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Taiwan Star Used Competitor Names in Keyword Advertising in Violation of the Fair Trade Act

The Fair Trade Commission decided at the 1,284th Commissioners' Meeting on Jun. 15, 2016 that Taiwan Star Telecom Corporation Limited (hereinafter referred to as Taiwan Star) had violated Article 25 of the Fair Trade Act by purchasing keyword ads using the name of Taiwan Mobile and posting on Google the wording "Taiwan Mobile exclusively offering monthly fees at half price within a limited period." The practice was obviously unfair conduct able to affect trading order. Therefore, the FTC imposed an administrative fine of NT\$600,000 on the company.


Taiwan Star commissioned an advertising agent to produce keyword ads using the names of its competitors (Taiwan Mobile, for instance) apparently out of the intention to attract the attention of browsers by taking advantage of the efforts its competitors had made to promote business over the years. The wording "monthly fees at half price within a limited period" was posted to entice browsers to click the keyword ad and get connected to the website of Taiwan Star. In other words, the company used ads showing the business symbols of its competitors and attractive advertising wording to increase its own business transaction opportunities with potential trading counterparts. As a consequence, competitors could thus have lost potential customers. The FTC concluded that the exploitation of the efforts of others was obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Act.



Smartking Digital Posted False Claims to Promote Products in Violation of the Fair Trade Act

The Fair Trade Commission decided at the 1,288th Commissioners' Meeting on Jul. 13, 2016 that Smartking Digital Cultural and Creative Co. (hereinafter referred to as Smartking Digital) had violated Article 25 of the Fair Trade Act by falsely claiming that the company had received government funding for its children's books and teaching software to promote its products. In addition to ordering Smartking Digital to immediately cease the unlawful act, the FTC also imposed on it an administrative fine of NT\$150,000.

According to the FTC's investigation, Smartking Digital mainly sold children's books and teaching software and had never had any cooperative or funding Relationship with the Parent-child Relationship Promotion Development Association of ROC, nor had it ever been subsidized by the government. However, the company's salespeople told consumers that the company's books and teaching software


were cheaper because they had been certified as good teaching materials and the production was funded by the government. In other words, the company took advantage of consumers' trust in government credibility and their mentality of seizing the opportunity of purchasing products being sold at a discount to lead potential trading counterparts to have misconceptions and make transaction decisions. It was a deceptive practice involving the use of false claims in product promotion to mislead consumers into making purchases. Smartking Digital marketed its products mainly by sending salespeople to make door-to-door sales and the practice of providing false claims was repeatedly carried out. The conduct not only had an impact on people who made purchases, but was also unfair competition to businesses adopting legal means to market children's learning materials. In other words, it was deceptive conduct able to affect trading order in violation of Article 25 of the Fair Trade Act. 

Establishment of Joint Venture by MFTBC and Shung Ye Trading Not Prohibited

The Fair Trade Commission decided at the 1,283rd Commissioners' Meeting on Jun. 8, 2016 that it would act according to Article 13 (1) of the Fair Trade Act and not prohibit the establishment of a joint venture by Mitsubishi Fuso Truck and Bus Corporation (hereinafter referred to as MFTBC) and Shung Ye Trading Co., Ltd. (hereinafter referred to as Shung Ye Trading).


Japan-based MFTBC would provide 51% of the capital and Shung Ye Trading 49% to set up a joint venture. Each company would appoint a number of directors according to the shares of the joint venture in its possession to participate in the management of the new enterprise, which would replace Shung Ye Trading to be responsible for the importation and wholesaling of Fuso commercial vehicles and become the exclusive agent for MFTBC's Fuso commercial vehicles in Taiwan. The condition met the merger types prescribed in Subparagraphs 2, 4 and 5 of Article 10 (1) of the Fair Trade Act. Meanwhile, MFTBC accounted for one quarter of the domestic small truck market in 2015, whereas the sales of both merging parties in the same year also exceeded the amount announced by the FTC and achieved the filing thresholds specified in Subparagraphs 2 and 3 of Article 11 (1) while the proviso set forth in Article 12 of the same act did not apply. Therefore, the two companies were required to file with the FTC according to law.

MFTBC produced and marketed Fuso commercial vehicles and Shung Ye Trading was originally the exclusive agent importing, wholesaling and distributing the products in Taiwan. The joint venture would replace Shung Ye Trading to be responsible for the importation and wholesaling of Fuso commercial vehicles and become the exclusive agent for MFTBC's Fuso commercial vehicles in Taiwan. After the merger, MFTBC and the joint venture would have upstream-downstream producer-distributor relations. Hence, the merger was a vertical one. After assessment, the FTC concluded that Fuso commercial vehicles to be imported and marketed by the joint venture were not the only commercial vehicles available in Taiwan. There were commercial vehicles from other makers. Moreover, there was no entry barrier in the relevant market. Therefore, the possibility for other competitors to choose trading counterparts would not change. The level of difficulty for enterprises other than the merging parties to enter the relevant market would also not be heightened. The merging parties would not be able to abuse their market power or create market foreclosure after the merger.

The merger would not lead to any significant competition restraint in the relevant market. Hence, the FTC thought the overall economic benefit would outweigh the disadvantages resulting from any competition restraint thereby incurred and, therefore, did not prohibit the merger. 

Venus International Made and Posted Inappropriate Keyword Strings in Violation of the Fair Trade Act


The Fair Trade Commission decided at the 1,285th Commissioners' Meeting on Jun. 22, 2016 that Venus International Co., Ltd. (hereinafter referred to as Venus International) had violated Article 25 of the Fair Trade Act by using the business symbol "Marilyn" of its competitor Marilyn International Co., Ltd. (hereinafter referred to as Marilyn International) to make inappropriate keyword strings and posted them on Google. The wording "Venus Marilyn makes your husband love you even more" and "turn you into a perfect Marilyn" was posted and consumers clicking on the texts would be linked to the website of Venus International. The FTC considered the practice obviously unfair competition able to affect trading order in violation of Article 25 of the Fair Trade Act and, therefore, imposed an administrative fine of NT\$50,000 on Venus International.

"Marilyn" was a business symbol that represented the efforts that Marilyn International had invested. By using the business symbol of a competitor and listing both "Venus" and "Marilyn" as the search results to connect consumers to its own website, Venus International was exploiting the efforts that Marilyn International had made over the years to promote its services. In other words, Venus International used the keyword strings and linked them to its own website to increase transaction opportunities. As a consequence, when potential trading counterparts clicked the keyword strings in question and were connected to Venus International, the competitor could have lost potential customers. The practice was exploitation of the efforts of others and obviously unfair competition able to affect trading order in violation of Article 25 of the Fair Trade Act. 

KYMCO and Jin Cheng Motorcycles Posted False Advertisements in Violation of the Fair Trade Act

The Fair Trade Commission decided at the 1,284th Commissioners' Meeting on Jun. 15, 2016 that Kuang Yang Motor Co., Ltd. (hereinafter referred to as KYMCO) and Jin Cheng Motorcycle Co., Ltd. (hereinafter referred to as Jin Cheng Motorcycles) had violated Article 21 (1) of the Fair Trade Act by claiming that the "KYMCO G6E 125" was equipped with an "electronic speed sensor" when marketing the said product on their websites. The wording "use of electromagnetic induction to transmit digital signals for faster and more accurate speed indication" was also posted (hereinafter referred to as the advertisement in question). It was a false, untrue and misleading representation with regard to quality of product and able to affect transaction decisions. Therefore, the FTC imposed administrative fines of NT\$600,000 on KYMCO and NT\$50,000 on Jin Cheng Motorcycles.

The claim that the product was equipped with an "electronic speed sensor" and the wording "use of an electromagnetic induction to transmit digital signals

for faster and more accurate speed indication" posted in the advertisement in question gave consumers the impression that the speed sensor with which the product was equipped was electronic and able to show the rider the speed more accurately and quickly. In other words, the claim about the advanced and precision equipment was intended to attract consumers to purchase the product. However, KYMCO admitted that the product was equipped with a mechanical speed sensor and, due to the product design and related regulations, the company could not replace it with an electronic one. Hence, the representation in the advertisement in question was inconsistent with reality and likely to lead consumers to wrong perceptions or decisions. Subsequently, market competition and order could lose their functions while competitors could lose customers and unfair competition could result. Therefore, the FTC concluded that it was a false, untrue and misleading representation in violation of Article 21 of the Fair Trade Act. 

Mr. Xie Violated the Fair Trade Act by Posting False Advertisements to Market Countryside Villas


The Fair Trade Commission decided at the 1,293rd Commissioners' Meeting on Aug. 17, 2016 that Mr. Xie had violated Article 21 (1) of the Fair Trade Act by using language and images for regular residences in advertisements to market the countryside villas in "Le Yun Estate" which was located on a piece of hillside conservation land designated to be used for agricultural and husbandry purposes. The practice was a false, untrue and misleading representation with regard to content and use of product and able to affect transaction decisions. Therefore, the FTC imposed on him an administrative fine of NT\$2 million.

To sell the units in "Le Yun Estate", Mr. Xie posted in newspapers and on unju.com.tw advertisements which contained the wording "American-style individual countryside villas, each on a piece of 756 pings of land" and "756 pings of flat land + an individual villa, prices starting from NT\$7.88 million." Images of wooden buildings were also provided. At the estate, there were also advertisements with the wording "Land 380 pings + an individual wooden house; prices starting from NT\$5.68 million," as well as pictures of the wooden houses. Meanwhile, the "Le Yun Estate" advertisement on unju.com.tw contained language such as "American-style country farm, an individual wooden house on a piece of land of 756 pings; prices starting from NT\$7.88 million," "community style," "neighbors around" and "the dream home of your life." There were also pictures showing the kitchen, living room, bedrooms and wooden house structure. All the advertisements gave the impression that the wooden houses were legal and could be partitioned into the kitchen, living room and bedrooms. In addition, it was

a community and there were neighbors. According to Mr. Xie, the villas were located in the Toushe Section of Danei District in Tainan City. However, the Tainan City Government said the area in question had been designated as a hillside conservation zone to be used for agricultural and husbandry purposes. As specified in Table 1 attached to Paragraph 3, Article 6 of the Regulations on Non-urban Land Use Control established in accordance with Paragraph 1 of Article 15 of the Regional Planning Act, farmhouses could be constructed on land designated to be used for agricultural and husbandry purposes (except in an industrial or river area; the construction of farmhouses was prohibited in certain agricultural or forest areas), but the condition was that the farmhouses had to comply with the Regulations for Agricultural Lands Constructing Farmhouse or the Regulations for Building Control in Areas Included in Regional Plans. The wooden houses shown in the above-mentioned advertisements were in violation of Article 25 of the Building Act because no building permit applications had ever been filed and sanctions had been imposed to tear them down.

When Mr. Xie produced and used the said advertisements, he was totally aware that he had not applied for permission as required by law to build the houses. However, he posted the advertisements which included the wording "individual villas," "community style," "neighbors around" and "the dream home of your life" as well as pictures showing the kitchen, living room and bedrooms without disclosing that the land was in a hillside conservation zone designated to be used for agricultural and husbandry purposes.

In addition, the construction of farmhouses had to comply with the Regional Planning Act, the Agricultural Development Act, and the Regulations for Agricultural Lands Constructing Farmhouse, etc. Moreover, applicants had to be farmers and land registration had to be completed at least two years before the applications for permission to build farmhouses on

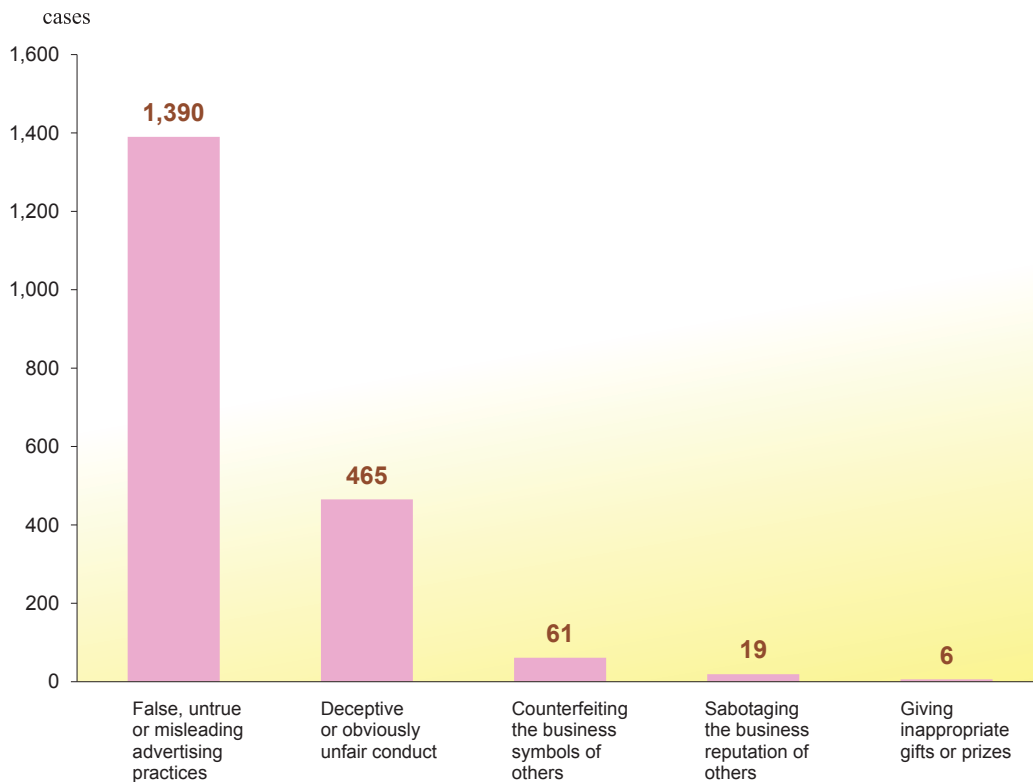
the land were filed. The intention of Mr. Xie to mislead consumers was obvious and the advertisements could have caused people to have wrong perceptions or make wrong decisions. The conduct was a false, untrue and misleading representation with regard to content and use of product and able to affect transaction decisions in violation of Article 21 (1) of the Fair Trade Act. 

Statistics on Unfair Competition Cases

Due to fierce competition, businesses often use advertising to give consumers false information to stimulate purchases or sabotage the reputation of competitors. Some even distribute inappropriate gifts and prizes to attract buyers. Therefore, the FTC has to establish regulations to prevent businesses from disrupting trading order and harming the interests of consumers and to ensure fair competition.

Statistics show that the FTC processed 11,079 cases after receiving complaints or initiating ex officio investigations and closed 11,015 of them from 2011 to the end of September 2016 (hereinafter referred to as the five recent years). After the deduction of cases in which reviewing was suspended because they did not belong to the jurisdiction of the FTC or were procedurally unsound and cases that were repeatedly filed, the ones related to the Fair Trade Act totaled 3,026 cases. Among them, the 1,920 cases (63.5%) involving unfair competition formed the largest proportion. When assessed by type of conduct (cases involving different offenses calculated repeatedly), cases involving false, untrue or misleading advertising practices totaling 1,390 (72.4%) topped the list, followed by 465 cases (24.2%) of deceptive or obviously unfair conduct (Fig. 1).

Fig. 1 Cases Involving Unfair Competition in the Five Recent Years--by Type of Conduct



Notes: The administrative responsibility entailing “counterfeiting the service symbols of others” was removed when the Fair Trade Act was amended on Feb. 4, 2015.

Table 1 Cases Involving Unfair Competition in the Five Recent Years--by Handling Result

Unit: case; business

Type of Conduct	Total	Sanctioning			No Sanction Given	Administrative Disposal
		No. of Cases	No. of Dispositions Issued	No. of Businesses Sanctioned		
Total (2011 to the end of Sep. 2016)	1,920	669	694	903	1,217	34
False, untrue or misleading advertising practices	1,390	550	574	756	816	24
Counterfeiting the business symbols of others	61	-	-	-	59	2
Giving inappropriate gifts or prizes	6	1	1	1	5	-
Sabotaging the business reputation of others	19	2	2	2	17	-
Deceptive or obviously unfair conduct	465	123	134	168	334	8

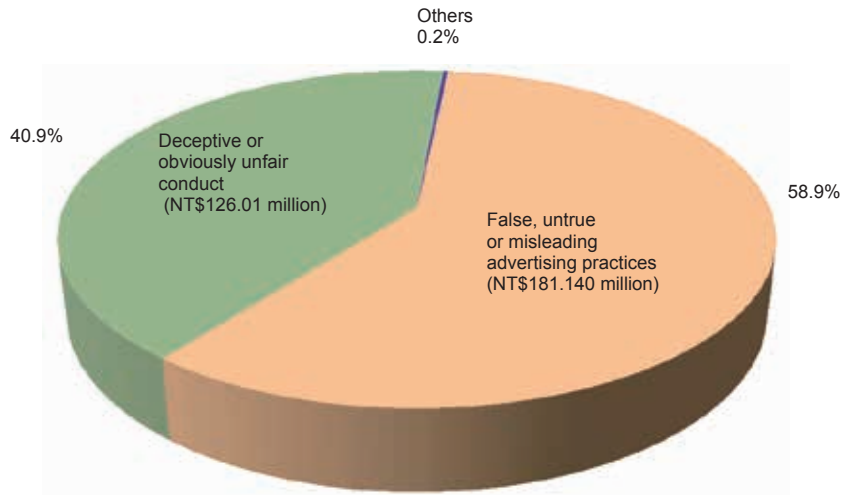
Notes:

1. Some cases involved two or more offenses; therefore, the numbers of dispositions issued and businesses sanctioned exceed the total number of cases.
2. The administrative responsibility entailing "counterfeiting the service symbols of others" was removed when the Fair Trade Act was amended on Feb. 4, 2015.

Sanctions were handed down in 669 cases (accounting for 34.8% of the total number of unfair competition cases) that involved unfair competition in the five recent years. According to the number of sanctions given, false, untrue or misleading advertising practices made up 39.6%, the highest, followed by deceptive or obviously unfair competition 26.5%, giving inappropriate gifts or prizes 16.7% and sabotaging the business reputation of others 10.5% (Table 1).

The FTC issued 694 dispositions on unfair competition practices and sanctioned 903 businesses. The fines totaled NT\$308.16 million. Assessed by type of conduct, the total fines of NT\$181.140 million (58.9%) imposed for false, untrue or misleading advertising practices were the highest, followed by NT\$126.01 million (40.9%) for deceptive or obviously unfair conduct (Table 1, Fig. 2).

Fig. 2 Fines Imposed for Unfair Competition in the Five Recent years--by Type of Conduct



FTC Activities in September and October 2016

- ▲ On Sep. 7, the FTC conducted a presentation on “The Fair Trade Act Regulations Governing Production of Advertisements by Advertising Agents” in Taipei City.
- ▲ On Sep. 23, the FTC conducted a presentation on the “Fair Trade Commission Disposal Directions (Guidelines) on Handling Promotional Advertising” in Taichung City.
- ▲ On Oct. 1, the FTC conducted a presentation on “Various Aspects of Trading Traps” at the Shengping Community in Zhuqi Township, Chiayi County.
- ▲ On Oct. 4 and 26, the FTC conducted the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Department of Marketing and Distribution Management of National Pingtung University and the Department of Business Administration of Chang Jung Christian University, respectively.
- ▲ On Oct. 14 to 29, the FTC conducted the 2016 “Workshop on the Fair Trade Act and Related Cases for the Elite in the South” at the Southern Taiwan Joint Services Center of the Executive Yuan.
- ▲ On Oct. 17, the FTC conducted the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” for the Department of Law of National Chengchi University.
- ▲ On Oct. 18, the FTC Vice Chairperson Chiu Yungho gave a lecture on “The Development of the Economic Analysis of Merger Issues”.
- ▲ On Oct. 21, the FTC held the “2016 Fair Trade Act Special Topic Speeches” in Kaohsiung City.
- ▲ On Oct. 24, the FTC held the “2016 Antitrust Law Seminar” in Taipei City.
- ▲ On Oct. 28, the FTC held a workshop on “Antitrust Lawsuits and Law Observance of Enterprises” in Tainan City.



1. The FTC conducting a presentation on “The Fair Trade Act Regulations Governing Production of Advertisements by Advertising Agents” in Taipei City
2. The FTC conducting a presentation on the “Fair Trade Commission Disposal Directions (Guidelines) on Handling Promotional Advertising” in Taichung City



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- 3.The FTC conducting the “2016 Workshop on the Fair Trade Act and Related Cases for the Elite in the South” at the Southern Taiwan Joint Services Center of the Executive Yuan
- 4.All the people attending the “2016 Workshop on the Fair Trade Act and Related Cases for the Elite in the South”
- 5.The FTC holding the “2016 Fair Trade Act Special Topic Speeches” in Kaohsiung City
- 6.The FTC holding the “2016 Antitrust Law Seminar” in Taipei City
- 7.The FTC holding the “2016 Antitrust Law Seminar” in Taipei City
- 8.The FTC holding a workshop on “Antitrust Lawsuits and Law Observance of Enterprises” in Tainan City

International Exchange Activities in September and October 2016

- ✦ From Sep. 5 to 7, the FTC's representatives attended the "Competition Workshop on Merger Control" held by the OECD-Korea Policy Centre Competition Programme in Seoul, Korea.
- ✦ On Sep. 8 and 9, the FTC Vice Chairperson Chiu Yungho led a delegation to attend the "9th Seoul International Competition Forum" and the "12th East Asia Top Level Officials' Meeting on Competition Policy (EATOP)".
- ✦ On Sep. 12 and 13, the FTC's representatives attended the ICN Chief/Senior Economists Workshop in Vancouver, Canada.
- ✦ On Sep. 13, 14 and 21, the FTC attended the teleconferences held by the ICN Merger and Cartel Working Groups Subgroup 1 and Subgroup 2.
- ✦ On Sep. 28 and 29, the FTC held the "Antitrust Regional Seminar on the Competition Analysis of Vertical Restraints" in Jakarta, Indonesia.
- ✦ From Oct. 3 to 5, the FTC's representatives attended the "2016 ICN Cartel Workshop" in Madrid, Spain.
- ✦ On Oct. 7, APEC Economic Committee Chairperson Mr. Rory McLeod and representatives from the National Development Council called on the FTC.
- ✦ From Oct. 18 to 20, the FTC's representatives attended the "APEC Workshop on the Investigative Process & Procedural Fairness By Competition Law Enforcement Authorities" held in Ho Chi Minh City, Vietnam.
- ✦ On Oct. 27, the FTC's representatives attended the webinar on "Assessment of Efficiency in Unilateral Conduct" held by the ICN Unilateral Working Group.



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1. The FTC's representatives attending the "Competition Workshop on Merger Control" held by the OECD-Korea Policy Centre Competition Programme in Seoul, Korea
2. The FTC Vice Chairperson Chiu Yungho (first from left) with Canadian Competition Bureau Commissioner John Pecman (second from left) when attending the "12th East Asia Top Level Officials' Meeting on Competition Policy (EATOP)" in Seoul, Korea



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- 3.The FTC's representatives attending the ICN Chief/Senior Economists Workshop in Vancouver, Canada
- 4.The FTC holding the "Antitrust Regional Seminar on the Competition Analysis of Vertical Restraints" in Jakarta, Indonesia
- 5.APEC Economic Committee Chairperson Rory McLeod (third from left) calling on the FTC
- 6.The FTC's representatives attending the "APEC Workshop on the Investigative Process & Procedural Fairness By Competition Law Enforcement Authorities" held in Ho Chi Minh City, Vietnam

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