ratio policy is expected to reduce the domestic liquor prices.

5. National Tax Service exploring possible expansion of online liquor sales

In Korea, only traditional Korean liquor sales by its manufacturers or by the direct dealing stores is permitted via e-commerce channels. For such reason, there have been debates over whether to expand the scope of alcohol beverages for online sales and delivery.

In November, the National Tax Service (NTS) commissioned the Korea Institute of Public Finance to conduct research on online liquor sales and related regulations in foreign countries. According to the NTS, the purpose of the study is to review regulations in the countries where online liquor sales is permitted and explore the possibility of improving the regulatory environment in Korea.

The research will be completed by the end of this year, and is expected to become an important consideration for the government in determining the direction of the online liquor sales policy. However, there are disagreements even

among the different government agencies on the complete easing of online liquor sales, and this may cause some delays in implementation. The NTS stated that it remains neutral on this issue and will coordinate with the relevant government agencies, industry players, and public opinion.

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