

□ Hon Hai Precision Industry Violates Article 24 of the Fair Trade Law by Stating or Disseminating Patent Right Disputes 【November 23, 2006】

During its 785th Commissioners' Meeting on November 23, 2006, the FTC determined that Hon Hai Precision Industry (hereinafter called "the Respondent") had violated Article 24 of the Fair Trade Law by consecutively publishing improper words, by stating or disseminating patent right disputes, on its website to degrade its competitor's business reputation. The Respondent's acts were obviously unfair and sufficient to affect trading order. Thus, the FTC ordered the Respondent to immediately cease these unlawful acts mentioned above and imposed an administrative fine of NT\$1,560,000 on the Respondent.

From June 24 to November 7, 2006, the Respondent posted a message on the Market Observation Post System saying that Lotes Co., Ltd. (hereinafter called "Lotes") was involved in several lawsuits of patent right infringement. After the investigation, it was found that the message in question consecutively alleged that Lotes was "counterfeiting," "infringing upon intellectual property rights (of another business)," "maliciously competing," "purposely confusing the market," "an illegal speculative company," and "an unworthy counterfeiter." These words are commonly known by the general public to be sufficient to be libelous and to defame Lotes' reputation. Since 2000, the Respondent has not received any decisions issued by relevant courts regarding Lotes' infringement of the patent of the Respondent's connector product. However, the words that the Respondent used in the message in question affirmatively claimed or implied that Lotes had infringed upon the Respondent's patent rights. Such a message was not a statement of facts and was used consecutively and considerably. Therefore, the contents of such a message published by the Respondent were obviously inappropriate.

Due to Respondent's advantageous position in the connector market, the message it published on the Market Observation Post System was broadly covered by newspaper, magazine and electronic media, which quoted the contents of the message in their reporting. It allowed the trading counterparts or potential trading counterparts of Lotes to know of the message in question through the media. The Respondent further published another message on November 25, 2006 not only to repeat the statements that the Respondent filed for a provisional detainment and patent right infringement litigation against Lotes but also to claim that "any and all relevant companies that are still using the product involved in the infringement will be the next target deterred by us." Based on the Respondent's market position, which was way more advantageous than that of the complainant, Lotes, the Respondent's acts to publish such messages were sufficient to cause doubt in Lotes' trading counterparts and potential trading counterparts and cause them to cease trading with Lotes. Upon the FTC's investigation, it was found that the trading relationship between some of Lotes' trading counterparts and Lotes was affected after these trading counterparts learned about the Respondent's messages and decided to avoid being involved in the patent right disputes to protect their own products. Thus, it was proved that the Respondent's acts were sufficient to affect trading order.

After taking into account the motive, objective, expected improper benefits, degree of damage to trading order, duration of the actions, benefits obtained, scale of business, business operations, whether the competent authority had previously corrected or warned against such action, the type, number and interval of previous violations and punishment, remorse shown after the violation, cooperation during the investigation and other factors, the FTC imposed the above-mentioned punishment in accordance with the forepart of Article 41 of the Fair Trade Law.