

The Requirements of Legality Concerning Comparative Advertising under the Competition Law — With particular observations on the development under the Fair Trade Law of Taiwan, the EC Directive and the German Act against Unfair Competition

Lin, Yi-Tien*

Abstract

An undertaking's purpose in adopting comparative advertising as its distribution strategy is to provide comparative information for buyers, so that it can show the superior side of its own products as compared with its competitors', thereby influencing the buyers' choice. Meanwhile the buyers can receive complete market information in an efficient way from this comparative advertising. The key issue in examining the legality of such comparative advertising is to ensure that the buyers will receive true and objective market information, and that the relationship between the competitive products will not be distorted by the undertaking.

In view of the conflicts between the interests of the undertaking, buyers and competitors, this article aims to find the criteria for the examination of the legality of the comparative advertising. This article makes reference to the relevant regulations, their development in the past and the practices under Articles 21 and 24 of the Fair Trade Law of Taiwan, Directive 97/55/EC of the European Community concerning comparative advertising (now Directive 2006/114/EC), and the German Act against Unfair Competition, i.e., §6 UWG. From the viewpoints of the principles of being non-misleading, objectiveness, truth, non-unnecessary denigration and non-unnecessary use of the reputation of the competitors, this article examines the content of the lawful comparative advertising under the competition laws of Taiwan, Germany as well as the EC Directive.

Key words: comparative advertising, principles of objectiveness and truth, misleading, take unfair advantage of the reputation, denigrate or discredit reputation, the German Act against Unfair Competition, Directive 2006/114/EC, the Fair Trade Law of Taiwan

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* Lin, Yi-Tien, Assistant Professor, Department of Law, National Cheng-Kung University, Dr. iur. of the University of Mainz, Germany.