



Initial Assessment of the Korean NCP for the OECD Guidelines for Multinational Enterprises

Complaint regarding Häagen-Dazs Korea and General Mills Korea

April 13, 2021

1. Introduction

The OECD Guidelines for Multinational Enterprises (hereinafter “the Guidelines”) are a set of voluntary and non-binding recommendations aimed at minimizing adverse impacts from the activities of multinational enterprises and strengthening their responsible business conduct.

The government of the Republic of Korea (ROK) established and is operating the Korean National Contact Point (hereinafter “the KNCP”) to promote the Guidelines and to handle specific instances regarding the activities of multinational enterprises which are based or operating in the ROK.

The KNCP offers good offices for parties to resolve issues raised in specific instances in accordance with the Implementation Procedures of the Guidelines. These procedures are to be used only upon agreement of the parties and their commitment to participate in good faith during the procedures.

The decision of a multinational enterprise to participate in good offices does not imply that its activities do not comply with the Guidelines. No parties participating in good offices are compelled to make concessions, waive their legal rights or violate the law.

2. Progress of the Specific Instance

The KNCP received a specific instance submitted by an individual with the surname Lee (hereinafter “the complainant”) against Häagen-Dazs Korea and General Mills Korea (hereinafter “the respondents”) on October 6, 2020.

The respondents submitted written responses to the KNCP on December 1, 2020 and the KNCP forwarded them to the complainant. The complainant presented additional submissions to the KNCP on December 8, 2020 which were passed on to the respondents. In response, the

respondents handed in additional submissions to the KNCP on December 28, 2020 and the KNCP delivered them to the complainant. Moreover, the respondents provided occupational safety and health training reports and labor-management council meeting minutes on January 21, 2021, followed by materials regarding their consumer complaint handling process and an evaluation report from the Busan Customs Office on February 26, 2021 to the KNCP.

3. Substance of the Specific Instance

- The respondents failed to print an expiration date on products only in Korea by changing the manufacturing process with the intention of not indicating the expiration date. (II. General Policies, IV. Human Rights, VI. Environment, VIII. Consumer Interests)
- Due to poor sales, the respondents sold and distributed inventory products after intentionally removing the expiration date in 1998 and in 2004, and sold products past their expiration date at convenience stores in Suncheon and Yeosu, South Jeolla Province. (II. General Policies, IV. Human Rights, VI. Environment, VIII. Consumer Interests)
- The respondents were negligent in addressing consumer complaints such as foreign substances in Häagen-Dazs Korea and General Mills Korea products and covering up complaints by offering vouchers or compensation, resulting in harm to consumers. (II. General Policies, IV. Human Rights, VI. Environment, VIII. Consumer Interests)
- The respondents undertook unfair disciplinary actions against the complainant, for example, by abusing the scope of joining trade unions which is a discriminatory measure that violates the General Policies, Employment and Industrial Relations chapters in the Guidelines. (II. General Policies, V. Employment and Industrial Relations)
- The respondents gave overlapping tasks from both Häagen-Dazs Korea and General Mills Korea to workers without explaining the relationship between the two businesses, failed to reveal details regarding the composition of the board of directors and evaluated workers considering the back margin while reducing costs via internal trading, which are violations of the Disclosure chapter of the Guidelines. (III. Disclosure)

- The respondents did not offer the required occupational safety and health training to workers and did not hold labor-management council meetings in accordance with the Act on the Promotion of Employees' Participation and Cooperation for all workers including non-union workers, and therefore breached the Environment chapter of the Guidelines. (VI. Environment)

4. Respondent's position

- Ice creams distributed in Korea are required to print the manufactured date, but not the expiration date.
- The alleged incident of the removal of the expiration date in 1998 cannot be fact-checked as it occurred more than 20 years ago, and the operator of the convenience stores selling expired products in the 2004 case was punished for his illegal act.
- There are internal measures in place to address consumer complaints or any sign of abnormalities in the manufacturing process in a prompt and fundamental manner, which have been implemented in accordance with the law. However, it is inappropriate to provide internal information as evidence without any legal basis.
- The complainant, who was formerly responsible for sales in the management of the respondents' agencies, was laid off according to due process for using verbal violence, threats, and receiving inappropriate gifts and entertainment services from the owners of the agencies that he managed. The Local Labor Relations Commission, National Labor Relations Commission, Seoul Administrative Court, Seoul High Court, and Supreme Court of Korea ruled that the dismissal of the complainant was legitimate.
- The list of directors of the board of directors is available to the public as they have been registered. It is also difficult to understand the complainant's claim that he does not know his affiliation as all workers sign a contract with the company when they are hired, and they can check their affiliation through the company's workday system which they are free to access at any time.
- The respondents use normal prices (the price applied or determined to be applicable in customary transactions among entities excluding foreign persons specially concerned) in trade with affiliates, and in 2014 the Busan Customs Office determined at a company evaluation that there was no issue with the adequacy of the trading price of the respondents. However, it is inappropriate to provide internal information as evidence without any legal basis.

- The respondents held both occupational safety and health training and labor-management council meetings, and are actively engaged in labor-management dialogue which is held on a monthly basis.

5. KNCP's Initial Assessment

In compliance with the Procedural Guidance in the Guidelines, the NCP makes an initial assessment once a specific instance is received. The initial assessment is the process to determine whether the issue raised is bona fide and relevant to the implementation of the Guidelines. In making an initial assessment, the following six factors are taken into account.

- the identity of the party concerned and its interest in the matter
- whether the issue is material and substantiated
- whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance.
- the relevance of applicable law and procedures, including court rulings
- how similar issues have been, or are being, treated in other domestic or international proceedings
- whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

Accordingly, the KNCP considered these factors based on the documents submitted by the parties.

- 1) the identity of the party concerned and its interest in the matter.

Häagen-Dazs Korea, one of the respondents, is a multinational enterprise that is engaged in manufacturing ice-creams and other ice-based food. Häagen-Dazs Korea is a subsidiary of U.S. General Mills which manufactures food and is based in Minnesota, U.S.A., with the Netherlands' Haagen-Daz Nederland B.V. holding a 50% stake.

General Mills Korea, the other respondent, is a multinational enterprise, a wholesale manufacturer of processed food and a subsidiary of U.S. General Mills, with the Netherlands' General Mills Holdings B.V. holding a 100% stake.

The complainant is identified as a former worker of Häagen-Dazs Korea and has an interest in this specific instance.

Moreover, as workers from Häagen-Dazs Korea and General Mills Korea carry out overlapping tasks for both businesses when necessary and the two businesses have an ex-post expenses settlement process, the complainant and General Mills Korea have an interest in this specific instance.

- 2) whether the issue is material and substantiated

The complainant claims the respondents violated chapters II. General Policies, III. Disclosure, IV. Human Rights, V. Employment and Industrial Relations, VI. Environment and VIII. Consumer Interests of the Guidelines, and the respondents submitted their documents in response.

Regarding the complainant's claim with respect to the disclosure of information and the working environment, it appears that the complainant has full access to the details of the board of directors and worker affiliation via the court registration and the employment contract, among others. Furthermore, regarding trade between the affiliations, it was determined that there is no issue with the trading price based on the evaluation made by the customs office. In addition, considering the documents submitted by the respondents, it is difficult to substantiate the complainant's claim that occupational safety and health training and labor-management council meetings were not held.

- 3) whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance.

There is a link between the enterprise's activities and the issues raised in the specific instance as the labeling of the ice cream's expiration date, the employee's dismissal and the disclosure of information, among others, are issues relevant to the normal business activities of the respondents.

- 4) the relevance of applicable law and procedures, including court rulings.

Regarding the complainant's claim that the respondents failed to print the expiration date on the products only in Korea by changing the manufacturing process with the intention of not indicating the expiration date, the 'Act on Labeling and Advertising of Foods' and 'Labeling Standards for Foods, etc.' (Notification of the Ministry of Food and Drug Safety) are applicable. According to the relevant laws and regulations, it is not necessary to print the expiration date as they obligate labeling only the "manufactured date".

Regarding the claim of unfair dismissal of the complainant, the complainant filed a suit against the respondent to annul the dismissal, which had been heard at the Local Labor Relations Commission, National Labor Relations Commission, Seoul Administrative Court, Seoul High Court, and the Supreme Court of Korea. The courts had ruled that the dismissal of the complainant by the respondents was fair and lawful.

- 5) how similar issues have been, or are being, treated in other domestic or international proceedings

Similar cases in other domestic or international proceedings regarding the labeling of expiration dates were not found.

- 6) whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

The purpose of the NCP is to provide a place for a dialogue and support the parties in reaching a solution. In this specific instance, however, considering that a ruling has been made by the courts in Korea on the dismissal of the complainant, the respondent abided by the laws and regulations regarding the printing of expiration dates on its products and the information requested by the

complainant is already disclosed, it does not merit further consideration for the purpose and effectiveness of the Guidelines.

6. Conclusion

Based on the documents submitted by both the complainant and respondents, the KNCP has determined that the issues raised do not merit further examination or any additional process including mediation. However, the KNCP recommends that the respondents provide further clarification to the complainant in good faith. The KNCP hereby concludes the procedure of this case.

April 13, 2021
Korea National Contact Point (KNCP)