

MEMORANDUM OF UNDERSTANDING ON MUTUAL ASSISTANCE
IN CONSUMER PROTECTION MATTERS BETWEEN THE
FEDERAL TRADE COMMISSION OF THE UNITED STATES OF AMERICA
AND THE PROCURADURÍA FEDERAL DEL CONSUMIDOR
(OFFICE OF THE FEDERAL ATTORNEY FOR CONSUMER PROTECTION)
OF THE UNITED MEXICAN STATES

The Federal Trade Commission of the United States of America ("FTC") and the Procuraduría Federal del Consumidor (Office of the Federal Attorney for Consumer Protection, or "Profeco") of the United Mexican States ("Mexico"),

RECOGNIZING the challenges posed by cross-border fraudulent and deceptive commercial practices, and desiring to improve the effectiveness of the enforcement of the Consumer Protection Laws of both countries; and

RECOGNIZING that the laws of both countries contain certain restrictions on international law enforcement assistance, including information disclosure, and that nothing in this Memorandum requires the Participants to provide assistance if such assistance is prohibited by their respective national laws, enforcement policies, and other important interests,

HAVE REACHED THE FOLLOWING UNDERSTANDING:

I. Definitions

For the purposes of this Memorandum,

A. "Consumer Protection Laws" refers,

1. in the case of the United States of America, to "unfair or deceptive acts or practices" contained in laws enforced by the Federal Trade Commission, including section 5 of the Federal Trade Commission Act, but does not refer to competition or antitrust laws and regulations, and
2. in the case of Mexico, to the Ley Federal de Protección al Consumidor, Ley Federal de Metrología y Normalización, and the applicable Normas Oficiales Mexicanas (Official Mexican Regulations, or "NOMs")

as well as any amendments thereto, and such other laws or regulations as the Participants may from time to time identify as a "Consumer Protection Law" for purposes of this Memorandum. Each Participant intends to use best efforts to notify the other of any relevant amendments to its Consumer Protection Laws.

B. "Information" means that included in documents or copies thereof, in written or electronic format, that are created, obtained and preserved by the Participants, and that may be used to establish the violation of Consumer Protection Laws or the occurrence of cross-border fraudulent or deceptive commercial practices.

C. "Participants" means

1. in the case of the United States of America, the FTC, and
2. in the case of Mexico, Profeco,

acting with respect to their respective enforcement responsibilities under the Consumer Protection Laws as here defined.

- D. "Person" means any natural person or legal entity existing under or authorized by the laws of either the United States, its states, or its territories, the laws of Mexico, or the laws of other states acting as a consumer or a Provider within, or directing activities toward, the territories of the Participants.
- E. "Provider" means any natural person or legal entity that on a regular or periodical basis offers, promotes, allocates, sells, leases, or grants the use or possession of goods, products, or services.
- F. "Request" means a request for assistance under this Memorandum.
- G. "Requested Participant" means the Participant from which assistance is sought under this Memorandum, or which has provided such assistance.
- H. "Requesting Participant" means the Participant seeking or receiving assistance under this Memorandum.

II. Information Assistance

- A. The Participants recognize that it is in their common interest to share Information and provide assistance that will: facilitate effective enforcement of their respective Consumer Protection Laws within their corresponding jurisdictions to prevent fraudulent and deceptive commercial practices across borders; avoid unnecessary duplication; and keep each other informed about developments in their respective countries that may affect the implementation of the terms of this Memorandum.
- B. Consistent with Article VI, the Participants intend to use best efforts to assist one another and to cooperate on a reciprocal basis in providing or obtaining Information that could assist in determining whether a Person has violated or is about to violate their respective Consumer Protection Laws, or in facilitating the administration or enforcement of such Consumer Protection Laws.
- C. Consistent with Article VI, the Participants intend to use their best efforts to inform each other as soon as practicable about violations of Consumer Protection Laws occurring or

originating in the territory of a Participant and that affect or may affect consumers in the territory of the other Participant.

III. Research Assistance

- A. The Participants recognize that it is in their common interest to share Information and provide assistance that will facilitate coordinated investigations, research, and consumer and business education; promote a better understanding by each of economic and legal conditions and theories relevant to enforcement of their respective Consumer Protection Laws and related activities.
- B. In furtherance of this common interest, consistent with Article VI, the Participants intend to use best efforts to exchange and provide appropriate information in relation to: investigations and research; speeches, research papers, and journal articles; compliance education programs; amendments to relevant legislation; and staffing and resource issues.

IV. Scope of Assistance

- A. Consistent with Article VI, assistance contemplated by this Memorandum includes, but is not limited to:
 - 1. using best efforts to disclose, provide, exchange, or discuss Information in the possession of any Participant;
 - 2. using best efforts to cooperate in the detection and investigation, carried out by each Participant, of violations of the Participants' Consumer Protection Laws;
 - 3. using best efforts to obtain, or arrange the obtaining of Information at the request of a Participant, including, when appropriate, documents, records, or other forms of documentary Information;
 - 4. using best efforts to share appropriate consumer complaint information; and
 - 5. in appropriate cases, coordinating enforcement against cross-border violations of the Participants' respective Consumer Protection Laws.
- B. Nothing in this Memorandum is intended to prevent a Participant from seeking assistance from or providing assistance to another Participant pursuant to other practices according to law.
- C. This Memorandum is intended to be used solely for the purpose of law enforcement assistance between the Participants. The provisions of this Memorandum are not intended

to give rise to a right on the part of any private person to obtain, suppress, or exclude any Information.

- D. Nothing in this Memorandum is intended to compel a Person to provide Information in violation of any legally applicable right, privilege, or restriction.
- E. Nothing in this Memorandum is intended to affect the right of a Participant to seek Information on a voluntary basis or otherwise lawful basis from a Person located in the territory of the other Participant, nor is it intended to preclude any such Person from voluntarily and lawfully providing Information to a Participant.

V. Requests for Assistance

- A. Requests by Profeco should be addressed to: Associate Director, International Division of Consumer Protection, FTC. Requests by the FTC should be addressed to: Director of International Affairs, Profeco.
- B. Requests regarding assistance in the enforcement of the Participants' Consumer Protection Laws should include, if applicable:
 - 1. a general description of the subject matter and nature of any investigation or proceeding to which the Request relates;
 - 2. where applicable, a description of the Information sought and the foreseen use of the requested Information;
 - 3. where applicable, a description of the action that the Requesting Participant is requesting that the Requested Participant take;
 - 4. requirements, if any, for confidential treatment of the Request or its contents; and
 - 5. any other information that the Requesting Participant believes would be helpful in facilitating review or execution of a Request.
- C. Requests regarding assistance on research and consumer and business education should include, if applicable:
 - 1. a general description of the subject matter and nature of any investigation or research to which the Request relates;
 - 2. where applicable, a description of the information sought and the foreseen use; and
 - 3. requirements, if any, for confidential treatment of the Request or its contents.

- D. Requests may also be submitted by completing the International Consumer Protection and Enforcement Network ("ICPEN") Information Request Pro Forma.
- E. The Participants should consult with each other regarding a Request in order to work out details about the manner and timing of executing the Request according to the nature and availability of the requested information.

VI. Limitations on Assistance

- A. Consistent with its national laws, international obligations, enforcement policies, and other important interests, a Participant should use its best efforts to provide assistance in response to a Request. The Requested Participant may decline to provide assistance.
- B. Notwithstanding any other provision of this Memorandum, a Participant should not communicate information to the other Participant if such communication is prohibited by the laws governing the Participant possessing the information or would be incompatible with that Participant's important interests.
- C. Before denying a Request, the Requested Participant should consult with the Requesting Participant to determine whether assistance may be given in part, subject to specified terms and conditions. If a Request is denied, the Requested Participant should provide the Requesting Participant with a written explanation of the basis for denial.
- D. The determination as to whether to grant a Request in whole or in part is delegated to the Associate Director, International Division of Consumer Protection, in the case of the FTC, and to the Director for International Affairs, in the case of Profeco.

VII. Confidentiality

- A. Each Participant should, to the fullest extent possible and consistent with its laws, maintain the confidentiality of any information communicated to it in confidence by the other Participant under this Memorandum.
- B. The Requesting Participant may, however, consistent with Article VI, communicate such confidential information to other law enforcement agencies (having first obtained assurances about the maintenance of confidentiality) for the purpose of Consumer Protection Law enforcement; any such onward sharing of information with other agencies is subject to the consent of the Requested Participant.
- C. Each Participant should oppose, to the fullest extent possible consistent with its laws, any application by a third party for disclosure of such confidential information.

- D. Unless otherwise discussed by the Participants, notifications and consultations pursuant to Articles II-IV of this Memorandum and other communications between the Participants in relation thereto should be deemed to be confidential.
- E. Nothing in this Memorandum prevents disclosure to third parties if such disclosure is required by the law of the Requesting Participant. The Requesting Participant should use its best efforts to notify the Requested Participant at least ten days in advance of any such proposed disclosure, or, if such notice cannot be given, then as promptly as possible.

VIII. Changes in Applicable Law

In the event of a significant modification to a Participant's Consumer Protection Laws, the Participants should use their best efforts to consult promptly to determine whether this Memorandum should be amended.

IX. Return of Information

The Requesting Participant should use its best efforts to keep Information shared until the conclusion of the investigation or research specified in the Request and should use its best efforts to return such Information at that time if the Requested Participant makes a written request for the retention and return of such Information at the time the Information is shared.

X. Costs

Unless otherwise decided by the Participants, the Requested Participant should pay all ordinary costs of executing a Request. Where the costs of providing or obtaining information under this Memorandum are substantial or extraordinary, the Requested Participant may require the Requesting Participant to undertake to pay those costs as a condition of proceeding with the Request. In such an event the Participants intend to consult on the issue at the request of either Participant.

XI. Duration of Cooperation

- A. This Memorandum will come into effect on the date of signature.
- B. Assistance under this Memorandum should be available in investigations or proceedings under the Participants' Consumer Protection Laws concerning conduct or transactions occurring after this Memorandum takes effect.
- C. A Participant should endeavor to provide the other Participant with 30 days written notice before ending its cooperation under this Memorandum. However, prior to withdrawing from this Memorandum, each Participant should use its best efforts to consult with the other Participant.

- D. On cessation of this Memorandum, the Participants should use their best efforts, in accordance with Article VII, to maintain the confidentiality of any Request and Information communicated to them in confidence by the other Participants under this Memorandum prior to its cessation, and to return, in accordance with the provisions of Article IX, any Information obtained from the other Participant under this Memorandum.

XII. Review of Memorandum

The Participants intend to consult and review the Memorandum on a biannual basis regarding the cooperation, coordination, and enforcement assistance undertaken between the Participants for the prior 24-month period.

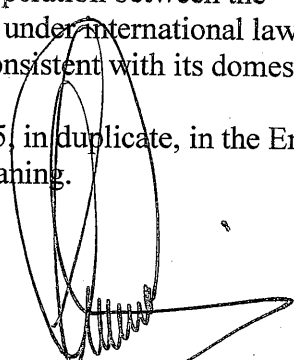
XIII. Legal Effect

This Memorandum is intended to create a framework for cooperation between the Participants and is not intended to create binding obligations under international law. Each Participant's implementation of this Memorandum will be consistent with its domestic law.

Signed in Washington, D.C. on this 27th day of January, 2005, in duplicate, in the English and Spanish languages, with both texts being identical in meaning.



Deborah Platt Majoras
Chairman
Federal Trade Commission



Carlos Francisco Arce Macías
Federal Attorney for Consumer Protection
Profeco