

Framed Links from the Perspective of the Fair Trade Act

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Abstract

In Taiwan, there has not been any discussion about whether it is fair to use a competitor's web page content through framed links. On the contrary, the same issue has been widely talked about in Germany. The German court responded by examining the setting of framed links to see if it constitutes "misleading statements (irreführende Angaben)" or "direct misappropriation (unmittelbare Leistungsübernahme)." Meanwhile, an overall evaluation of unlawfulness should not be ignored. By analyzing two German competition law judgments and related academic discussions regarding how framed links are applied in business practices, this article aims to provide some useful suggestions for Taiwan's Fair Trade Commission and administrative courts, which will definitely have to face this legal issue in the future. As for Taiwan, like Germany, an assessment regarding the possibility of misleading presentations or direct misappropriation as well as a final evaluation should be made for a single case. For this reason, we should analyze the conditions of both Article 21 and Article 25 of the FTA and their relevant administrative and juridical practices. The analysis will reveal a principle to enable a common judgment to be made according to both articles. This judgment is based on an overall weighing of interests that reflect not only the different viewpoints of the persons in the case of framing, but also the unavoidable conflict between private interests and the purposes of the Fair Trade Act. In other words, the attentiveness of an Internet user, the evaluation of the intellectual property law, the requirement to maintain fair competition in the market and the features of the Internet, especially the "free exchange of information" and "the general freedom of action by the link setter," must also be considered to achieve the balance between public and private interests. The question regarding whether setting a framed link is illegal or not cannot generally be answered. Framing in the sense of a linking technique is not per se illegal. More importantly, the unlawfulness caused by setting a framed link

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depends on the concrete situation, which may create a false image that the linked resource belongs to the link setter. In such a situation, the setter is considered to have broken the law by unjustly obtaining the competitor's work.

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