

DEPARTMENT ADMINISTRATIVE ORDER NO. 07

Series of 2006

SUBJECT: Instituting the Simplified and Uniform Rules of Procedure for Administrative Cases Filed with the Department of Trade and Industry (DTI) for Violations of the Consumer Act of the Philippines and Other Trade and Industry Laws

Pursuant to Article 159 of the Consumer Act of the Philippines (R.A. No. 7394) (approved on April 13, 1992) and to Sections 2 and 18 of Executive Order No. 913 (entitled "Strengthening the Rule-Making and Adjudicatory Powers of the Minister of Trade and Industry in Order to Further Protect Consumers", issued on October 7, 1983) and to implement more effectively the said two laws, the following rules and regulations are hereby prescribed and promulgated:

RULE I

TITLE AND CONSTRUCTION

Section 1. Title of the Rules. – These Rules shall be known as the "Simplified and Uniform Rules of Procedure for Administrative Cases Filed with the Department of Trade & Industry (DTI) for Violations of the Consumer Act of the Philippines and Other Trade and Industry Laws."

Section 2. Construction. – These Rules shall be liberally construed to carry out their objective of promoting the just, speedy, and inexpensive resolution of cases. Further, the best interest of the consumer shall be considered in the interpretation and implementation of the provisions of these Rules.

Section 3. Applicability of the Revised Rules of Court. – (a) Subject to the requirements of due process, the technical rules of evidence (Part IV of the Revised Rules of Court) prevailing in the courts of law shall not be strictly applied hereto.

(b) In the absence of any applicable provision in these Rules, the pertinent provisions of the Revised Rules of Court shall apply suppletorily.

RULE II

DEFINITION OF TERMS

Section 1. Basic Terms. – For purposes of these Rules, the following definitions shall be observed:

- (a) “*Consumer*” – means a natural person who is a purchaser, lessee, recipient or prospective purchaser, lessee or recipient of consumer products or services over which the DTI has jurisdiction.

- (b) “*Juridical person*” – means:
 - 1. The State and its political subdivisions;
 - 2. Other corporations, institutions and entities for public interest or purpose created by law;
 - 3. Corporations, partnership and associations for private interest or purpose to which the law grants a juridical personality separate and distinct from that of each shareholder, partner or member: *Provided, however,* That associations defined by law as corporations or partnerships *de facto* or by estoppel shall be considered as juridical persons under these Rules; and
 - 4. Entities authorized by law to sue and be sued.

- (c) “*Adjudication Officer*” – means:
 - 1. the Consumer Arbitration Officer (CAO) assigned to adjudicate the cases mentioned in Section 5 (a), Rule III of this Order. This term includes the Acting Consumer Arbitration Officer; or
 - 2. the Hearing Officer assigned to adjudicate the cases mentioned in Section 5 (b), Rule III of this Order.

- (d) “*Mediation*” – means an alternative mode of dispute resolution forming part of the adjudication process under Rule X of these Rules, under which the Adjudication Officer, as defined hereinabove, facilitates communication and negotiation between the parties, and assists the parties in reaching a voluntary agreement regarding a dispute. This shall include the mediation conducted by the Consumer Welfare Officer (CWO) at the pre-adjudication level.

- (e) *“Adjudicate”* and *“adjudication”* – includes “mediate” and “mediation”, respectively.
- (f) *“Complaint”* – means a sworn written statement of ultimate facts, filed by any consumer or any person, charging any person (natural or juridical) with any violation of the Consumer Act, or any Trade and Industry Law, or the Price Act and its IRR.
- (g) *“Formal Charge”* – means a written statement of ultimate facts, signed and sworn to by the duly authorized officer or representative of the initiating office or agency, filed by any office or agency of the DTI, charging any person (natural or juridical) with any violation of the Consumer Act, or any Trade and Industry Law, or the Price Act and its IRR.
- (h) *“Consumer Act”* – refers to Republic Act No. 7394, otherwise known as the “Consumer Act of the Philippines”, including any future amendment thereto.
- (i) *“Violations of the Consumer Act”* – refers to any and all of the acts, omissions, and offenses enumerated in Title II, Chapter I; and Title III, Chapters I, II (except the provisions on the sealing and testing of instruments of weights and measure), III, IV, V, VI, and VII of the Consumer Act, as violative of said Act.
- (j) *“Trade and Industry Law”* – means any Act, Batas Pambansa, Presidential Decree, General Order, Letter of Instructions, Executive Order, and other similar issuances, as well as any and all amendments thereto, which regulates trade and industry activities, the violation of which subjects the offender to criminal or administrative penalties or civil liability, or does not subject the offender to any penalty, sanction, or liability at all, and which law or issuance is subject to the implementation, administration, execution or enforcement of the Department, such as those enumerated in Section 1 of Ministry Order No. 69, Series of 1983, as amended, and Department Administrative Order No. 3, Series of 1993.
- (k) *“Price Act”* – refers to Republic Act No. 7581 otherwise known as the “Price Act”.

- (l) “*Department*” or “*DTI*” – refers to the Department of Trade and Industry.
- (m) “*Secretary*” – refers to the Secretary of the DTI.
- (n) “*Regional Office*” – refers to the DTI office having jurisdiction over a particular region of the Philippines.
- (o) “*Provincial Office*” – refers to the DTI office having jurisdiction over a particular province of the Philippines.
- (p) “*Area Office*” – refers to any office of the DTI-National Capital Region (NCR) which has jurisdiction over a particular area of Metro Manila.
- (q) “*Agency*” – refers to any bureau or unit of DTI which handles certain cases.
- (r) “*This Order*” – refers to this Department Administrative Order.

RULE III

JURISDICTION

Section 1. Cases Covered. – These rules of procedure shall be observed in the adjudication of:

- (a) Cases filed by consumers for violations of the Consumer Act. The rules herein that will govern are, all the rules which apply to violations of the Consumer Act.

If the complainants are DTI offices or agencies (*motu proprio*), the rules which will apply are those in (b) below.

- (b) Cases filed by natural or juridical persons or by DTI offices or agencies (*motu proprio*) for violations of Trade and Industry Laws. The rules herein that will govern are, all the rules which apply to violations of Trade and Industry Laws.

- (c) Cases filed by natural or juridical persons or by DTI offices or agencies *motu proprio* for violations of the Price Act (R.A. No. 7581) and its implementing rules and regulations. The rules herein that will govern are, all the rules which apply to violations of Trade and Industry Laws.

Section 2. Cases not Covered. - Cases which use a procedure other than that provided under the Consumer Act or other than that provided under E.O. No. 913, are not covered by these Rules. The following cases are excluded from the coverage and application of these Rules:

- (1) Cases handled by the Intellectual Property Office (IPO) pursuant to the Intellectual Property Code (R.A. No. 8293);
- (2) Cases handled by the Board of Investments (BOI) pursuant to the Omnibus Investments Code (E.O. No. 226 as amended);
- (3) Cases handled by the Construction Industry Arbitration Commission (CIAC) pursuant to E.O. No. 1008 (issued on February 4, 1985) and the Alternative Dispute Resolution Act of 2004 (approved on April 2, 2004); and
- (4) Cases handled by the Export Trade Complaints Committee (ETCC) pursuant to DTI Department Administrative Order No. 11, Series of 1999.

Section 3. Handling of Certain Cases. – (a) For cases involving violations of R.A. No. 4566 (Contractor’s License Law), as amended, and its implementing rules and regulations, the Philippine Contractors’ Accreditation Board (PCAB) shall have original and exclusive jurisdiction over said cases pursuant to R.A. No. 4566 as amended by P.D. No. 1746. However, with regard to cases involving persons or entities engaging in construction without a valid PCAB license, same shall constitute violations of a Trade and Industry Law and accordingly shall be adjudicated under Executive Order No. 913 and these Simplified and Uniform Rules.

(b) For cases involving violations P.D. No.1466 (law requiring the use of Philippine flag vessels), and its revised implementing rules and regulations, the Philippine Shippers’ Bureau (PSB) shall have the option of adjudicating said cases either (1) under P.D. No. 1466 and its revised implementing rules and regulations, or (2) under E.O. No. 913 and these Simplified and Uniform Rules of Procedure. Whenever option no. 2 is used, only the Hearing Officers of PSB shall have original and exclusive jurisdiction over said cases, notwithstanding the provisions of Sections 5 and 6, Rule III of these Rules.

Section 4. Prosecution of a Separate Action/Prohibition on Forum Shopping. – (a) Upon the filing of the complaint, the complainant or the duly authorized officer filing the formal charge, as the case may be, shall certify under oath therein or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that the complainant or office of agency concerned has not theretofore commenced any action or filed any claim involving the same issue in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status

thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the Adjudication Officer before whom his aforesaid complaint or formal charge is pending.

(b) The failure to comply with the foregoing requirement shall not be curable by mere amendment of the complaint or of the formal charge, but shall be cause for the *motu proprio* dismissal without prejudice of the case by the Adjudication Officer.

(c) Further, should any such separate action be filed prior in time, the Adjudication Officer, upon notice and hearing, may order the suspension of the action filed under these Rules if the resolution of the previously initiated action, or any issue therein, is prejudicial to the resolution of the action filed under these Rules.

Section 5. Jurisdiction of Adjudication Officers (AOs). – (a) Consumer Arbitration Officers (CAOs) shall have original and exclusive jurisdiction to adjudicate all cases filed by consumers under the Consumer Act.

(b) Hearing Officers (HEROs) shall have original and exclusive jurisdiction to adjudicate: (1) all cases filed by natural or juridical persons for violations of any Trade and Industry Law; and (2) all *motu proprio* cases filed under a formal charge (as defined under these Rules) by any office or agency of the Department for violations of any Trade and Industry Law, or of the Consumer Act, or of the Price Act and its IRR.

Section 6. Concurrence of Jurisdiction. – Subject to Section 5 above and to Rule IV hereof, the Provincial, Regional, Area Office, or the agency where the complaint or formal charge is first filed shall take cognizance thereof to the exclusion of all other offices or agencies of the Department having jurisdiction over the same case.

Section 7. Jurisdiction Over Cases of Violation of PSB – Revised Rules on Freight Forwarding. – Notwithstanding the provisions of Sections 5 and 6 of this Rule, only the Hearing Officers of the Philippine Shippers' Bureau shall have original and exclusive jurisdiction over cases involving violations of PSB Administrative Order No. 6, Series of 2005 entitled "Philippine Shippers' Bureau (PSB) – Revised Rules on Freight Forwarding".

Section 8. Qualifications of Adjudication Officers. – Adjudication Officers shall have such qualifications as required by law, according to whether they are CAOs or Hearing Officers.

Section 9. Consumer Arbitration Officers, Acting Consumer Arbitration Officers, and Hearing Officers; To Whom They Refer To. – (a) "Consumer Arbitration Officers" are lawyers who are holding the plantilla positions of Attorney III in the various regional offices of DTI. "Acting Consumer Arbitration Officers" are DTI employees/officers who will be designated as Acting Consumer Arbitration Officers by the Undersecretary for Regional Operations Group. "Hearing Officers" are DTI employees/officers who will be designated as Hearing Officers by the Undersecretary for Regional Operations Group and/or by their Supervising Undersecretary.

(b) Every such designation (whether original or renewal) shall be for a period of not exceeding three (3) years.

(c) Under this Order, a Consumer Arbitration Officer or an Acting Consumer Arbitration Officer can be designated further as a Hearing Officer. A Hearing Officer can be designated further as an Acting Consumer Arbitration Officer.

Section 10. Powers and Duties of the Adjudication Officer. – The Adjudication Officer shall exercise the following powers and duties:

- a. Issue summons;
- b. Administer oaths and affirmations;
- c. Conduct adjudication;
- d. Regulate and maintain order during the proceedings;
- e. Issue *subpoena* or *subpoena duces tecum, motu proprio* or when requested by any party to compel the attendance of witnesses or the production of documents, records or books during the hearing;
- f. Take or receive all relevant evidence;
- g. Rule upon offers of proofs;
- h. Take or cause deposition to be taken whenever the ends of justice would be served thereby;
- i. Rule on any procedural request;
- j. Issue preliminary orders, preventive orders, and temporary orders;
- k. Exclude any party, witness, or any other person from the hearing room;
- l. Render a decision within fifteen (15) days from the time the proceedings were terminated; and
- m. Perform such other functions as would contribute to the just, speedy, and inexpensive resolution of the case.

RULE IV

VENUE

Section 1. Venue for Complaints Filed by Consumers for Violations of the Consumer Act. – The complaint shall be filed in duplicate with the Provincial Office (or with its field office) or with its mother Regional Office if the province has no Provincial Office, or in the case of the National Capital Region (NCR), with the Area Office, situated in the place specified by the parties in a written agreement executed prior to the filing of the complaint. If there is no such written agreement, then in any of the following places, at the option of the complainant, to wit:

- (a) Place where the transaction was done, wholly or partially;
- (b) Place where the violation of the Consumer Act was committed, wholly or partially;
- (c) Place of the execution of the contract sued upon, as it appears therefrom;
- (d) Place of residence of the complainant at the time of the transaction, or at the time of the violation, or at the time of the filing of the complaint; and
- (e) Place of residence of the respondent, or business domicile if the respondent is a juridical person, at the time of the transaction, or at the time of the violation, or at the time of the filing of the complaint.

Section 2. Venue for Complaints filed for Violations of Trade and Industry Laws, Including the Price Act and its IRR. – Section 1 of this Rule shall apply to all complaints filed by natural or juridical persons for violations of Trade and Industry Laws and the Price Act and its IRR.

Section 3. Venue for Formal Charges. – Formal charges shall be filed in accordance with in Section 1 of this Rule: *Provided*, That should the office filing the formal charge be a Provincial Office, the formal charge shall be filed with its mother Regional Office.

Section 4. Change of Venue After the Complaint/Formal Charges Has Been Filed. - After the complaint/formal charge has been filed but before the mediation stage is finished, the parties to the case may agree in writing to a change in venue: *Provided, however*, That this change can be done only once.

RULE V

COMMENCEMENT OF ACTION

Section 1. Commencement of Action. – (a) In all cases filed under these Rules, the party initiating the action shall be called the “Complainant” and the opposing party the “Respondent”. In the case of a formal charge, the initiating office or agency is the complainant.

(b) All cases for violations of the Consumer Act, or of any Trade and Industry Law, or of the Price Act and its IRR, shall be commenced by filing a complaint or a formal charge, as the case may be.

(c) The full names of any and all real parties-in-interest, whether natural or juridical persons, or of the DTI office or agency, shall be stated in the caption of the complaint or formal charge, as well as in the decisions and orders.

(d) All complaints shall be prosecuted by the complainant or by his/its counsel. All formal charges shall be prosecuted by the duly authorized officer or representative of the initiating office or agency of DTI. The respondent shall defend himself personally or by counsel.

Section 2. Essential Elements and Parts of a Complaint. – (a) The following shall be alleged in the complaint:

- (1) The names and addresses of the parties and their capacity to sue or be sued;
- (2) A statement of relevant facts, including all relevant dates;
- (3) A statement of cause/s of action;
- (4) A statement of law/s violated; and
- (5) The relief/s prayed for, and the preliminary order, preventive measure order, or temporary order sought, if any.

(b) The following documents shall be attached to the complaint, to form integral parts thereof:

- (1) Clear sworn statements of witness/es;
- (2) Clear copies of documentary evidence; and
- (3) A verified statement on any civil, criminal or administrative action that has been filed or is/are pending, as provided in Section 4, Rule III of this Order.

(c) The absence of any one, some, or all of the above shall be a ground for the *motu proprio* dismissal without prejudice of the case.

Section 3. Essential Elements and Parts of a Formal Charge. – (a) The following shall be alleged in the Formal Charge:

- (1) The names and addresses of the parties;

- (2) The designation of the violation/offense committed;
- (3) The act/s and/or omission/s constituting the violation/offense;
- (4) The approximate date of the commission of the violation/offense;
- (5) The place where the violation/offense was committed; and
- (6) The relief/s prayed for, and the preliminary order, preventive measure order, or temporary order sought, if any.

(b) The following documents shall be attached to the formal charge, to form integral parts thereof:

- (1) Clear sworn statements of witness/es;
- (2) Clear copies of documentary evidence; and
- (3) A verified statement on any civil, criminal or administrative action that has been filed or is/are pending, as provided in Section 4, Rule III of this Order.

(c) The absence of any one, some, or all of the above shall be a ground for the *motu proprio* dismissal without prejudice of the case.

Section 4. Form of Complaint and/or Formal Charge. – The complaint or formal charge shall be legibly printed on legal size paper. Its caption shall state the name and address of the office with which it is filed, the title of the action, and the words “Adm. Case No. _____”. The caption shall include the names of the parties, with the identifying words “Complainant” and “Respondent”.

Section 5. Rule on Suit Against Associations Without Juridical Personality.
– When two or more persons associated in any business, transact such business under a common name, whether it comprises names of such persons or not, the association may be sued under such common name.

RULE VI

SERVICE OF PLEADINGS AND OTHER PAPERS

Section 1. Filing and Service of Pleadings. – All pleadings and other papers in connection with the case shall be filed with the appropriate docketing unit of the Regional office, Provincial or field office, Area Office, or other appropriate office or agency of the Department, as the case may be.

Section 2. Service of Summons, Notices, Decisions and Orders. – (a) Summons, notices, and copies of decisions and orders shall be served on the parties to the case personally by the duly authorized process server or other officer of the Department or by registered mail.

(b) The serving officer shall submit his return within five (5) days from date of service thereof, stating legibly in his return, his name, the name of person served, and the date of receipt, which return shall be immediately attached to and shall form part of the records of the case. If no service was effected, the serving officer shall state the reason therefor in his return.

RULE VII

PROHIBITED PLEADINGS AND MOTIONS

Section 1. Prohibited Pleadings or Motions. – For purposes of these Rules, the following pleadings and motions shall be prohibited:

- (a) Motion to dismiss, except a motion to dismiss based on lack of jurisdiction, which must be raised at the earliest opportunity;
- (b) Motion for judgment on the pleadings;
- (c) Motion for summary judgment;
- (d) Motion for bill of particulars;
- (e) Motion for extension of time to file any required pleading;
- (f) Counterclaim;
- (g) Cross-claim;

- (h) Reply;
- (i) Rejoinder;
- (j) Motion to Intervene; and
- (k) Memorandum of any kind.

Section 2. Motion for Postponement. – No dilatory motions for postponement shall be allowed. During the mediation stage, however, the parties shall be allowed a maximum of two (2) postponements: *Provided*, That these shall be for the purpose of seriously seeking an amicable settlement of the case: *Provided, further*, That such postponements shall cover a period of not more than a total of thirty (30) days.

RULE VIII

PRESCRIPTION OF ACTIONS

Section 1. Prescription of Actions Under the Consumer Act. – Any complaint of a consumer (as defined under Section 1 (a), Rule II of this Order), for violation of the Consumer Act, shall be filed within two (2) years from the time the consumer transaction was consummated, or the deceptive or unfair and unconscionable act or practice was committed, or in case of hidden defects, from the date of discovery thereof. After the said period, the filing thereof shall be barred.

Section 2. Prescription of Actions Under Other Cases. – Any other complaint or formal charge shall be filed within three (3) years from the date of the commission of the violation/offense, or if such date is unknown at that time, then within three (3) years from the date of discovery thereof. After the said period, the filing thereof shall be barred.

RULE IX

PROCEEDINGS BEFORE THE ADJUDICATION OFFICER

Section 1. Docketing of Cases and Assignment to an Adjudication Officer.
– (a) All complaints and formal charges shall be docketed. After docketing, the Head of Office concerned shall assign the case to an Adjudication Officer.

(b) The adjudication of any complaint, except one which is initiated by a consumer for violation of the Consumer Act, is discretionary with the Department, and not a matter of right for the complainant. Thus, after the docketing and assignment of an administrative case number, the Head of Office concerned shall determine whether or not the Department should adjudicate the case, taking into consideration the following:

- (i) Whether or not the adjudication of the case will aid in the enforcement of the Trade and Industry Law allegedly violated, and if it does, the extent thereof;
- (ii) The wisdom, propriety, and expediency of adjudicating the case;
- (iii) The other legal remedies available to the parties in settling their dispute/s; and
- (iv) Whether or not the subject matter of the case is a priority in the adjudication program of the Department.

(c) Unless the Secretary determines otherwise, if the Head of Office elects not to submit the case for adjudication, he shall issue an order to such effect. No reason shall be given for such elected action, except that it is pursuant to Section 1 (b) of this Rule. The said order shall not be appealable.

Section 2. Preliminary Determination/Dismissal *Motu Proprio* by the Adjudication Officer. – Upon assignment of the case, the Adjudication Officer shall determine whether:

- (a) the Head of Office has already elected to adjudicate the case (this is not applicable to complaints filed by consumers for violations of the Consumer Act);
- (b) the case falls within the jurisdiction of the Department in accordance with these Rules;
- (c) the complaint or formal charge is sufficient in form and substance, and a cause of action or the charge is sufficiently alleged, as the case may be; and
- (d) the action has not yet prescribed.

Should the Adjudication Officer find that any or some of the essential elements required for a complaint or formal charge do not exist, or that the complaint or formal charge do not have the required attachments, he shall *motu proprio* dismiss the action without prejudice.

Section 3. Issuance of Summons. – If the Adjudication Officer believes, based on the allegations of the complaint or of the formal charge and the supporting evidence, that there exists a *prima facie* case and that same complies with all the requirements heretofore mentioned, he shall issue a summons to be served on the respondent, copy furnished the complainant.

Summons shall be served by personal service, by registered mail, or by publication. In case of summons by publication, the same shall be done once in a newspaper of general circulation, the cost being borne by the complainant.

Section 4. Answer. – The summons shall require the respondent to file a written answer within ten (10) working days from receipt of the summons.

Section 5. Preliminary Order. – (a) At any time after the commencement of the action and before judgment, the Adjudication Officer may *motu proprio* or upon verified application by the complainant, or by the officer who signed the formal charge, issue a preliminary order requiring any person to refrain from a particular act or to perform a particular act, if the Adjudication Officer is satisfied that the commission or the continuance of the act complained of during the pendency of the action or the non-performance thereof would probably work injustice to the complainant or the general public; or that the respondent is doing, threatens or is about to do, or is procuring or suffering to be done, some act probably in violation of the complainant's or the general public's rights respecting the subject of the administrative action, and tending to render the judgment ineffectual.

(b) The Adjudication Officer may require the complainant to file with the office of the Adjudication Officer, a bond executed to the respondent, in an amount to be fixed by the Adjudication Officer, to the effect that the complainant will pay to such party all damages which he may sustain by reason of the preliminary order if the Adjudication Officer should finally decide that the complainant was not entitled thereto: *Provided*, That no bond shall be required in cases initiated by formal charge.

(c) The preliminary order may be granted with or without prior notice and hearing on the application for issuance of preliminary order, at the sound discretion of the Adjudication Officer.

(d) The preliminary order may be dissolved fully or partially at anytime by the Adjudication Officer *motu proprio*, or upon application by the respondent with or without prior notice and hearing on the application for dissolution thereof, at the sound discretion of the Adjudication Officer. The grounds for objecting to, or for a motion for dissolution, of any injunctive relief under Section 6, Rule 58 of the Rules of Court shall be applicable.

Section 6. Preventive Measure Order. – At any time after the commencement of the administrative action and before judgment, the Adjudication Officer may *motu proprio* or upon application by the complainant, issue a preventive measure order for the purpose of preventing the disposition or tampering of evidence, the continuance of acts being complained of, and the flight of the respondent, as the case may be:

(a) The seizure of the goods which are the subject of the said adjudication or the padlocking of the warehouse, building, factory, store, shop, or any other structure where the said goods are contained or stored; or the withholding of such goods if for any reason the possession thereof has passed to the Department;

(b) The seizure of paraphernalia, machines, vehicles and the like believed to have been used in the commission of the offense, or the padlocking of the warehouse, building, factory, store, shop, or structure where the said paraphernalia, machines, vehicles and the like are contained or stored; or the withholding of such paraphernalia, machines, vehicles and the like if for any reason the possession thereof has passed to the Department;

(c) The padlocking of the business establishment, warehouse, building, factory, store, shop or any other structure which was used in the commission of the offense;

(d) The holding in port of any vessel or aircraft which has been used in the commission of the offense;

(e) The prevention of the departure from the Philippines of the respondent regardless of citizenship; and

(f) Any other preventive measure which is deemed necessary by the Adjudication Officer.

Section 7. Temporary Order. – Any of the following temporary orders may also be issued by the Adjudication Officer if the case involves a violation of the Price Act and its IRR:

(a) Temporary Closure Order (TCO) for a period not exceeding ten (10) days; and

(b) Temporary Restraining Order (TRO) for a period not exceeding ten (10) days (per Section 10 (11), Price Act).

RULE X

MEDIATION

Section 1. Statement of Policy. – In applying and implementing the provisions of these Rules, primary consideration must be given to the need to promote candor of parties and the Adjudication Officer through the policy of fostering prompt, economical and amicable resolution of disputes in accordance with principles of integrity of determination by the parties, and the policy that the decision making authority in the mediation process rests with the parties, pursuant to R.A. No. 9285 or the Alternative Dispute Resolution Act of 2004.

Section 2. Mediation. - Within five (5) days from the filing of the answer, or from the lapse of the period to answer if none has been filed, the Adjudication Officer shall issue a notice of mediation, which shall be served upon each of the parties concerned at least five (5) days before the holding thereof. During mediation, the Adjudication Officer shall:

- a. Explain to all parties the nature of the action;
- b. Clarify from the parties the relief/s sought;
- c. Encourage the parties to settle the case, and ask for the parties offers and counter offers;
- d. In all cases, endeavor to facilitate the amicable settlement by the parties, by stressing on the advantages thereof, e.g., cost-effective, peace of mind and reliefs;
- e. Propose to the parties alternative solutions and encourage counter-offers; and
- f. Resort to such other means toward the speedy and impartial disposition of the case. A successful mediation shall operate as a dismissal with prejudice of the case and is immediately final and executory.

Section 3. Compromise and Execution During Mediation. – During the mediation stage, if the parties agree on an amicable settlement of the case, they shall sign an agreement indicating the terms and conditions thereof. The agreement shall not be contrary to law, morals, good customs, public order or public policy. The Adjudication Officer shall render a decision based on the compromise agreement, which shall immediately be final and executory.

RULE XI

PRELIMINARY CONFERENCE

Section 1. Next Action When There is Failure of Mediation. – (a) Should mediation fail to resolve the case, the Adjudication Officer shall conduct a preliminary conference to consider the following:

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;

- (3) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;
- (4) The limitation of the number of affiant-witnesses; and
- (5) Such other matters as may aid in the prompt disposition of the case.

(b) The Adjudication Officer shall have the option of requiring the parties to simultaneously submit preliminary conference briefs to aid him in the conduct of the preliminary conference.

(c) Thereafter, the Adjudication Officer shall issue a Preliminary Conference Order stating: (a) the stipulated and/or admitted facts, if any; (b) the issues of law and of fact agreed upon; and (c) other matters taken up during the preliminary conference.

RULE XII

POSITION PAPER; HEARING

Section 1. Submission of Position Paper and Supporting Evidence. – (a) In lieu of a formal hearing, the Adjudication Officer shall direct the parties to simultaneously submit their respective position paper with supporting affidavits and other documentary evidence not later than fifteen (15) days from receipt of the Preliminary Conference Order.

(b) The supporting affidavits shall take the place of direct testimony. Affidavits and supporting documentary evidence which were annexed to the complaint or formal charge, and the answer, as the case may be, and forming part of the records of the case, are deemed automatically reproduced for purposes of presentation of evidence and need not be annexed to the position papers. They shall, however, be distinctly identified for reference in the position paper.

(c) The Adjudication Officer, at his option, may set the submission of position paper and supporting evidence for hearing.

(d) Upon the submission of the position papers, or upon the expiration of the fifteen (15)-day period mentioned in paragraph (a) of this section if no position paper has been filed, or upon termination of the hearing mentioned in the immediately following section, the case shall be deemed submitted for decision.

Section 2. Hearing. – Should the Adjudication Officer believe that there is/are question/s of fact, he may set the case for hearing before the same is submitted for decision, purposely to resolve that issue. During the said hearing, questions may be propounded by parties to each other's affiants-witnesses.

RULE XIII

DECISION AND ADMINISTRATIVE PENALTIES/SANCTIONS

Section 1. Decision.- Within fifteen (15) days from the time the case is submitted for decision, the Adjudication officer shall issue a decision in writing. The decision shall be clear and concise, and shall contain statements on: (a) the relevant facts of the case; (b) the issue/s involved; (c) applicable law and/or jurisprudence; (d) conclusions and reasons therefor; and (e) the relief/s granted, if any, and the administrative penalty/ies imposed, if any.

Section 2. Imposition of Administrative Penalties. – The Adjudication Officer shall have the power to impose administrative penalties upon the respondent, if warranted, and even if these have not been prayed for by the complainant, to wit:

(a) **For the violation of the Consumer Act:**

(1) The issuance of a Cease and Desist Order (CDO), which shall be embodied in the decision: *Provided; however,* That such order shall specify the acts that the respondent shall cease and desist from and shall require him to submit a report of compliance therewith within a reasonable time;

(2) The acceptance by the Adjudication Officer of a voluntary assurance of compliance or discontinuance from the respondent which may include any or all of the following terms and conditions:

- 2.1 an assurance to comply with the provisions of R.A. No. 7394 and its implementing rules and regulations;
- 2.2 an assurance to refrain from engaging in unlawful acts and practices or unfair or unethical trade practices subject of the adjudication;
- 2.3 an assurance to comply with the terms and conditions specified in the consumer transaction subject of the complaint;
- 2.4 an assurance to recall, replace, repair or refund the money value of defective products distributed in commerce; and

- 2.5 an assurance to reimburse the complainant out of any money and/or property in connection with the complaint, if any, and to file a bond to guarantee compliance therewith;

Said acceptance does not require as a condition precedent, the consent of the complainant.

- (3) The restitution or rescission of the contract without damages;

- (4) The seizure and condemnation of the consumer product/s found to be hazardous to health and safety unless the respondent files a bond issued by an accredited bonding company, equivalent to ten percent (10%) of the value of the seized or condemned items, or such other percentage as may be determined by the Adjudication Officer, to answer for any damages or injury that may arise from the continued use of the product;

- (5) The imposition of an administrative fine in such amount as deemed reasonable by the Adjudication Officer, which shall in no case be less than Five Hundred Pesos (P/ 500.00) nor more than Three Hundred Thousand Pesos (P/ 300,000.00) depending on the gravity of the offense, and the additional administrative fine of not more than One Thousand Pesos (P/ 1,000.00) for each day of continuing violation; and

- (6) Other penalties provided elsewhere in the Consumer Act.

(b) For the violation of any Trade and Industry Law:

- (1) The issuance of a Cease and Desist Order (CDO), which shall be embodied in the decision;

- (2) The acceptance by the Adjudication Officer of a voluntary assurance of compliance or discontinuance from the respondent under such terms and conditions as may be imposed by the Adjudication Officer. Said acceptance does not require as a condition precedent, the consent of the complainant;

- (3) The seizure, forfeiture or condemnation of the products which are the subject of the offense, as well as the proceeds of the offense;

- (4) The seizure and forfeiture of the paraphernalia and all properties, real or personal, which have been used in the commission of the offense;

(5) The imposition of an administrative fine in such amount as deemed reasonable by the Adjudication Officer, which shall in no case be less than Five Hundred Pesos (P/ 500.00) nor more than One Hundred Fifty Thousand Pesos (P/ 150,000.00), plus the additional administrative fine of not more than One Thousand Pesos (P/ 1,000.00) for each day of continuing violation. The fine imposed under this Section shall be regardless of the limits of the criminal fine fixed in the trade and industry law violated;

(6) The cancellation of any permit, license, authority, or registration which may have been granted by the Department, or the suspension of the validity thereof for such period of time as the Adjudication Officer may deem reasonable which shall not however, exceed one year;

(7) The withholding of any permit, license, authority, or registration which is being secured by the respondent from the Department;

(8) The submission of a recommendation to the LGU concerned, through proper channel, for the cancellation/suspension of a Mayor's Business Permit;

(9) The awarding of nominal and liquidated damages;

(10) Censure; and

(11) Other penalties/sanctions analogous to the above, such as:

11.1 Closure of the business establishment for a period not exceeding one year;

11.2 Ordering the respondent to recall, replace, repair, or refund the money value of defective products distributed in commerce; and/or

11.3 Ordering the respondent to reimburse the complainant the expenses and the costs incurred in prosecuting the case in the Department.

(c) **For the violation of the Price Act and its IRR:**

(1) The permanent closure of the establishment;

(2) The confiscation/seizure and forfeiture of all products and/or effects subject of the offense;

- (3) The confiscation/seizure and forfeiture of all paraphernalia used in the commission of the offense/crime;
- (4) The suspension, revocation or cancellation of any permit, license, authority, or registration issued by the Department;
- (5) The issuance of a cease and desist order, which shall be embodied in the decision;
- (6) Censure;
- (7) Reprimand; and
- (8) The imposition of an administrative fine of not less than One Thousand Pesos (P/ 1,000.00) nor more than One Million Pesos (P/ 1,000,000.00).

Section 3. Service of the Decision. - A copy of the decision may either be served personally or by registered mail, to the parties or counsel. If the decision is served on the respondent by way of publication once in a newspaper of general circulation, the cost thereof shall be shouldered by the complainant.

RULE XIV

MOTION FOR RECONSIDERATION

Section 1. Motion for Reconsideration. – (a) *Cases Filed by Consumers for Violations of the Consumer Act* – Per Article 165 of the Consumer Act, no Motion for Reconsideration is allowed for said cases.

(b) *Cases Filed for Violations of Trade and Industry Laws or of the Price Act and its IRR* – Per Section 13 of E.O. No. 913, only one (1) Motion for Reconsideration is allowed within the appeal period. The filing of the Motion for Reconsideration shall suspend the running of the said appeal period, and the number of days lapsed shall be deducted in the computation of the remaining appeal period.

Should the Adjudication Officer believe that the motion for reconsideration is merely *pro forma* and filed manifestly for delay, he shall deny the same in writing. Otherwise, the Adjudication Officer shall ask the adverse party to file a comment and/or opposition thereto within ten (10) days from receipt of said order. Upon the lapse of said period, whether with or without any comment and/or opposition being filed, the Adjudication Officer shall proceed to resolve the motion.

RULE XV

APPEALS

Section 1. Manner of Appeal. – (a) Under Article 165 of the Consumer Act, an appeal may be taken from a final judgment or order of the Adjudication Officer which completely disposes of a case, within fifteen (15) days from receipt thereof. The appeal shall be taken by filing a Memorandum of Appeal with the Secretary, with Notice of Appeal to the Adjudication Officer, and with copy duly furnished the adverse party/ies, on any of the following grounds:

- (1) Grave abuse of discretion;
- (2) The decision/order is in excess of jurisdiction or authority of the Adjudication Officer; and
- (3) The decision/order is not supported by the evidence or there is serious error in the findings of facts.

(b) To ensure simplicity and uniformity in these Rules, paragraph (a) of this section is hereby made applicable to appeals from decisions of Adjudication Officers to the Secretary, in cases filed for violations of Trade and Industry Laws and the Price Act and its IRR.

Section 2. Decision on Appeal. – The Secretary shall decide the said appeal within thirty (30) days from receipt thereof. His decision on the appeal shall become final and executory if no further appeal is made within the reglementary period provided by law, as follows:

- a. If the case falls under the Consumer Act (where the complainant is a consumer), the further appeal shall be by way of certiorari to the Court of Appeals, pursuant to Section 4, Rule 65 of the Revised Rules of Court, which must be filed by the appellant within sixty (60) days from receipt of the decision to be assailed in the Court of Appeals.
- b. If the case falls under any Trade and Industry Law (E.O. No. 913) or under the Price Act and its IRR, the further appeal shall be made to either:
 1. the Office of the President; or to the
 2. Court of Appeals under Rule 43 of the Revised Rules of Court.

Section 3. Delegation of the Secretary's Appeal Function. – The Secretary may delegate to subordinate officer/s his function of reviewing and deciding said appeals from decisions/final orders of Adjudication Officers.

RULE XVI

EXECUTION OF DECISIONS

Section 1. When Decision Becomes Final and Executory. – All decisions shall become final and executory when all periods for Motion for Reconsideration and Appeal provided in these Rules, whether taken or not, shall have lapsed.

Section 2. Execution. – (a) As soon as a decision becomes final and executory, the Adjudication Officer shall, either on motion of the interested party or *motu proprio*, issue an Order of Execution with the corresponding Writ of Execution, requesting the proper Sheriff's Office to execute said decision. No deputation is necessary.

(b) When there is a need to deputize and enlist the assistance of public officers and government agencies (other than the Sheriff's Office), or private individuals and entities, the Adjudication Officer may deputize anyone of them, and the deputation shall take effect as soon as the said officers, agencies, individuals, and entities give their consent to their deputation.

RULE XVII

OTHER PROVISIONS

Section 1. Treatment of Pending Cases. – All cases (for violations of the Consumer Act, or Trade and Industry Laws, or the Price Act and its IRR), which are pending with the various DTI offices and agencies on the date this Order takes effect, shall continuously be adjudicated in accordance with the rules of procedures and designations existing immediately prior to the effectivity of this Order: *Provided, however,* That to ensure uniformity and a smooth transition, the DTI-National Capital Region shall observe the existing procedures being observed by the other DTI Regional Offices and Provincial Offices in the mediation and adjudication of cases involving violations of the Consumer Act, Trade and Industry Laws, and the Price Act.

Section 2. Separability Clause. – If for any reason any section, provision, or part of this Order, or the application of such section, provision, or part to any person, group, or circumstance is declared invalid or unconstitutional, the remainder of this Order shall not be affected by such declaration.

Section 3. Repealing Clause. – (a) The following DTI orders are hereby repealed:

- (1) Ministry Order No. 69, Series of 1983, entitled “Rules and regulations governing administrative actions for violations of trade and industry laws”, issued on 25 November 1983: *Provided, however,* That the list of “Trade and Industry Laws” embodied in Section 1 thereof, including all the amendments to said list, is hereby excluded from the said repeal.
- (2) Department Order No. 13, Series of 1989, entitled “Authorizing Provincial Directors to sign Statements of Violation, for violations of Trade and Industry Laws within their respective province”, issued on May 19, 1989.
- (3) Department Order No. 25, Series of 1989, entitled “Expanding the Authority of DTI Provincial Directors in the Enforcement of Trade and Industry Laws”, issued on July 6, 1989.
- (4) Department Order No. 124, Series of 1992, entitled “Appointment of Acting Consumer Arbitration Officer under Republic Act No. 7394, otherwise known as Consumer Act of the Philippines”, issued on October 28, 1992.
- (5) Department Administrative Order No. 3, Series of 1993, entitled “Amending Department Order No. 124, Series of 1992”, issued on June 30, 1993.
- (6) Joint DTI-DOH-DA Administrative Order No. 1, Series of 1993, entitled “Rules and regulations implementing the provisions of Chapter III, Title V of Republic Act No. 7394, otherwise known as the Consumer Act of the Philippines”, issued on December 27, 1993, insofar as it applies to the DTI.
- (7) Department Administrative Order No. 10, Series of 1995, entitled “Designation and jurisdiction of Consumer Arbitration Officer/Alternate Acting Arbitration Officer”, issued on October 26, 1995.
- (8) Department Administrative Order No. 4, Series of 1997, entitled “Venue of actions involving violations of the Consumer Act (R.A. 7394)”, issued on June 17, 1997.
- (9) Department Order No. 89, Series of 1998, entitled “Expanding the Authority of the Consumer Arbitration Officers (CAO) to Include Mediation and Adjudication of Administrative Cases Involving Violations of Trade and Industry Laws under Executive Order No. 913”, issued on December 14, 1998.

- (10) The following sections of Department Administrative Order No. 2, Series of 2002, entitled "Defining the responsibilities and liabilities of manufacturers, importers, traders, wholesalers, distributors, retailers and or their agents, with regard to products covered by mandatory product certification and prescribing penalties for violation thereof", issued on July 1, 2002:

Section 8 - entitled "Adjudication of Cases";
Section 9 - entitled "Preliminary and Preventive Orders";
Section 10 - entitled "Procedure for Filing an Appeal";
Section 11 - entitled "Penalties and Sanctions";
Section 13 - entitled "Execution of Final Orders/Decisions/
Judgments; and
Section 15 - entitled "Prescription".

- (11) The following sections of Department Administrative Order No. 8, Series of 2002, entitled "Rules and Regulations Implementing Article 53 of the Consumer Act of the Philippines (R.A. 7394) in Relation to Section 8, Rule II, Chapter I, Title III of Department Administrative Order No. 2, Series of 1993 Prohibiting Chain Distribution Plans or Pyramid Sales Schemes in the Sale of Consumer Products", issued on August 28, 2002:

Section 3 – entitled Administrative Proceedings; and
Section 4 – entitled "Administrative Proceedings under E.O. 913
and M.O. 69".

- (12) The following Sections of PSB Administrative Order No. 6, Series of 2005, entitled "Philippine Shippers' Bureau (PSB) – Revised Rules on Freight Forwarding", issued on November 23, 2005:

Section 42 – entitled "Modes of commencing administrative adjudication proceedings".
Section 43 – entitled "Mediation; three (3) types of decision renderable by the Director of PSB".
Section 44 – entitled "Elevation of case".
Section 45 – entitled "When summons not necessary".
Section 46 – entitled "Probable cause rule".
Section 47 – entitled "Additional powers".

(b) All other Department Administrative Orders, Department Orders, other issuances, or parts thereof which are inconsistent with this Order are hereby likewise repealed or amended accordingly.

Section 4. Effectivity. – This Order shall take effect fifteen (15) days after full publication in two (2) newspapers of general circulation.

Makati City, July _____, 2006.

PETER B. FAVILA
Secretary

Recommended by:

ZENAIDA CUISON MAGLAYA
Undersecretary for Consumer
Welfare and Trade Regulation Group

VICTORIO MARIO A. DIMAGIBA
Director
Bureau of Trade Regulation and
Consumer Protection
and
Officer-in-Charge
Office of Legal Affairs