

# Analysis of Important Cases of Fair Trade Act - Examples of false advertising

## Abstract

Key words: false advertisement, no empirical advertising, two-stage fast screening principles, penalty prediction system

According to the Article 21 of the Fair Trade Act of R.O.C., No enterprise shall make or use false or misleading representations or symbols on the matter that is relevant to goods and is sufficient to affect trading decisions on goods or in advertisements, or in any other way make it known to the public. This provision provides for the main legal basis for unfair competition involved in false advertising of unfair competition. With the network development and media dissemination mode diversification, the identification of establishment of false advertising difficulties, the burden of proof risk assigned to whom, the number of acts and the statute of limitations of penalty, and the type and rationality of the penalty discretion benchmark, etc., are necessary to discuss.

Except the introduction of current national competition laws for false advertising and law enforcement trends of USA, European and Japan, this study will be for the Administrative Court for false advertising cases, to explore the subject of behavior, the elements and the statute of limitations and other issues, and analysis of practical cases. In view of the behavior pattern of false advertising, explain the identification of the subject and number of acts, the application of the elements, the allocation of burden of proof, the calculation of the statute of

limitations and the relationship between the application of the relevant laws and regulations to clarify the practical aspects of law enforcement. Also in view of the future, Fair Trade Commission will face the trial of the technology giant's advertising cases put forward the two-stage fast screening principles, and further through the economic analysis model, to study the appropriateness of the amount of fines for various types of false advertising and the basis for the punishment.

Based on the research results, this research purposes the following suggestions:

1. The subject of Article 21

This research suggests that it shall focus on participating in the decision-making process of false advertising and have its decision-making influence on false advertising publication, that is, it should be the subject of the application subject of Article 21.

2. The advertising target shall be specific persons or non-specific persons

The current legal practice of application of false advertising should be targeted at the non-specific public, it is foreseeable that will exclusion most of the emerging platforms of precise advertising, hindering the competitive order, therefore, it is to suggest the treatment principles shall change into the "relevant public" will be proper able.

3. Reinforcing evidence sufficient to influence the transaction decision

FTC should use the questionnaire surveys, statistical data from the Internet and other media browsing records, based on the general consumer's feelings about

the content of the disputed advertisements and the opinions and experiences of the use of related products (services) to deal the major false advertising cases. And make decision with supporting of the influence of misleading advertising to consumer's transaction decision.

#### 4. Burden of proof

Japan's legal system for non-substantiated advertising regulations restricts the competent authority from ordering advertisers to submit proofs that have a reasonable basis when necessary, which will help improve the efficiency of law enforcement for verifying false advertisements, and it can also meet the requirements of ensuring the procedural justice of the parties. FTC should consider the necessary of this non-substantiated advertising standard of our legal practice.

#### 5. Statute of limitations

It is recommended that the principle of handling false real estate advertisements of FTC shall change the statute of limitations will be calculated from the time when false advertisements are stopped (when the illegal act ends) or when false or intrusive (when the result of the act occurs) is found.

#### 6. Determination of the number of conduct

This study suggests that the basis for determining the number of behaviors is applicable to false advertising cases, and it is necessary to observe subjective decisions and objective behaviors separately. The standard for determining the first act of administrative penalty is applicable to the decision process of the advertisement formation in consideration of the specific circumstances of the case.

In addition, the implementation of the publishing act is also at different stages, which is the identification of the two acts.

#### 7. Conflict of laws

The division of application between Article 21 and Article 25 shall be the Article 21 should focus on specific advertising methods that businesses use false or erroneous advertisements for their products (services). And Article 25 is the regulation of a "safety net", that is focus on cases in which the nature of fair competition in the market has been violated by using wrong methods to cause the counterparty of the transaction to deal with it or to make the competitor lose trading opportunities, or the advertising behavior of the business has violated the principle of efficient competition.

#### 8. Establish a two-stage quick screening method

It is recommended that FTC shall establish a two-stage quick screening method which based on the characteristics of the industry and the behavior of manufacturers as the standard for whether to regulate false advertising cases with antitrust in order to respond to the development of the industry, such as the trial of the technology giant's advertising cases.

#### 9. Proposed a false advertising penalty prediction system

Under the trend of AI legal enforcement, using the penalty prediction system as an objective auxiliary tool for administrative or judicial discretion, it is proposed that the false advertising penalty prediction system can help the rationale of the penalty, and it can further support the FTC's decision of implementation of Article 36 of Enforcement Rules of Fair Trade Act that

required FTC shall attention to the requirements of "types of violations in the past, number of times, intervals, and penalties received".

With this research and analysis on the issue of competition laws enforcement doubts from the important cases of false advertising, and at the same time consider the establishment of models of foreign law enforcement trends, actual law enforcement cases, the two-stage fast screening principles and penalty benchmarks as a reference for future handling of cases and enforcement by the Fair Trade Commission.