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July 6, 2022

Prepared for: Board of Directors, FOOD & LIFE COMPANIES LTD.

Investigation Report

Audit & Supervisory Committee

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Contents

Part 1: Overview of the Investigation	4
1. Purpose of the Investigation	4
2. Duration of the Investigation	4
3. Methods Employed in the Investigation and Preparation of the Report	4
Part 2: Facts of the Incident	5
1. Introduction	5
2. Regular Flow When Sushiro Runs a Campaign (Sales Promotion).....	5
(1) Campaign planning and decision-making.....	5
(2) Calculation and procurement of planned quantities.....	6
(3) Preparation of advertisements.....	7
3. Facts Pertaining to Campaign (1) and Campaign (2).....	7
(1) Campaign details and decisions to implement the campaigns	7
(2) Calculation of planned quantities	7
(3) Identification of possible shortages and sales adjustments after the start of the campaigns	8
(4) Details and running periods of advertisements pertaining to Campaign (1) and Campaign (2) ...	9
(5) Response to implementation of the Sales Adjustments	9
(6) Complaints from customers.....	10
4. Facts Pertaining to Campaign (3)	11
(1) Campaign details and decisions to implement the campaign	11
(2) Calculation of planned quantities	11
(3) Running of the “forbidden 90 yen sale”	11
(4) Shortages immediately after the start of the campaign	12
(5) Stores that did not serve Dish (3) on the start date of Campaign (3).....	12
(6) Advertising related to Campaign (3) and handling of notices associated with shortages of Dish (3)	13
(7) Complaints from customers.....	14
Part 3: Cause Analysis	14
1. Introduction	14
2. Issues with Predicting Sales Quantities	14
(1) Setting assumptions when making predictions	14
(2) Relationship with the 90 yen sale	15
(3) Lack of ongoing comparison and analysis of differences between predicted and actual sales ...	16
3. Failure to Monitor the Status of Shortages, etc. or Revise Campaign Details after the Start of Campaigns.....	16
(1) Failure to monitor the status of shortages, etc. or share information in a timely fashion	16
(2) De facto barriers to making changes to campaign details.....	17
4. Failures to Make Corrections or Other Changes to Advertising due to Changes to Campaign Details.....	17
(1) Inadequate response related to advertising taken by F&LC and Sushiro	17
(2) Failure to have a system in place to correct or suspend advertisements	18
(3) Loss of substance to Advertising Representation Management Regulations	18
5. Poor Understanding of the Act (Bait-and-Switch Advertising).....	19
6. Inadequate Consumer Perspective	20

7. Possibility of a Corporate Culture Discouraging the Offering of Opinions	20
8. Possibility of Personnel Shortages at Head Office	21
Part 4: Measures to Prevent Recurrence	21
1. Introduction	21
2. Planning of Campaign Details	22
(1) Revisions to methods for calculating planned sales quantities and verification after the fact	22
(2) Development of campaign details and advertisements from the perspective of consumers	22
(3) Eliminating and reviewing events that have a significant impact on a campaign after it has been formulated	22
(4) Reconfirming the overall business process from campaign planning and proposal through to implementation in stores.....	23
3. Management System for Handling Matters After Campaign Launch.....	23
(1) Monitoring of sales.....	23
(2) Disclosing the status of shortages.....	24
(3) Adjustments to logistics, etc. between stores	24
(4) Considering changes to advertising content in response to modified campaign details, and clarifying responsibility and authority	24
4. Development of Internal Systems.....	24
(1) Ensuring the thorough operation of the Advertising Representation Management Regulations....	24
(2) Appropriate allocation of personnel	25
(3) Re-acknowledgement and utilization of the internal reporting system.....	26
5. Implementing Training and Awareness-Raising, and Enhancing Compliance Awareness	26
(1) Conducting thorough training on the Act	26
(2) Enhancing compliance awareness	27
Part 5: Conclusion.....	28

Part 1: Overview of the Investigation

1. Purpose of the Investigation

The FOOD & LIFE COMPANIES Group (“the F&LC Group,” hereafter) maintains an organizational structure in which operations other than the sales division are consolidated under FOOD & LIFE COMPANIES LTD. (“F&LC,” hereafter) with operating companies such as Akindo Sushiro Co., Ltd. (“**Sushiro**,” hereafter) classified as subsidiaries. On June 9, 2022, the Consumer Affairs Agency issued an administrative order pursuant to Paragraph 1, Article 7 of the Act Against Unjustifiable Premiums and Misleading Representations (“**the Act**,” hereafter) with regard to advertising displays that were part of a campaign run by Sushiro.

We are fully aware that F&LC’s executive officers are diligently investigating the incident for which the administrative order mentioned above was issued (“**the Incident**,” hereafter) and examining measures to prevent a recurrence in the F&LC Group. However, in light of the fact that the Incident is a serious matter that relates to the foundation of the F&LC Group’s business and has attracted sharp criticism from the public, acting in our capacity as the Audit & Supervisory Committee we conducted an investigation (“**the Investigation**,” hereafter) by commissioning a joint investigation with third-party outside attorneys, conducting our own analysis of the cause of the Incident, and submitting recommendations on measures to prevent recurrence to the Board of Directors.

2. Duration of the Investigation

The Investigation ran from June 17, 2022 to July 5, 2022.

3. Methods Employed in the Investigation and Preparation of the Report

For the purpose of the Investigation, the Audit & Supervisory Committee analyzed and examined the internal regulations, minutes and various other documents it had requested from related departments or otherwise viewed, and also conducted interviews with officers and employees when the need arose.

Note that in conducting the Investigation, the Audit & Supervisory Committee appointed the following four outside attorneys possessing no vested interest in F&LC or Sushiro as joint investigators, and had them conduct the Investigation and prepare this report together with the Audit & Supervisory Committee.

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Part 2: Facts of the Incident

1. Introduction

In the Incident, Sushiro was issued an administrative order by the Consumer Affairs Agency on June 9, 2022 for having made false representations applicable to item 1 or item 4 of the “Misleading Representations on Bait Advertising” (FTC Notification No. 17 of April 28, 1993) pursuant to the provisions of item 3, Article 5 of the Act as prohibited by the provisions of said article, with respect to transactions for the following dishes supplied at each Sushiro store in each of the following campaigns run by Sushiro.

Each campaign pertaining to the Incident	
Campaign (1)	Campaign titled <i>Sekai-no-umai-mon-Matsuri</i> (“World’s Delicious Food Festival”)
Campaign (2)	Campaign titled <i>Takumi-no-Hitosara Dokuso / Toyama Sushijin-Koan Shinmono-Uni Sushijin-Ryu Sanshu-Mori</i> (“Plate of Master Chef Original / Toyama Sushijin Creation: Newly Arrived Sea Urchin, Sushijin-Style Plate of Three Types”)
Campaign (3)	Campaign titled <i>Fuyu-no-Daikansha-sai Fuyu-no-umai-mon</i> (“Winter Big Thank-you Campaign - Delicious Foods of Winter”)
Each dish pertaining to the Incident	
Dish (1)	Dish titled <i>Shinmono! Noko-Uni-Tsutsumi</i> (“New Arrival! Rich Sea Urchin Wrap”), 100 yen (110 yen including tax)
Dish (2)	Dish titled <i>Toyama-Sushijin-Koan Shinmono-Uni Sushijin-ryu Sanshu-Mori</i> (“Toyama Sushijin Creation: Newly Arrived Sea Urchin, Sushijin-Style Plate of Three Types”), 480 yen (528 yen including tax)
Dish (3)	Dish titled <i>Fuyu-no-Mikaku! Goka-Kani-Zukushi</i> (“Taste of Winter! Extravagant Assortment of Crab”), 780 yen (858 yen including tax)

Based on the premise that there were no errors in each of the facts found by the Consumer Affairs Agency in its administrative order, F&LC has published “Apology and Notice Regarding Administrative Order Pertaining to Some Advertising Representations for Campaigns at Domestic Sushiro Outlets” dated June 9, 2022 to the F&LC website, and has publicly announced information about the cause of the Incident, future initiatives, and so on. In the Investigation it was also verified that there were no errors in these facts. For their parts the Audit & Supervisory Committee which comprises independent outside directors and the team of independent outside attorneys both conducted analyses of the cause of the Incident independently, determined that it would be necessary to issue recommendations on measures to prevent recurrences, and conducted investigations into additional facts to the extent necessary.

The following section provides an overview of the regular workflow when Sushiro runs a campaign (sales promotion) under item 2., followed by descriptions of the facts that were verified regarding each of the campaigns involved in the Incident under items 3. and 4.

2. Regular Flow When Sushiro Runs a Campaign (Sales Promotion)

(1) Campaign planning and decision-making

In general, Sushiro currently runs two campaigns a month, and individual campaigns are planned by the Sales Promotion Planning Section of the Sushiro Sales Planning Department. Then, at a meeting known as

an “Integrated Three-Way Meeting”¹ that includes the F&LC Product Department which is responsible for procurement and the F&LC Advertising Department which is responsible for advertising in addition to the Sushiro Sales Planning Department, discussion takes place about the specific details of the campaign, the products that will make up the campaign, how long the campaign will run for, and other matters. Decisions made at the Integrated Three-Way Meeting are placed on the agenda of the Sushiro Management Council, and the Sushiro Board of Directors makes resolutions on the implementation of campaigns by around three months before campaigns are scheduled to run.

Additionally, before and after one of the aforementioned resolutions is made at Sushiro Board of Directors meetings, at a meeting known as a “Direction Meeting” the Sales Promotion Planning Section of the Sushiro Sales Planning Department provides instructions and shares information regarding the content of a campaign, details of the products involved and the direction of the campaign including its advertising concept to the Sales Promotion Section of the F&LC Advertising Department, which is responsible for the campaign’s advertising, and outside advertising agencies.

In addition, separate from the Direction Meeting, a “Naming Meeting” that comprises the F&LC Product Department, Advertising Department, Sushiro Sales Planning Department as well as the F&LC Legal Office (which was known as the Legal Section, General Affairs Department at the time of the Incident) is held to make decisions regarding the naming of campaign products and general points about how to appeal to customers.

Note that at the time that each of the campaigns pertaining to the Incident was planned, the only “Integrated Three-Way Meeting” the F&LC Legal Office attended was the “Integrated Three-Way Weekly” held once a week, and did not attend the “Department Heads Integrated Three-Way Meeting” held twice a week or the “Direction Meeting.”

(2) Calculation and procurement of planned quantities

To determine the quantities of ingredients to be procured for a campaign once a resolution approving the running of a campaign has been made by the Sushiro Board of Directors, the Sales Promotion Planning Section of the Sushiro Sales Planning Department calculates the planned product quantities (quantities expected to be sold), and then based on the results of those calculations, determines the quantities of the ingredients to be procured and sends a request to the F&LC Product Department for their procurement.

These planned quantities are traditionally calculated using dedicated Excel spreadsheets with sales budget for individual campaigns and past sales results for the same products (or similar ones if the same products do not exist)² as base data. However, as a part of measures to slim down head office functions pursued by F&LC and Sushiro around April 2021, an AI system that calculates planned quantities was introduced (note that since before that same month, this AI system was operated on a trial basis in stages).

Incidentally, for the planned quantities calculated using the dedicated Excel spreadsheet, traditionally a person experienced with purchasing would make corrections based on their gut feelings informed by experience in a process known as “additional considerations,” and particularly for campaign products, these

¹ According to interviews conducted during the Investigation, strictly speaking there exist two kinds of “Integrated Three-Way Meeting,” namely the “Department Heads Integrated Three-Way Meeting” held twice a week and attended by department and section heads from the F&LC Product Department, F&LC Communication Planning and Promotion Department and Sushiro Sales and Planning Department, and the “Integrated Three-Way Weekly” held once a week and attended by officers and the F&LC Legal Affairs Office in addition to the aforementioned members. However in this report, the former meeting body is being referred to.

² According to interviews conducted during the Investigation, out of the products that had been sold in the past, the Sales Promotion Planning Section of the Sushiro Sales and Planning Department would select similar candidate products from perspectives such as sales price, type of fish, number of slices and size of each piece, and after ultimately obtaining approval from the Sushiro President and Representative Director, would select similar products.

adjustments would often err conservatively on the more plentiful side to avoid shortages part-way through a campaign. While some of those interviewed said that they avoiding using these “additional considerations” in general after the introduction of the AI system since it may have defeated its purpose, actually as detailed in section 3. (2) below, at least when calculating the planned quantities for Dish (1) pertaining to the Incident, “additional considerations” increasing the quantities were incorporated.³

Also note that as mentioned in section (3) below, as the regular workflow dictated that specifically which campaign products should be featured in television commercials should be finalized after the names of the campaign products have been determined in a Naming Meeting, at the stage that planned quantities are being calculated, the ability of the television commercials to appeal to customers is not taken into account, in a past approach that continues to this day.

(3) Preparation of advertisements

After the product names of campaign products have been determined in the Naming Meeting, Sales Promotion Section of the F&LC Advertising Department works with outside contracted firms to plan and produce television commercials and advertisements to be placed on websites, social media and elsewhere. Also note that aspects such as the content of television commercials and their designs are finalized between around a month and a month and a half before the month in which a campaign starts.

Additionally, the advertisements planned and produced by this section are reviewed by the Sushiro Sales Planning Department, the F&LC Product Department, the F&LC Corporate Communication Department, and the F&LC Legal Office, and after being approved by each of these departments, are subject to a final decision by the F&LC Advertising Department.

On the other hand, at the time each of the campaigns pertaining to the Incident was planned, when changes or corrections were made to an advertisement once it had been finalized, no process had been established for changes, such as having the changes reviewed by the F&LC Legal Office.

3. Facts Pertaining to Campaign (1) and Campaign (2)

(1) Campaign details and decisions to implement the campaigns

The Sales Promotion Planning Section of the Sushiro Sales Planning Department planned Campaign 1, whose applicable product was Dish (1), and Campaign (2), whose applicable product was Dish (2) (both of which are campaigns related to *uni*—sea urchin), and after both campaigns were decided on by the Integrated Three-Way Meeting and Sushiro Management Council, implementation of the campaigns were approved by resolutions of the Sushiro Board of Directors in June 2021. It was also decided that the campaign running periods would be from September 8, 2021 to September 20, 2021 for Campaign (1), and from September 8, 2021 to October 3, 2021 for Campaign (2).

(2) Calculation of planned quantities

Around May 2021, the Sales Promotion Planning Section of the Sushiro Sales Planning Department used the AI system that predicts sales quantities in campaigns (albeit a system that was in the trial operation stages) to calculate planned quantities for Dish (1) and Dish (2), and based on those planned quantities, the procurement quantities of the *uni* to be used for Dish (1) and Dish (2) were determined to be a total of 50,000 kilograms (50 tons). Also note that the type of *uni* used in Dish (1) and Dish (2) is the same, making it possible to flexibly use the *uni* for either dish.

Additionally, as mentioned in section 2. (2) above, when calculating planned quantities the sales results of

³ As the AI system requires time to be trained on the data, some of those interviewed suggested that it would take a period of around three years before accurate calculations could be made using the AI system.

the same product in the past or the sales results of similar products if the same product does not exist were used as a base data metric. For Dish (1), since the same product had been sold in the past, past sales results for the product were used as base data, but for Dish (2), since there were no sales results for the same product in the past, data on the product *meibutsu-tare-de-taberu-sushi-yon-shu* (“four varieties of sushi enjoyed with specialty sauce”; a product sold in a campaign run in April 2021), which uses the same high-grade *nori* seaweed as Dish (2) and has a similar appearance to it, was used.

Also note that at least for the planned quantity of Dish (1), after calculations were made using the AI system, “additional considerations” to set a quantity conservatively on the larger side were made. As to the specific nature of these “additional considerations,” since products that use *uni* are one of the products that has a strong ability to attract customers enough to run as a standalone campaign, a much higher quantity was added on to the planned quantity calculated by the AI system.

Several of the people we interviewed noted that “the prediction accuracy of the AI system at the time was not very high” with regard to the calculation of planned quantities, and in fact as is mentioned in section (3) below, even though the planned quantity was topped up considerably through the “additional considerations” process, an even more significant discrepancy emerged between the planned quantity and the quantity actually sold.

(3) Identification of possible shortages and sales adjustments after the start of the campaigns

a. Discovery of possible shortages of Dish (1) and Dish (2)

When the Sales Promotion Planning Section of the Sushiro Sales Planning Department checked the actual sales data for September 8, 2021, the launch date of both Campaign (1) and Campaign (2), on the following day, in order to consider whether additional procurement of ingredients would be needed, they found that actual sales quantities on the launch date for both Dish (1) and Dish (2) had significantly surpassed planned quantities, that sales had exceeded past record figures by a large margin, and that it was highly likely that shortages would occur during the duration of the campaigns.

In response, after consulting with the F&LC Product Department which is responsible for procurement, the Sales Promotion Planning Section of the Sushiro Sales Planning Department decided to bring forward deliveries of *uni* that were scheduled to be sold for a campaign in December 2021. However, since it was possible that the additional deliveries of *uni* would not make it in time due to customs clearance procedures in which case there may have been shortages of Dish (1) and Dish (2), on September 13, 2021⁴, as mentioned in section b., the decision was made to engage in sales adjustments for Dish (1) and Dish (2) (“**the Sales Adjustments,**” hereafter).

b. Implementation of the Sales Adjustments

Details of the Sales Adjustments are as follows.

	Weekdays (September 14 to September 17)	Saturday, Sunday and Public Holiday (September 18 to September 20)
Dish (1)	Sales suspended	Sales offered
Dish (2)	Sales offered	Sales suspended

⁴ This decision was made five days after the campaign start date. According to interviews conducted as part of the Investigation, it was possible that a sufficient quantity of *uni* could be secured to provide Dish (1) and Dish (2) depending on the situation with customs clearance, and as a result of efforts to grasp this situation, the decision to implement sales adjustments was made at this time.

At this point, regarding the reason for implementing the Sales Adjustment detailed above, according to the written statement dated May 25, 2022 that Sushiro submitted to the Consumer Affairs Agency, Sushiro stated that “we made this decision because we thought that it would benefit many customers rather than ourselves, out of a desire to allow the large number of customers we expected to visit our stores over the long weekend to taste our *uni*.” However, the details of the Sales Adjustments were to continue using the *uni* which could be used flexibly between the two dishes while suspending sales of the lower unit price Dish (1) and only sell the higher unit price Dish (2) on weekdays, and to only sell the lower unit price Dish (1) over the long weekend. In interviews conducted during the Investigation, although one person interviewed said that “as more customers visit during long weekends, we wanted to avoid disappointing the customers who visited in the hope of enjoying *uni*,” another person interviewed said that “when I was interviewed by the Fair Trade Commission, I answered honestly that even though we implemented the Sales Adjustments to prevent a spate of complaints from customers over the long weekend⁵ and due to the need to increase sales per customer on weekdays, that decision was wrong.”

(4) Details and running periods of advertisements pertaining to Campaign (1) and Campaign (2)

After the Sales Promotion Section of the F&LC Advertising Department had planned and produced the advertisements related to the running of Campaign (1) and Campaign (2), Sushiro ran advertisements for Dish (1) and Dish (2). The advertising media and running periods that were identified in the administrative order are as follows.

Campaign (1)	
Period from September 14, 2021 to September 20, 2021	Sushiro website
Period from September 8, 2021 to September 20, 2021	Television commercials
Campaign (2)	
Period from September 8, 2021 to September 17, 2021	Sushiro website

(5) Response to implementation of the Sales Adjustments

a. Response at each store

In response to the implementation of the Sales Adjustments, posters indicating that sales of Dish (1) or Dish (2) were suspended, for example posters stating “Please note in advance that due to overwhelming popularity we are **awaiting additional shipments** of Rich Sea Urchin Wrap and cannot serve it at this time. We apologize for the inconvenience” were created for Dish (1). On September 13, 2021, multiple of such posters were put in places visible to customers such as the windbreak room, waiting area and around the cash register of each store. To coincide with the Sales Adjustments, over the long weekend these posters were replaced with posters indicating that sales of Dish (2) had been suspended. Also note that as mentioned in section (2) above, the *uni* used in Dish (1) and Dish (2) was interchangeable. For example, even on a weekday during the Sales Adjustments pertaining to the Incident, it could have been possible to utilize the *uni* used in Dish (2) to serve Dish (1). Therefore, the expression of “awaiting additional shipments” used in the aforementioned posters was a representation contrary to the facts. According to interviews conducted during the Investigation, the reason that these kinds of expressions were adopted in the posters was because sales had never been adjusted in a method similar to the Sales Adjustments in the past, and the Sales Promotion Planning Section of the Sushiro Sales Planning Department used boilerplate text to create the posters.

⁵ According to the interviews conducted in the Investigation, the number of customers that visit over weekends and public holidays is around three times as much as on weekdays.

In addition, although it was mentioned that the vertical banners advertising Campaign (1) and Campaign (2) installed at each store were put away in response to the implementation of the Sales Adjustments, among the complaints received from customers regarding Campaign (1) as mentioned later in section (6) were complaints such as “even though I entered the store after seeing the banner for sea urchin wrap, it was sold out” and “even though a banner advertising sea urchin wrap was on display, they were out of it and I felt as though I had been cheated,” suggesting that ultimately the action regarding the vertical banners was not implemented thoroughly at each store.

b. Response on the Sushiro website

On September 14, 2021, the Sales Promotion Planning Section of the Sushiro Sales Planning Department asked the Sales Promotion Section of the F&LC Advertising Department to add comments to the Sushiro website in connection with the implementation of the Sales Adjustments for the advertisements regarding Dish (1) on the website, and in response, the Sales Promotion Section of the F&LC Advertising Department added the statement that “Due to overwhelming popularity, this dish may be sold out at some stores” to the image portion of Dish (1) in the poster images related to Campaign (1) published on the website.

However, even though advertisements related to Campaign (2) on the Sushiro website were taken off the website on September 17, 2021, the day before sales of Dish (2) were suspended, the Sales Promotion Section of the F&LC Advertising Department did not actively advertise on the Sushiro website that sales of Dish (2) would be suspended over the long weekend (September 18, 2021 to September 20, 2021).

c. Response relating to television commercials

The Sales Promotion Section of the F&LC Advertising Department, which was responsible for planning and creating television commercials, despite being aware of the implementation of the Sales Adjustments,⁶ continued with the airing of television commercials related to Campaign (1) as scheduled during the period during which sales of Dish (1) were suspended due to the Sales Adjustments.

Regarding this point, many of those interviewed in the Investigation said that “it never occurred to us that the television commercials should be cancelled due to the Sales Adjustments.” In addition, one of those interviewed mentioned that “in a campaign we ran in the past, when there was a shortage of a campaign products and I suggested to a senior staff member that the television commercials be suspended, I was reprimanded with the explanation that before cancelling a television commercial in which a large amount of money had been invested, other available measures should be implemented first, so there was a culture that we first needed to think about what other measures we could take before doing anything about television commercials.” According to the senior staff member who fielded this recommendation, “even though I spoke to this person to the effect that they should think about other available measures before cancelling television commercials, the intent of that statement did not extend to not allowing television commercials to be cancelled when necessary.”

(6) Complaints from customers

Complaints from customers received by each Sushiro store and the head office are collated by the F&LC Corporate Communication Department. The number of complaints received is shared with officers as a weekly report over email, and is also reported on a monthly basis at Sushiro Management Council meetings.

⁶ The recipients of email sent by the Sales Promotion Planning Section of the Sushiro Sales and Planning Department on September 13, 2021 to each of the Sushiro sales departments responsible for each store instructing them to implement the Sales Adjustments also included the F&LC Communication Planning and Promotion Department.

However, a spate of complaints were fielded with regard to Dish (1) particularly from September 14, 2021 to September 17, 2021 when sales of Dish (1) were suspended, and included complaints along the lines of “I am unhappy that the sea urchin wrap is always sold out even though I visited the store for that purpose,” “isn’t selling the assortment of three items despite saying the sea urchin wrap is *awaiting additional shipments* bait-and-switch advertising?” “you should end the sales technique of serving sea urchin as part of the assortment of three items while refusing to sell it as a single item” and “if you are only going to sell the sea urchin wrap on the weekend, I want you to say that in the commercial as well.” Among those who were interviewed, some stated that “I think I heard talk about complaints being received about the *uni* when the Sales Adjustments related to the Incident were being implemented.” It was also confirmed that at its meeting on September 22, 2021, which was during the period of Campaign (2), the Sushiro Management Council was informed by the Sushiro Sales Planning Department that the majority of complaints received during Campaign (1) and Campaign (2) were about the non-sale of *uni*.

4. Facts Pertaining to Campaign (3)

(1) Campaign details and decisions to implement the campaign

Through the Sales Promotion Planning Section of the Sales Planning Department, Sushiro planned Campaign (3), which involved Dish (3) as one of the campaign products. After decisions at the Integrated Three-Way Meeting and Sushiro Management Council, the Sushiro Board of Directors approved the running of Campaign (3) by resolution in August 2021. It was also decided that the campaign would run from November 26, 2021 to December 12, 2021.

(2) Calculation of planned quantities

Around July 2021, the Sales Promotion Planning Section of the Sushiro Sales Planning Department used the AI system that predicts sales quantities during campaigns to determine planned quantities for Dish (3) of 220,000 plates, and asked the F&LC Product Department to procure each of the necessary ingredients based on this prediction.

Note that in calculating the planned quantities for Dish (3), since there were no results for sales of the same product in the past, data for a high-priced, medium-sized dish⁷ featuring a rare assortment of specialty Hokkaido items titled *Tokusen Hokkaido-Mori* (“Specialty Hokkaido Platter”; sold in July 2021) was used as a similar product.

Note that some of those interviewed expressed the opinion that since medium-sized dishes such as Dish (3) not only place a strain on preparation and management at stores but also tend to produce a lot of food ingredient losses, it is more difficult to calculate expected quantities. And in fact, as mentioned in section (4) below, a significant discrepancy between the planned quantities and actual sales quantities for Dish (3) emerged.

Further, as shown in section (3) below, while a campaign titled the “forbidden 90 yen sale” (“**90 yen sale**,” hereafter) ended up being run parallel to Campaign (3) at short notice, at the time the expected quantities of Dish (3) were calculated, implementation of the 90 yen sale was not scheduled, and therefore the ability to attract customers expected due to the parallel implementation of that campaign was of course not taken into account at all.

(3) Running of the “forbidden 90 yen sale”

In parallel with Campaign (3), Sushiro implemented the 90 yen sale at short notice. A 90 yen sale is a sales

⁷ A product that involves placing multiple types of sushi on a single plate.

promotion where products usually sold at 100 yen are sold at 90 yen for a limited time, and is termed “forbidden” because it is a campaign only implemented once every few years and has a dramatic effect of attracting customers.⁸

As noted above, it was confirmed that despite being a sales promotion with an extremely strong effect on attracting customers, the 90 yen sale in question was decided on at short notice by the Sushiro Management Council on November 10, 2021 (roughly two weeks before the start date of Campaign (3)). Regarding the events leading up to this decision, multiple of those interviewed stated that “the decision to hold the 90 yen sale was made at the word of F&LC and Sushiro representatives,” and in fact according to the representatives of F&LC and Sushiro, “since a campaign run by a competitor prior to Campaign (3) was going well, we thought that if there was a sense of Sushiro being pressured by competitors even in the short term, this would be a good time to introduce a stimulus. In addition, since it was hard to get customers to return even after priority measures to prevent the spread of COVID-19 had been relaxed, we thought this would be a good impetus creating opportunities for people to eat out.”

(4) Shortages immediately after the start of the campaign

When the Sales Promotion Planning Section of the Sushiro Sales Planning Department checked the sales data for November 26, 2021, the start date of Campaign (3), they found that actual sales quantities on the launch date for Dish (3) had significantly surpassed planned quantities, and that it was highly likely that shortages would occur during the duration of the campaign.

However, unlike Campaign (1) and Campaign (2), as the ingredients used for Dish (3), namely raw snow crab flakes, flaked red snow crab legs and red snow crab legs were special orders for Campaign (3) and were in the first place ingredients that did not allow additional procurement, there was no choice but to suspend sales of Dish (3) once the procured quantities had been used up during the campaign. In fact, the number of stores that suspended the sale of Dish (3) rose considerably, and the time of the suspension was well over half of the entire length of the campaign. Of the 605 stores operated by Sushiro at the time, the total number of stores that had suspended sales of Dish (3) had risen to 124 by November 29, the fourth day of Campaign (3). By December 6, the 11th day of the campaign, the total number of stores had risen to 503. By December 12, 2021, the final day of Campaign (3), 574 stores had suspended sales of Dish (3).

Despite being aware of the situation described above, the Sales Promotion Planning Section of the Sushiro Sales Planning Department expected that while Dish (3) was the product of Campaign (3), it was not the centerpiece of the 90 yen sale, and even if it did run out, that the number of customers unhappy about it would be limited. Their perception was that once Dish (3) sold out, they would discontinue serving it, and labor was required for inventory control of the ingredients falling under the 90 yen sale. Due to factors such as these, they did not see the increasing number of stores suspending sales of Dish (3) as a particular problem.

(5) Stores that did not serve Dish (3) on the start date of Campaign (3)

There were four stores that did not service Dish (3) on November 26, 2021, the start date of Campaign (3). One of these stores was never able to serve Dish (3) throughout the duration of the campaign because it did not have a fryer needed to serve Dish (3) installed. As the fryers at the other three stores were out of order, they were unable to serve Dish (3) on the day (note that the stores whose fryers were out of order started serving Dish (3) after their fryers had been repaired, but all three of the stores later suspended sales of Dish (3) part way through the duration of Campaign (3)). Therefore, the reason that these four stores were unable

⁸ According to interviews, running a 90 yen sale has the effect of attracting between 130% and 140% of customers compared with normal times.

to serve Dish (3) on the start date of Campaign (3) was not due to a lack of inventory. Also note that according to interviews conducted during the Investigation, the Sales Promotion Planning Section of the Sushiro Sales Planning Department was not aware of the fact that the fryers at three stores were out of order on that day. On the other hand, the Sales Promotion Section of the F&LC Advertising Department was aware that Dish (3) could never have been served at the store with no fryer installed. However, as noted in part b. of section (6) below, in either case the fact that Dish (3) could not be served at all or could not be served for a certain period at these four stores was not made known with respect to the advertising for Campaign (3).

(6) Advertising related to Campaign (3) and handling of notices associated with shortages of Dish (3)

a. Details and running period of advertisements pertaining to Campaign (3)

After the Sales Promotion Section of the F&LC Advertising Department had planned and produced the advertisements related to the running of Campaign (3), Sushiro ran advertisements for Dish (3) as part of promoting Campaign (3). The advertising media and running periods that were identified in the administrative order are as follows.

Campaign (3)	
Period from November 24, 2021 to December 10, 2021	Sushiro website
December 11, 2021 and December 12, 2021	Sushiro website
November 26, 2021; the period from November 29, 2021 to December 3, 2021; and the period from December 6, 2021 to December 10, 2021	Television commercials
November 26, 2021 and the period from November 29, 2021 to December 10, 2021	Television commercials
November 27, 2021; November 28, 2021; December 4, 2021; December 5, 2021; December 11, 2021; and December 12, 2021	Television commercials

b. Handling of notices associated with shortages of Dish (3)

As mentioned in section (4) above, shortages of Dish (3) occurred immediately after the start of the campaign at many stores. However, neither the Sales Promotion Planning Section of the Sushiro Sales Planning Department nor the Sales Promotion Section of the F&LC Advertising Department held any discussions along the lines of suspending advertisements related to Campaign (3), and even after the number of stores suspending sales of Dish (3) increased, the aforementioned advertisements were continued.

In addition, as was stated in section (5) above, although some stores were unable to serve Dish (3) on the start date of Campaign (3) due to issues with fryers, each of the aforementioned advertisements failed to make note of the fact that Dish (3) could not be served at those stores.

Moreover, although advertisements for Campaign (3) were run on social media (Twitter, LINE), these advertisements were continued until the end of the campaign and did not make note of the fact that sales had been suspended.⁹

Despite the fact that Dish (3) was introduced while presenting Campaign (3) as a whole in television commercials for the campaign, according to interviews conducted in the Investigation, the Sales

⁹ Additionally, the Sales Promotion Section of the F&LC Advertising Department had planned to release additional advertisements for Campaign (3) over social media on December 3, 2021, but in response to instructions from the Sales Promotion Planning Section of the Sushiro Sales Planning Department to “delete the advertisements for the medium-sized crab dish since we don’t have any of them left,” the advertisements for Dish (3) were deleted.

Promotion Planning Section of the Sushiro Sales Planning Department adopted the above handling with respect to Dish (3) and had not ascertained that the television commercials had the effect of attracting customers.

(7) Complaints from customers

As mentioned in section 3. (6) above, complaints from customers received by each Sushiro store and the head office are collated by the F&LC Corporate Communication Department. The number of complaints received is shared with officers as a weekly report via email, and is also reported on a monthly basis at Sushiro Management Council meetings.

However, many of those interviewed in the Investigation stated that even among those who attended Sushiro Management Council meetings “had not ascertained that a large number of complaints regarding Dish (3) had been received from customers until an investigation into the Incident was conducted by the Fair Trade Commission.” Furthermore, one of those interviewed stated that even in the Sales Promotion Planning Section of the Sushiro Sales Planning Department, “as there was a perception that Dish (3) was not the centerpiece of Campaign (3), I don’t think any checks were made from the perspective of complaints regarding Dish (3).”

Part 3: Cause Analysis

1. Introduction

The direct causes of the advertisements of each campaign associated with the Incident being deemed so-called “bait advertisements” (described in FTC Notification No. 17 of April 28, 1993) in violation of item 3, Article 5 of the Act are that (1) each dish involved in the Incident recorded sales at a pace exceeding procured quantities, resulting in the Sales Adjustments being implemented on September 13, 2021 for Dish (1) and Dish (2), and a large number of stores running out of Dish (3) soon after the start of its campaign, creating discrepancies in the initial advertising content and actual facts, and despite this that (2) advertising was not corrected and measures such as cancellation were not taken in a timely and appropriate fashion based on changes to the details of the campaign. In the following section, we will analyze the causes of the above factors (1) and (2).

2. Issues with Predicting Sales Quantities

(1) Setting assumptions when making predictions

Around July 2021, Sushiro introduced an AI system that predicts sales quantities using past sales as base data, and even at the time of the Incident, the system was being operated on a trial basis. The sales quantities in each of the campaigns associated with the Incident were based on predictions produced by this AI system (albeit the system in the trial operating stage). For Dish (1), past sales for the same product were used as the base data for predictions, while the past sales of similar products were used for Dish (2) and Dish (3). Additionally, for Dish (1), adjustments based on the intuition of a person with experience in purchasing known as “additional considerations” were incorporated using the AI-based prediction results as a basis, in order to ensure quantities far greater than those calculated by the AI system, using the highest results (on a single day basis) for past sales as a rough indication.

However, as a result, a spate of stores ran out of Dish (3) early on in Campaign (3), while some stores also ran out of Dish (1) and Dish (2) from before the Sales Adjustments were implemented. On these points, many of the people we interviewed during the Investigation pointed out that the sales exceeded expectations immediately after the sales promotion started, but even taking this point into consideration, there remain

doubts as to whether the setting of the predicted sales quantities was appropriate.

It is indeed impossible to predict future sales quantities with perfect accuracy, and with the environment surrounding the restaurant industry having undergone rapid changes due to the COVID-19 pandemic and other events, we cannot deny that it is difficult to accurately predict sales quantities, but even in the interviews we conducted as part of the Investigation, many people stated that the accuracy of the AI system was not very high at the time, and in addition, there were people pointing out the following issues regarding predictions of the sales quantities for each of the campaigns related to the Incident.

- (i) In predicting sales quantities, the ability of television commercials to attract customers are not taken into account.
- (ii) Yield ratios¹⁰ and quantities discarded after product production are not taken into account for prediction.
- (iii) Since the start of the COVID-19 pandemic, it has been necessary to reduce the number of products placed on the conveyor belts, resulting in an upward trend of products served via touch panel orders, and since products tied to campaigns are displayed in a prominent location on the touch panels, there has been a trend for these orders to increase greater than before, but this point has not been reflected in sales predictions.
- (iv) When comparing products tied to campaigns with other products on the regular menu in recent years, the percentage of sales from the former has increased to the point of accounting for around 50% of all sales, but this fact has not been reflected in sales predictions.
- (v) With regard to Dish (3), despite it being difficult to increase procurement beyond initially predicted sales quantities due to the ingredients used for the campaign being specially ordered items, this point was not reflected in the sales predictions.

As a result of the Investigation, although we accept that there is no evidence that the advertisements intentionally included information that was known to be unfeasible from the outset in each of the campaigns associated with the Incident (and therefore believe that the major cause of the Incident was that advertisements were not corrected in a timely and appropriate fashion based on changes to the details of the campaigns), as noted above, we believe the fact that the assumptions that should have been taken into account when making sales predictions were not considered caused the discrepancies between sales predictions and actual sales.

(2) Relationship with the 90 yen sale

In terms of its relationship with Dish (3), when the 90 yen sale was held in parallel with Campaign (3) the number of customers visiting each store increased dramatically, and with consumers feeling more room in their wallets due to dishes that were usually 100 yen being served for 90 yen, it made it easier for them to order Dish (3), which is in a comparatively high price range. As a result, sales of Dish (3) far exceeded the predicted sales quantities and shortages of the dish occurred at many stores immediately after Campaign (3) began.

Additionally, according to interviews conducted through the Investigation, although those interviewed acknowledged that it would have been easy to predict that the 90 yen sale would have a higher sales promotion effect than other campaigns by referencing the results of past 90 yen sales, during the Incident, since the decision to hold the 90 yen sale was made at the last minute, it was not possible to procure

¹⁰ Ratio of the production volume expected based on the amount of raw ingredients input to the actual quantity of product obtained

additional quantities of Dish (3) on top of the original allotment.

What's more, based on the fact that even during the *Kanizukushi* ("Assorted Crab") campaign that was run from November 10 to November 23, 2021, just before the campaign for Dish (3), sales of products using crab exceeded forecasts and many stores ran out of them, it would have been appropriate to also review predicted sales quantities for Dish (3) (or if not possible, to revise the details of the campaign and advertising) in light of those shortages, but no such action was taken.

Therefore, in terms of the relationship with Dish (3), the fact that the 90 yen sale was held in parallel and had an impact on increased numbers of customers, the fact that shortages also occurred in the crab campaign that was held immediately before Campaign (3), and the fact that these events were not reflexed in the predicted sales quantities and procurement quantities for Dish (3) are believed to have caused the discrepancy between predicted and actual sales.

(3) Lack of ongoing comparison and analysis of differences between predicted and actual sales

In addition to the above, in order to produce more accurate predictions of sales quantities, sales predictions and actual results in campaigns that had been run should have been compared after the fact to analyze discrepancies and their causes, and to consider corrections or revisions to prediction methods, but as a result of the Investigation, we found no evidence that F&LC or Sushiro engage in such analysis or consideration on an ongoing basis, and we believe that this is another factor that caused the discrepancies between predicted and actual sales in each of the campaigns pertaining to the Incident.

3. Failure to Monitor the Status of Shortages, etc. or Revise Campaign Details after the Start of Campaigns

(1) Failure to monitor the status of shortages, etc. or share information in a timely fashion

In the case of Dish (3), shortages occurred at many stores immediately after the campaign started, while for Dish (1) and Dish (2), shortages were occurring at some stores before the Sales Adjustments were implemented.

On this point, based on the sales on the first day of each campaign, it was already predicted that it would be difficult to continue with any of the three campaigns for their full durations as originally planned. Therefore, it is possible that shortages could have been prevented if the details of the campaigns had been revised at the end of the first day of each campaign, such as by limiting daily sales quantities, or by shortening the length of the campaigns, for example (note that even in such cases, the changes to the campaign details would still have necessitated action such as corrections to the advertisements as noted in section 4. below).¹¹

However, although the Sales Promotion Planning Section of the Sushiro Sales Planning Department was monitoring the status of product sales at each store and reporting information on shortages to the Sushiro Management Council weekly, as the information is not provided in real time, in the case of a campaign lasting around two weeks, often by the time information on shortages is shared with the Management Council a campaign would have already ended or be about to end, leaving top management with no leeway to consider changes to the details of a campaign.

In addition, the Sales Promotion Planning Section of the Sushiro Sales Planning Department keeps track of the status of shortages on a daily basis and ideally should be expected to serve as an information center for

¹¹ If the sales quantity per day is "considerably limited" (if the sales quantity was not even half of the forecast purchase quantity), details of those limitations need to be clearly stated, and it should be noted that representations that only say "while stocks last" do not clearly state the sales quantity (Operating Standards Part 2, Sections 2-(1) and 2-(2) of Misleading Representations on Bait Advertising).

other departments, but with the people we interviewed stating things like “even though the crab was a campaign product, we were not focused on it because it did not account for a large portion of total sales,” we can recognize that there was an extremely low awareness of shortages among campaign-tied products being a problem.

Moreover, the Sushiro Sales Division, which oversees each Sushiro store, should have fulfilled the role of sharing information about shortages at each store and complaints from visiting customers with other departments, but some of those interviewed mentioned that “in recent years, feedback from sales in the field has not been making it to head office.”

In this way, as information on the sales of campaign-tied products and information from each store was not being monitored or shared in a timely fashion, we believe that opportunities to revise campaign details were lost, leading to large-scale shortages.

(2) De facto barriers to making changes to campaign details

Even if information about shortages was monitored by top management in a timely fashion, it would be necessary to change the details of a campaign to prevent shortages from occurring thereafter, but some of those who attended Management Council meetings that we interviewed stated things like “there are high hurdles to making changes to the details of a campaign once it gets going,” or “stopping a campaign is not part of the corporate culture.”

As can be seen from the above remarks, there were high hurdles to making changes to a launched campaign after the fact at F&LC and Sushiro, and this precluded opportunities to review campaign details and caused shortages.

4. Failures to Make Corrections or Other Changes to Advertising due to Changes to Campaign Details

(1) Inadequate response related to advertising taken by F&LC and Sushiro

a. Dish (1)

Regarding Dish (1), advertising was distributed on the Sushiro website, through television commercials and on social media (Twitter, LINE). Afterward due to the Sales Adjustments, posters indicating that products were “awaiting additional shipments” were posted in each store, and additional information indicating that “products may be sold out at some stores due to overwhelming popularity” was added to the advertisements posted on the website.

However, the fact that there was no mention of sales being suspended in the television commercials and social media outlets in which advertisements were placed was insufficient as a way to indicate cancellations due to changes to the details of the campaign, and the expression of “awaiting additional shipments” on the posters was in itself an untrue expression, as the *uni* was actually in stock, even if future shortages were expected.

In addition, the announcement that “products may be sold out at some stores due to overwhelming popularity” added to the website gave the impression that sales would be taking place even during the period of the sales adjustments, and the text in the above statement was displayed at a smaller size than other text in the advertisement, making the details of the corrections to the advertisement insufficient. This announcement needed to be made in a way that made the suspension of sales clearly understood.

b. Dish (2)

Regarding Dish (2), advertisements were run on the Sushiro website. Afterward due to the Sales Adjustments, posters indicating that shipments of the product had not yet arrived were put up at each store, and the website stopped advertising the dish the day before sales were suspended.

However, since the campaign period had already been announced, if sales are to be suspended during a portion of that period, that needs to be announced in a way that can be clearly understood. In addition, television commercials continued to be aired, and it was insufficient to only put up posters and end advertising on the website.

c. Dish (3)

Regarding Dish (3), advertisements were distributed on the website, through television commercials and on social media (Twitter, LINE). Excluding the fact that there were some stores that could not serve Dish (3) from the outset due to issues with their fryers, shortages occurred at many stores immediately after the start of the campaign, and despite this, these advertisements were continued until the end of the campaign.

However, since the dish could not be served as claimed in the details of the campaign that was initially announced, each of the above advertisements needed to be suspended, and consumers needed to be informed that Dish (3) could not be provided. Also note that as mentioned above, as there were some stores that lacked the fryer to serve Dish (3) or whose fryers were out of order, they were either unable to serve Dish (3) at all or were unable to do so for a certain period, and failing to provide information to this effect in the advertisements was insufficient action.

(2) Failure to have a system in place to correct or suspend advertisements

In addition, to inform consumers of changes to the details of a campaign in an appropriate way, it was necessary to first clarify the department and people responsible for making changes to advertisements, and then for the Sales Promotion Planning Section of the Sushiro Sales Planning Department, which monitors information about product shortages, to share information about changes to the details of the campaign with that department¹² and have it make corrections to advertisements consistent with the changes to the details of the campaign, or to propose suspending the advertisements.

However, according to interviews conducted during the Investigation, in the Advertising Department, which is the department of F&LC responsible for advertising, there was no system in place for sharing information on changes to the details of campaigns as needed. In addition, some of those interviewed stated that they had made changes to the content of advertisements in response to changes to campaign details in the past, while others stated that they had changed the content of advertisements but did not remember the specific details involved.

Given this, it can be recognized that the F&LC Advertising Department had not gone as far as to put in place a system to respond by considering changes to the content of advertisements, at least for when changes were made to campaign details.

Due to such a system not being in place, the advertisements for the campaigns related to the Incident were not corrected or suspended appropriately, and this may have been another factor that caused the “bait-and-switch” advertisements.

(3) Loss of substance to Advertising Representation Management Regulations

F&LC has established Advertising Representation Management Regulations, and they state in Article 14, Paragraph 3 that “when a question arises regarding a managed representation that is already in use, except

¹² This sharing of information is also something businesses are required to implement as “sharing information regarding representations” (Part 4, Section 4 of the Guidelines Regarding Management Measures for the Provision and Display of Premiums to be Taken by Business Operators), which is one of the “Necessary systems and other necessary measures” prescribed in Article 26, Paragraph 1 of the Act.

in the case of an emergency or unavoidable circumstances, the person responsible for the management of representations shall, after receiving instruction from the general manager responsible for representations regarding the temporary suspension or discontinuance of the representations in question, promptly consult with the relevant departments including customer service and PR departments as well as the department responsible for determining the representation in question to coordinate a response.”

However, with regard to the Incident, even staff of the F&LC Advertising Department, which is the very department responsible for advertising, were unaware of the existence of these Advertising Representation Management Regulations until the investigation by the Fair Trade Commission was conducted at the behest of the Consumer Affairs Agency, and consequently were not taking action pursuant to Article 14, Paragraph 3 of the regulations. Similarly, the General Manager of the Advertising Department did not recognize their position as the “person responsible for the management of representations” under the regulations, not did the officer in charge of the department recognize their own position as the “general manager responsible for representations” under the regulations.

As a result of the Advertising Representation Management Regulations having lost their substance in this way, as described in section (2) above, there were no systems in place regarding the correction or discontinuance of advertisements in response to changes to campaign details, and whether or not operations were consistent with the regulations was not targeted in audits conducted by internal auditing departments or the Audit & Supervisory Committee, the third line of the so-called Three Lines of Defense¹³ in corporate governance. Accordingly, this is recognized as another factor contributing to the occurrence of “bait-and-switch” advertising.

5. Poor Understanding of the Act (Bait-and-Switch Advertising)

Since many people were aware that the Sales Adjustments would be implemented for Dish (1) and Dish (2) due to the instructions sent by email on September 13, 2021, and since the first report from the Fair Trade Commission had been received prior to the campaign period for Dish (3), if the officers and employees of F&LC and Sushiro had a sufficient understanding of the Act (bait-and-switch advertising in particular), they could have pointed out the need to review the campaign details or make corrections to advertisements and take appropriate action.

On this point, even though it was confirmed that F&LC and Sushiro had conducted training on representations for their sales staff, held workshops for advertising-related departments at the head office, distributed a newsletter for head office staff introducing incidents from other companies and information regarding representations, and even distributed a compliance guidebook and other materials, no training was conducted with regard to bait-and-switch advertising. As mentioned in section 4. (1) above, considering that only inadequate action was taken in response to changes to campaign details and instructions regarding corrections to advertisements were extremely limited internally, it must be said that the level of understanding of the Act (bait-and-switch advertising in particular) on the part of officers and employees was woefully insufficient, several of those interviewed as part of the Investigation stated that “we took note of the issue of misleading representations in the Act, but were not particularly aware of bait-and-switch advertising.”

This poor understanding of bait-and-switch advertising on the part of F&LC and Sushiro is regarded as another factor that led to the bait-and-switch advertising incidents.

¹³ The Three Lines of Defense is an approach appearing in the Internal Control Integrated Framework of the Committee of Sponsoring Organizations of the Treadway Commission (COSO). It classifies the departments of an organization into (1) actual operations, (2) administration and (3) internal audit, and implements internal control by having each of them assume defensive lines, acting as the three roles in risk management.

6. Inadequate Consumer Perspective

Complaints received from customers at each Sushiro store and the head office were collated by the F&LC Corporate Communication Department and reported at Sushiro Management Council meetings on a monthly basis. Because of the connection with the running periods of campaigns, reports on complaints about issues such as product shortages would sometimes be reported after a campaign had ended (for Dish (3), many of those interviewed stated that even Management Council attendees had not been aware that large-scale shortages had occurred until this was pointed out by the Fair Trade Commission, but that problem itself is as noted in the previous section 3. (1)), but it was confirmed that the large number of complaints received regarding Dish (1) and Dish (2) as a result of the Sales Adjustments was also reported to the Management Council during their respective campaigns.

Even in interviews conducted for the Investigation, some people stated that the revolving sushi industry is one that generates a relatively large number of complaints from customers and for its part top management also pays a certain amount of attention to customer complaints, but with respect to the above complaints about Dish (1) and Dish (2), there was a recognition that complaints would be unavoidable since sales had been suspended, and no evidence of the Management Council discussing the correction or suspension of advertising was found.

In addition, while the Incident was the first time that Sushiro had received an administrative order from the Consumer Affairs Agency regarding “bait-and-switch advertising,” complaints regarding shortages of campaign-tied products were also frequently received during past campaigns, and also Sushiro did not go so far as to scrutinize complaints received during past campaigns, take seriously the extremely common complaint from consumers that they visited stores specifically for campaign-tied products which ended up not being served or discuss specific countermeasures at Management Council meetings.

Additionally, regarding the Sales Adjustments, some of those interviewed during the Investigation stated that “as more customers visit our stores over the long weekend, we were trying to avoid disappointing customers who were looking forward to tasting our *uni*.” However, regarding the Sales Adjustments, it is inevitable that Sushiro would be accused of making sales the sole priority by putting Dish (1) on sale during the long weekend instead of the less popular Dish (2), and there is no denying that Sushiro, with its sales target of 103% of the previous year’s sales, sacrificed consumers who visited its stores on weekdays immediately before the long weekend in order to prioritize sales.

Additionally, on the reason why the state of shortages of Dish (3) was not seen as particularly problematic, some of those interviewed stated that as Dish (3) was not a centerpiece of Campaign (3), they expected the number of unsatisfied customers to be limited even if shortages occurred.

Thus, even in light of the fact that company officers and employees had an inadequate understanding regarding the Act as mentioned above, the fact that Sushiro lacked consideration for consumers when implementing and making changes to campaigns and exhibited a tendency to be sales-oriented is recognized as one of the factors contributing to the occurrence of “bait-and-switch” advertising.

7. Possibility of a Corporate Culture Discouraging the Offering of Opinions

As has been already mentioned, measures such as correcting or suspending advertising were not implemented in a timely and appropriate fashion despite the fact that each of the campaigns related to the Incident could not be implemented as planned, but considering that interviews conducted during the Investigation suggested that there was no culture of suspending campaigns for which television commercials were currently airing and that some people were aware that they could not go against policies decided on by company officers, it is possible that decisions made by senior management at F&LC and Sushiro were absolute, fostering a corporate culture that makes it difficult to raise legal and compliance issues including corrections to the

details of advertisements with superiors, and that this corporate culture may have inhibited efforts to prevent bait-and-switch advertising from happening.

8. Possibility of Personnel Shortages at Head Office

Although the F&LC Group consolidates operations other than the sales division at F&LC, and implements BPR¹⁴ and BPO¹⁵, according to interviews conducted during the Investigation, the Sales Planning Section of the Sushiro Sales Planning Department was running its personnel at full capacity just to run two campaigns a month and it is difficult to say that it had enough capacity to conduct monitoring or verify campaigns after the fact. Additionally, some of those interviewed pointed out that there were also personnel shortages at the head office of F&LC due to greater workloads from the increased number of brands being operated and managed due to its acquisition of shares in KYOTARU CO., LTD. on February 26, 2021 (F&LC was known as Sushiro Global Holdings Ltd. at the time).

Even if personnel shortages are acknowledged, it is difficult to consider this as a direct cause of the bait-and-switch advertising that occurred in the Incident, but it has been pointed out since the possibility that it inhibited campaign monitoring as well as efforts to issue and make corrections to advertising in a timely and appropriate manner cannot be ruled out.

Part 4: Measures to Prevent Recurrence

1. Introduction

Even in the investigation conducted by the Fair Trade Commission into the Incident, three issues were identified as problematic regarding Sushiro's campaigns and sales of products: (1) products selling out early before the end of a campaign, (2) products selling out early in the day during the campaign period, and (3) original advertisements being maintained despite discrepancies between actual sales and the campaign details (failure to appropriately change or correct advertisements). It was also pointed out that similar events were occurring outside this specific Incident.

Campaigns involve advertising and publicity to make the details of a campaign known to consumers in order to motivate them to visit stores, and it goes without saying that many customers who visit stores do so with the aim of receiving campaign-tied products or services after learning about the details of a campaign when they see an advertisement.

For this reason, if advertising is to be used to run a campaign, there is an inherent need to conduct a campaign according to the campaign details (including all elements such as the campaign's duration, targeted stores, targeted products, details of services and so on). Despite this, at Sushiro a situation developed in which the products and services tied to campaigns were not provided. This not only resulted in a loss of trust among customers who visited Sushiro stores, but also led to a significant loss of trust among consumers in general due to the Incident being subject to an administrative order.

This situation is something that must not happen again, and in our capacity as the Audit & Supervisory Committee, we recommend the following recurrence prevention measures in light of the results of the Investigation and the cause analysis undertaken in Part 3.

¹⁴ BRP stands for Business Process Re-engineering, and refers to the practice of fundamentally reviewing existing organizations and systems to orient them towards the original purpose of business operations and re-building duties, workflows, management structures and information systems from a process perspective.

¹⁵ BPO stands for Business Process Outsourcing, and refers to the management strategy of outsourcing the business processes a company handles internally to a dedicated contractor.

2. Planning of Campaign Details

(1) Revisions to methods for calculating planned sales quantities and verification after the fact

As mentioned previously, it is not possible to predict future sales quantities with perfect accuracy. However, in order to run a campaign as planned and secure sufficient profits, it is necessary to eliminate discrepancies between planned sales quantities and actual results as much as possible.

To ensure this, it is necessary to verify whether the current methods to calculate planned sales quantities are working properly, and to revise them as needed. Note that even if sales are conducted in limited quantities, this is still predicated on preparing and securing sufficient sales quantities. If quantities sell out at an early stage a company will still not escape criticism from consumers, and in any event the importance of calculating planned sales quantities is not diminished.

During the Investigation, it was found that the AI system currently used to calculate planned sales quantities is not that accurate, with some personnel pointing out the issues that were mentioned in Section 2. (1) of Part 3. In addition, given that some personnel indicated that due to the nature of AI, a certain amount of data needs to be accumulated for it to function, in order to calculate planned sales quantities with greater accuracy, it will be necessary to identify issues with the current methods for calculation and make revisions while thoroughly verifying factors causing discrepancies between planned and actual sales following each campaign, and revise how planned sales quantities are calculated accordingly. It appears that some personnel are currently undertaking this kind of verification, but given that the above problems have not been corrected, it is difficult to describe this system as functioning adequately. The verification system needs to be rebuilt.

It should also be noted that if the so-called “additional considerations” are to be performed in addition to calculations performed by the AI system, this should be done based on reasonable grounds, and verification after the fact would also be required regarding this point.

(2) Development of campaign details and advertisements from the perspective of consumers

If situations in which campaign-tied products cannot be served are prevented from the outset, “bait-and-switch advertising” will not apply, and customers visiting the stores will not complain.

However, as illustrated above, since it is not possible to calculate planned sales quantities accurately, shortages cannot be realistically avoided.

Additionally, if we consider the fact that consumers are leveling greater scrutiny in response to the Incident, to prevent shortages from occurring as much as possible there needs to be greater innovation than before in the details of campaigns, including the setting of campaign duration and the selection of campaign-tied products.

In terms of campaign advertising, considerable costs are incurred when television commercials are used, and if a situation arises that requires changes or cancellations after the fact, it may not be possible to attain expected cost-effectiveness. In light of this, at the stage that the content of advertisements is being determined, sufficient thought needs to be given to their configuration and other aspects, particularly with television commercials, so that changes do not need to be made after the fact.

(3) Eliminating and reviewing events that have a significant impact on a campaign after it has been formulated

With regard to shortages of Dish (3), the decision to run a 90 yen sale during the same period after the formulation of Campaign (3) was one of the factors that led to a significant increase in the number of customers visiting stores.

Considering that arrangements were made to procure products based on the planned sales quantity at the

time the campaign was formulated and that some campaign-tied products do not allow for additional procurements as needed, when an event that could significantly impact sales quantities occurs after a campaign has been formulated, it is necessary to re-forecast further sales quantities in light of the event, review the response to shortages, or in some cases consider cancelling the campaign, in order to eliminate such significant effects in advance.

Additionally, in the case of Dish (3), considering that the ingredients used for the campaign were specially ordered items and it was difficult to increase the initial planned sales quantities, the possibility of shortages of Dish (3) occurring as a result of the decision to run a 90 yen sale should have been recognized at the start of Campaign (3). If that were the case, before the start of the campaign the campaign details and content of advertisements should have been revised to avoid the need for corrections to advertising after the start of the campaign as much as possible.

Therefore, in the future, even after a campaign has been formulated, it will be necessary to monitor the sales of other products and any campaigns that will be run in parallel, and to ascertain trends and other factors appropriately. It will also be necessary to consider the need for additional procurements, or when not possible, consider the need for changes to campaign details or advertising, and even the cancellation of campaigns.

(4) Reconfirming the overall business process from campaign planning and proposal through to implementation in stores

As was stated in section 2. of Part 2, under the current system, individual campaigns are planned and proposed by the Sales Promotion Planning Section of the Sushiro Sales Planning Department at least three months prior to implementation, then following deliberation by the Integrated Three-way Meeting made up of the Sushiro Sales Planning Department, F&LC Product Department and F&LC Advertising Department, campaigns are deliberated and decided on by the Sushiro Management Council and Board of Directors. This triggers a series of tasks that includes determining the planned quantities, procuring ingredients and planning campaign advertising, resulting in a lengthy series of business processes until the products are actually served at stores.

With the details of each campaign varying, the external environment, fine-tuning of sales promotion policies and the condition of procured ingredients may change, and while some processes will change with the introduction of AI systems, at this point it is advisable to continually re-verify the entire process from the perspectives of appropriateness, effectiveness, efficiency and soundness, and to make corrections as necessary.

3. Management System for Handling Matters After Campaign Launch

(1) Monitoring of sales

As we have mentioned repeatedly, since it is not possible to avoid discrepancies between planned and actual sales quantities, from the perspective of ensuring that sales take place as advertised, it is crucial that wherever possible, the status of sales (not only the number of plates sold but whether sales are possible from following day based on the sold-out status, inventory situation, etc.) at each store be ascertained in real time after a campaign has started.

Additionally, regarding the status of sales of each of the dishes related to the Incident, a considerable number of complaints were received from consumers, and it is easy to see that store personnel were having difficulties dealing with customers visiting their stores. Instead of only collating such feedback from consumers and stores after the fact, the F&LC Corporation Communication Department should consider engaging in real-time monitoring and the sharing of necessary information to gain an accurate grasp of the

situation in the field (at stores) in addition.

(2) Disclosing the status of shortages

Considering the perspective of customers, who naturally expect they will be able to eat campaign-tied dishes if they visit a store during such a campaign, possible improvements include publishing information on campaign-tied product shortages for each store on the website as much as possible in real time, or allowing this information to be checked via an app, in a similar way to how waiting times for each store can be checked. It would also be advisable for each store to implement displays to this effect.

(3) Adjustments to logistics, etc. between stores

For all of the dishes associated with the Incident, there were variations in shortages from store to store, and although considerable quantities were procured on a companywide basis, due to factors including decisions made by store managers, some stores experienced shortages early on, while others were able to continue sales for a large portion of the campaign period. There were also differences in sales between neighboring stores. The development of these situations creates a sense of inequality among consumers and could lead to distrust.

Given this, when the risk of a shortage emerges, the practice of proactively exchanging ingredients between stores to prevent store-to-store discrepancies as much as possible in light of store inventory and sales conditions should be considered.

(4) Considering changes to advertising content in response to modified campaign details, and clarifying responsibility and authority

When, in cases such as the Incident, sales vastly exceed planned sales quantities and threaten to develop into shortages, there is need to swiftly consult with related departments and discuss action to revise campaign details or advertisements. Despite this, the F&LC Group had not established clear rules on how to respond to such situations.

However, to take appropriate action by revising campaign details and advertising, it is necessary for each related department to coordinate and discuss measures in a timely and appropriate manner. Those departments include the Sales Promotion Planning Section of the Sushiro Sales Planning Department, which plays a central role as a department that has information on the status of sales, as well as the representatives of F&LC and Sushiro, the F&LC Legal Office to ensure legal compliance, the F&LC Product Department to consider the possibility of additional procurement of ingredients, and the F&LC Advertising Department to coordinate the PR response. Additionally, as mentioned in Section 4. (1) of Part 3 above, when changes have been made to the details of a campaign, appropriate measures must be taken to remedy inaccurate representations, such as by suspending or replacing television commercials and placing corrective advertisements on the website and social media. Simply removing advertisements that have already been posted is insufficient.

Additionally, these operations should be formalized as systems, and added to the items that are audited by internal auditing departments and Audit & Supervisory Committee in the future, from an operational monitoring perspective.

4. Development of Internal Systems

(1) Ensuring the thorough operation of the Advertising Representation Management Regulations

As a result of the Investigation, it was confirmed that although the F&LC Group has established Advertising Representation Management Regulations which designate people responsible for managing and checking

advertising content and other matters¹⁶, in practice the regulations have lost their substance and are not functioning at all. In other words, the officer in charge of the F&LC Advertising Department or its general manager never even considered having television commercials suspended, based on the assumption or prediction that even if they check with their superiors, such actions would not be allowed. For this reason, despite events transpiring that necessitated changes to advertising content or the suspension of representations, neither the “person responsible for the management of representations” nor the “general manager responsible for representations,”¹⁷ who are the officer in charge of the F&LC Advertising Department and its general manager respectively, took any action to modify the advertising or suspend the representations concerned.

It is therefore necessary to disseminate the details of the Advertising Representation Management Regulations among the relevant people and thoroughly ensure operations consistent with its provisions. In other words, the “person responsible for the management of advertising representations” and the “general manager responsible for representations,” who are the officer in charge of the F&LC Advertising Department and its general manager, respectively, must strongly recognize that management of the F&LC Group’s advertising is part of their own responsibilities.

However, even if the details of the Advertising Representation Management Regulations are disseminated and a new advertising representation management system is developed, if it is not operated appropriately then it will not result in effective measures to prevent misleading representations. For this and other reasons, in cases where there are doubts over legal decisions, the Legal Office should always be consulted with, and other efforts must be made to ensure appropriate operation, such as checking with outside experts (consulting corporate attorneys, etc.) as needed. It is also advisable for the status of the development and operation of various regulations including the Advertising Representation Management Regulations to be submit to audits by internal auditing departments and the Audit & Supervisory Committee.

(2) Appropriate allocation of personnel

It is the Sales Promotion Planning Section of the Sushiro Sales Planning Department that plays a central role in Sushiro’s campaigns, including the formulation of new campaigns and the monitoring of sales after the start of campaigns. In addition, since Sushiro runs around 20 campaigns each lasting about two to three weeks each year, practically speaking personnel in the section are always busy either formulating new campaigns or monitoring the sales of the campaigns that are currently running.

For this reason, the section appears to be under a heavy load to a certain degree, and even regarding things like the methods for calculating planned sales quantities, which is one of the section’s duties, there were discrepancies among the personnel we interviewed. Therefore we cannot rule out the possibility that appropriate information sharing and training is not taking place within the section.

In addition, to prevent something like the Incident from recurring in the future, it will be necessary to verify the methods for calculating planned sales quantities and perform thorough monitoring after the start of

¹⁶ One of the “Necessary systems and other necessary measures to properly manage matters relating to the offering of the premiums and matters relating to the representations” prescribed in Article 26, Paragraph 1 of the Act is “designating persons and departments responsible for the management of representations, etc.” (Part 4, Section 5 of the Guidelines for Measures to be Taken by Business Operators Regarding the Provision of Premiums and Management of Representations), and this action needs to be taken.

¹⁷ When designating person(s) responsible for the management of representations, four requirements need to be met. (1) The person(s) have the authority to monitor and oversee matters related to representations made by the company; (2) If there are multiple such persons, their authorities and responsibilities must be clarified; (3) They must endeavor to obtain a certain degree of knowledge regarding the Act; and (4) Methods must be established to make these matters known inside the company. However, actual conditions did not reflect any of these points.

campaigns, and as this is expected to impose an even greater workload than before, it may be necessary to verify appropriate personnel allocations once more and take measures such as augmenting personnel as necessary.

Additionally, since there is also room for doubt as to whether personnel have been sufficiently reinforced in connection with business expansion or whether proper training has been provided at F&LC Group departments other than the Sales Promotion Planning Section of the Sushiro Sales Planning Department, the appropriate allocation of personnel at each department should be revisited in conjunction with BPR and BPO efforts.

(3) Re-acknowledgement and utilization of the internal reporting system

As was mentioned in section 7 of Part 3, at F&LC and Sushiro a corporate culture had developed that caused people to hold back from advising their superiors about legal and compliance issues (the perception that even if a suggestion is made it will not be adopted), and this may have been a factor in why bait-and-switch advertising could not be prevented.

While there is no silver bullet for changing corporate culture and concrete measures should be vigorously discussed within the company going forward, for its part the Audit & Supervisory Committee recommends utilization of the internal reporting system as one suggestion.

Although the F&LC Group has established a consultation hotline for internal reports, a compliance consultation desk, and other hotlines and helplines (collectively referred to as the “internal reporting system” hereafter), at this point the majority of reports are related to harassment between officers and employees, and there are doubts as to whether the system functions effectively as a receptacle for feedback from officers and employees regarding legal and compliance issues.

Given this, a renewed effort is required to inform all officers and employees of the F&LC Group that the internal reporting system exists, that matters concerning the Act are legal and compliance issues and that internal reports also include requests and opinions of things that would be beneficial to the Group.¹⁸ We believe that combined with efforts to encourage the use of the system, this would strengthen compliance in the Group and help to change the corporate culture into one in which diverse opinions from officers and employees make their way upwards.

5. Implementing Training and Awareness-Raising, and Enhancing Compliance Awareness

(1) Conducting thorough training on the Act

As a result of the Investigation, we learned that most officers and employees of F&LC and Sushiro, including members of the F&LC Advertising Department that is responsible for advertising lack an accurate understanding of the implications of the “bait-and-switch advertising” that caused the problems in the Incident.

A common theme among these people is that they have never been trained or educated on bait-and-switch advertising, and although the F&LC Group has conducted training on misleading representations with regard to the Act, including in relation to advertising, it has become clear that almost no training or instruction has been provided to officers or employees with regard to bait-and-switch advertising.

The F&LC Group should tackle training and awareness-raising for officers and employees as an organization. Gaining a proper understanding of the Act including the bait-and-switch advertising that was problematic in the Incident, and applying that understanding in day-to-day work will help prevent

¹⁸ The best time to disseminate this information may be in conjunction with the announcements concerning implementation of the revised Internal Reporting and Consultation Operating Regulations, which have been modified based on amendments to the Whistle-Blower Protection Act that took effect on June 1, 2022.

recurrences. In that sense, disseminating knowledge and raising awareness of the concepts of the Act needs to be implemented as one of the “Necessary systems and other necessary measures to properly manage matters relating to the offering of the premiums and matters relating to the representations” prescribed in Article 26, Paragraph 1 of the Act, namely “Disseminating and Raising Awareness of Concepts of the Act” (Part 4, Section 1 of the Guidelines for Measures to be Taken by Business Operators Regarding the Provision of Premiums and Management of Representations).

In addition, it is not sufficient to only conduct formal training; officers and employees need to have a proper understand of the Act and the content of training needs to be devised so that it can be thoroughly disseminated companywide. For example, it would be advisable for the training to include mentions of how a problem similar to the Incident occurring again would disadvantage the F&LC Group, and also explain how specific potential cases of advertising and sales should be handled (not only with regard to how campaign details or advertising content should be changed, but also including how to deal with inquiries from customers and other activities).

Other conceivable actions to ensure that complaints can be properly handled at each store include running workshops on customer service and setting up a desk to handle individual questions and other issues.

Of course the appropriate human resources would need to be assigned to such a desk, such as those with knowledge of the Act, and those with practical experience at stores.

(2) Enhancing compliance awareness

The Incident was caused by an insufficient understanding of bait-and-switch advertising on a companywide basis at F&LC and Sushiro. However, even though some personnel thought that from a customer service perspective it would be necessary to take action regarding advertisements including the pulling of television commercials at the point that the decision was made to suspend sales of Dish (1) and Dish (2), in the end no specific action was taken because of an existing practice of never pulling television commercials in the F&LC Group and an assumption that suggestions would be ignored.

From the perspective considering the consumers’ point of view, if some kind of response was deemed necessary, people would need to consider the issue in-depth, quickly explore the necessary response and proceed with action, but the poor compliance awareness on the part of the F&LC Group’s upper management (the lack of a compliance-oriented stance) is believed to have ended up having a negative impact on all officers and employees.

For this reason, in order for the F&LC Group to enhance the compliance awareness of all officers and employees, in addition to distributing a compliance handbook, senior management needs to declare compliance as a management issue of the highest priority, make this widely known across the organization, and conduct training and instruction on a regular basis. This training and instruction should incorporate the minimum legal knowledge related to the operations and the action and attitudes needed from a compliance perspective, as well as mention of how compliance violations affect officers and employees themselves as well as the company.

Also note that while this training and instruction could be conducted in conjunction with training about the Act as noted in section (1) above, it deserves consideration in light of social problems and management issues at the time it is implemented and needs to reflect the characteristics of each store and department, and the organizational levels of those being trained. After considering what kind of training and instruction to offer in light of these factors and in terms of what would be effective in improving compliance awareness among officers and employees while preventing recurrences of bait-and-switch advertising, it will be necessary to formulate a detailed training and instruction program, with consideration also given to inviting outside experts as appropriate.

Part 5: Conclusion

This concludes the results of the Investigation conducted by the Audit & Supervisory Committee and its recommendations for improvements. In closing, we would like to offer a few remarks in reflection of the results of the Investigation and other considerations.

Firstly we wish to comment with regard to (1) that there was insufficient knowledge concerning bait-and-switch advertising despite the organization having conducted numerous campaigns and engaged in advertising including television commercials in the past; (2) the failure to provide sufficient products to customers who had visited Sushiro stores after seeing such advertisements, and (3) that despite there having been no shortage of complaints received from customers regarding shortages of campaign tied products in the past, this situation was left unaddressed. In addition to urging officers and employees to reflect on these points, the members of the Audit & Supervisory Committee must also reflect greatly on the fact that the system to audit the development and operation of related regulations such as F&LC's Advertising Representation Management Regulations and Crisis Management Regulations was insufficient, and that the Committee itself should have proactively gathered information, identified issues earlier and in greater detail, and raised those issues at Board of Directors meetings.

It is clear from regulations concerning bait-and-switch advertising that the practice is used as a means to sell other goods and services that an entity sells after inducing consumers interested in advertised goods and services that the entity in fact does not or cannot provide, and that this conduct unfairly induces consumers and interferes with general consumers' voluntary and rational choice-making. Therefore, the purpose of the Act is to protect the interests of general consumers by regulating such misrepresentations, focusing on the fact that they are likely to mislead general consumers about the availability of an advertised product or service, which is a fundamental premise of product selection (see Article 1 of the Act). Additionally, from the perspective of consumers, there is no difference in the damage caused by misrepresentations such as bait-and-switch advertising whether it takes place within an extremely narrow scope or on a nationwide basis.

For the F&LC Group to continue to develop in a tough management environment that is impacted by the recent COVID-19 pandemic, industry competitors catching up and other developments, the future action taken in light of the Incident must not be relegated to the performative level of simply ensuring that future advertisements do not constitute bait-and-switch advertising.

We must be strongly aware that due to Sushiro being the largest company in the industry and in light of the Incident, the F&LC Group faces strict scrutiny from consumers and society, and once again needs to consider things from the consumer perspective.

In closing, the Audit & Supervisory Committee would like to take this opportunity to remind all officers and employees of the F&LC Group, including those involved in the Incident, to take the severe remarks made in this report seriously.

In 2021, the company name was changed to FOOD & LIFE COMPANIES Ltd., and to coincide with this the F&LC Group's corporate philosophy was renewed:

PROMISE: *Value for our customers.*

We aim to exceed our customers' expectations for UMAI! - what's delicious.

Our goal is to bring excitement beyond imagination, to everyday lives.

We will relentlessly pursue providing more value.

We sincerely hope that the Group and each department will consider and capture the intent of this philosophy in their respective roles and functions, strive to improve their responsiveness and organizational capabilities towards achieving their goals, develop seamless workflows between departments and promote a corporate

culture that is conducive to dialogue, in order to exceed the expectations of our customers, stakeholders and shareholders.