NO 105

TAIWAN FTC NEWSLETTER

2022.6

Selected Cases

FTC Statistics

FTC Activities

Jidi After-class Tutoring Center Violated the Fair Trade Act by Posting False Advertisements

The FTC decided at the 1,561st Commissioners' Meeting on Sep. 15, 2021 that Jidi After-class Tutoring Center (hereinafter referred to as "JATC") located in Taipei City had violated Article 25 of the Fair Trade Act by adopting the name of a competitor to make a keyword advertisement and displaying together the names "Ligong" and "Sanyuan" in the wording "Ligong—Sanyuan Tutoring Center of your preferred choice"; and "pass an entrance examination into Ligong—Sanyuan Tutoring Center, your No. 1 Choice." The practice was obviously unfair conduct exploiting the results of the others' efforts and was able to affect trading order. The FTC imposed an administrative fine of NT$100,000 on JATC.

During the investigation, the FTC discovered that "Ligong" was the trademark of a competitor of JATC. By purchasing the keyword advertisements with the term "Ligong," JATC could easily convey the wrong impression to Internet users that Ligong Tutoring Center and Sanyuan Jidi Educational Institution, managed by JATC, were the same enterprise or affiliates. When consumers clicked the keyword advertisement either out of confusion or unknowingly, they would be intercepted and directed to the website of the Sanyuan Jidi Educational Institution. As a consequence, the chances for Ligong Tutoring Center to contact potential customers would be reduced and the economic interests behind the name "Ligong" would be jeopardized. The practice was able to affect trading order in the tutoring market for healthcare worker license examination takers. It was in violation of Article 25 of the Fair Trade Act. Therefore, the

FTC imposed an administrative fine of NT$100,000 on JATC.

The FTC encourages all advertisers to fully understand the agreements signed with online advertising platforms. Besides, regardless of whether they post keyword advertisements on their own or through agents, the advertisers should thoroughly check whether the keywords adopted have included the names of any other competitors before releasing the advertisements to avoid breaking the law by displaying their names and the names of competitors together in keyword advertising.

Merger of CPC and a Gas Station in Zaoqiao not Prohibited

The FTC decided at the 1,567th Commissioners' Meeting on Oct. 27, 2021 not to prohibit the merger of Chinese Petroleum Corporation (hereinafter referred to as "CPC") and Huiyu Enterprises Co., Ltd. (hereinafter referred to as "Huiyu Enterprises") by citing Article 13(1) of the Fair Trade Act.

CPC intended to acquire all the business and assets of one of the gas stations of Huiyu Enterprises in Zaoqiao. The condition met the filing threshold. Therefore, CPC filed a pre-merger notification with the FTC.

Both CPC and Huiyu Enterprises operated gas stations. Besides, CPC was also the petroleum product supplier of Huiyu Enterprises. Therefore, the merger involved the retail market of gas stations and the petroleum product market. It was a horizontal merger and a vertical merger simultaneously. Since there were no significant market entry barriers and the merger only involved one gas station in Zaoqiao, the post-merger market share increase would be tiny. Furthermore, the prices of petroleum products would remain consistent with the retail prices announced by CPC. Therefore, after the merger CPC would not have the capacity to raise prices randomly.

Currently, CPC and Formosa Petrochemical Corporation are the only two petroleum product suppliers in the domestic market. Gas station operators have the freedom to choose their trading counterparts. Moreover, the floating oil price mechanism provided by CPC is public information; therefore, it is not possible for CPC to increase the operating costs of its gas station competitors. The gas stations in Zaoqiao have always used petroleum products supplied by CPC and the merger would not make any change to the market structure. For this reason, CPC was unlikely to abuse its market power or bring about a market foreclosure.

After reviewing the case, the FTC concluded that the overall economic benefit of the merger would outweigh the disadvantages resulting from competition restraints and made the decision not to prohibit the merger by citing Article 13(1) of the Fair Trade Act.

Application for Extension of Joint Shipment of Soy Beans Approved

The FTC decided at the 1,584th Commissioners' Meeting on Jan. 26, 2022 to approve to extend the joint shipment of 5 soy bean imports. The FTC cited Article 15(1) as well as Article 16(2) of the Fair Trade Act and approved the concerted application by TTET Union Corp., Tai Hwa Oil Industrial Co., Ltd., Great Wall Enterprise Co., Ltd., Mei Lan Lei Co., Ltd. and Ever Light Oil Co., Ltd., thereby giving them the permission to extend their joint shipment for 5 years until Mar. 12, 2027.

TTET Union Corp. and the 4 other companies had applied earlier for exempted concerted action approval to bring in soy bean imports through joint shipments. On Feb. 17, 2017, the FTC issued the Letter Kung Lian Tzu No.106001 to approve the application with undertakings attached. As the previous approval was about to expire, TETT Union Corp. and the four other companies acted according to Article 16(2) of the Fair Trade Act and applied for permission to extend their joint shipment.

The FTC decided that the joint shipment of soy beans could enhance the bargaining power of the participants and lower transportation costs. Moreover, the volume of soy beans imported by the participants (hereinafter referred to as "the southern group") did not account for a large percentage of total soy bean imports, and they still had to face competition from other joint shipment groups and importers. Therefore, the southern group had the incentive to reflect the cost saving in their selling prices. In turn, the consumers would share the advantage of the economic benefits. Meanwhile, the competent authority for the industry of concern also indicated that joint shipments could increase the negotiating power of participating businesses for better international shipping fares and ensure a steady supply to meet the continuous demand of the downstream industrial chain as well as urgent or sporadic needs in the domestic market.

The FTC concluded that the concerted action to make joint shipments would benefit the overall economy and public interest and resulted in its decision to approve the extension application with the following undertakings attached:

1. The applicants may act according to the principle of autonomy of private law and establish the guideline and regulations regarding what the participants should do to facilitate the operations of joint shipments. However, the applicants shall not make use of this permission or related regulations to engage in any other concerted actions or refuse to allow other enterprises to join the concerted action without justifiable cause. Any changes made by the members of the concerted action must be reported to the FTC for reference.

2. The applicants shall not make use of this permission or related regulations to restrict any one of the applicants' freedom to decide the quantity of imports to be brought in or to bring in imports independently.

3. The applicants are required to report to the FTC on a quarterly basis regarding the implementation of the joint shipment operations, including the registered purchased quantity of each importer, the actual quantity purchased, the shipment date and purchase prices, the sailing date and date of arrival at the domestic harbor, the quantity of imports of each applicant each month, the quantity processed, the sales, and the inventory.

Ting You Co., Ltd. Violated the Fair Trade Act by Posting False Advertisements for its Housing Project

For most people, buying a home is a major decision in life and it is a lifetime dream driving them to be diligent. However, the important information that can affect the transaction decision often comes from the advertisements placed by the builder of the housing units. The information provided by the advertisements shall include the floor plan and the advertising brochure, which presents the interior layout, public amenities, parking space, and other information for prospective buyers. Therefore, when builders release information on housing projects, they have the obligation to ascertain the authenticity and integrity of the housing project advertisements in order to ensure that consumers can purchase spaces that they can use legally.

The FTC decided at the 1,564th Commissioners' Meeting on Oct. 6, 2021 that Ting You Co., Ltd. had violated Article 21(1) of the Fair Trade Act by posting false advertisements when marketing the "Si De Da Shuang Xi" housing project between November 2018 and September 2020. The FTC imposed administrative fines of NT$1 million on Ting You Co., Ltd. and NT$100,000 on the sales agent, Mr. Huang.

On the floor plans for the shopfronts and the first floor, the space at the back of the second to the fourth floors was indicated as being for bedrooms and bathrooms for interior use and the vacant lot next to store No. 7 was referred to in the drawing as a parking space for 3 cars. It gave people the impression that the interior space and the parking space next to Store No. 7 could be used legally. However, according to the as-built drawings of the first to fifth floors according to the use permit and the professional opinion provided by the Taichung City Government, the space at the back of the second to the fourth floors was approved to be balconies in the floor plans for the shopfronts, and the vacant lot next to Store No. 7 was supposed to be a statutory vacant lot. If the company turned the "balcony" spaces into interior use for bedrooms and bathrooms without applying for approval of change of design, they would be illegal structures. In the meantime, if the statutory vacant lot was turned into a space for parking, it would be in violation of Article 73(2) of the Building Act.

During the investigation, the FTC found that Ting You Co., Ltd. had not filed any design modification application with the Taichung City Government. This meant that the representations in the advertisements for the "Si De Da Shuang Xi" housing project were inconsistent with the facts. The practice was deemed to be a false and misleading representation and could cause the general public to have wrong perceptions or make wrong decisions. It was in violation of the aforesaid regulation set forth in the Fair Trade Act.

The FTC also indicated that investigating and imposing sanctions on false advertising was one of the priorities of its policy objectives. As long as there is false advertising involved, the FTC will initiate investigations and introduce sanctions according to law regardless of whether the advertising is provided by a builder, sales agent or realtor. Besides, if there is deceptive or obviously unfair conduct able to affect trading order, the FTC will still be able to impose on the offender an administrative fine of up to NT$25 million according to Article 25 of the Fair Trade Act no

matter false advertising exists or not.

The amount of real estate transactions is huge. For most people, the process of checking out the unit, negotiating the price, making a down payment, signing the contract, transferring the ownership, getting a loan and paying the mortgage are all lifelong tasks. The impact of any dispute cannot be described in just a few simple words. Real estate builders, sales agents and intermediaries have access to and control most of the information. Information asymmetry exists between them and the consumers. Thus the builders, sales agents and intermediaries have the obligation to help consumers realize their dreams of buying a home by adhering to the spirit of good faith, observing laws and fulfilling their corporate social responsibility. This will not only prevent them from getting penalized for legal violation, but will also reduce consumer disputes so as to establish good trading order and enhance their corporate image.

Horia Sofas Violated the Fair Trade Act by Posting False Advertisements

The FTC decided at the 1,571st Commissioners' Meeting on Nov. 23, 2021 that Horia Handcraft Sofa Co., Ltd. (hereinafter referred to as "Horia Sofas") had violated Article 21(1) of the Fair Trade Act by claiming on official website that its sofas were the only sofa products in Taiwan passing the tests conducted by SGS, and that the MDI foam they used would not emit toxic gases during the production process like TDI foam. The wordings were false and misleading representations with regard to quality of product as well as the production process of raw material and were sufficient to affect trading decisions. Therefore, the FTC imposed an administrative fine of NT$700,000 on Horia Sofas.

Horia Sofas posted on its website the text "Horia—a brand established nearly 30 years ago" and "Horia—perfecting sofa craftsmanship for nearly three decades." The wordings gave people the impression that the Horia brand or Horia Sofas had been in business for about 30 years. However, the Horia trademark was registered on Sep. 16, 2016 and the company was established on Jun. 16, 2017. Apparently, the Horia brand or Horia Sofas could not have been in operation for nearly 30 years.

Meanwhile, there were also the wordings "the only sofas passing tests in Taiwan—foam, wood, fabric, spray adhesive and structure passing safety certification" and "Valencia vinyl…the only one in Taiwan passing SGS tests." They gave people the impression that the company's sofas were the only sofas passing the tests conducted by SGS and the foam, wood, fabric, spray adhesive and structure had also all passed the safety tests performed by SGS. Meanwhile the Valencia vinyl was the only fabric in Taiwan passing the test performed by SGS. Nevertheless, the FTC's investigation revealed that, during the period in which the advertisements were posted, there were still other companies releasing their test reports on the Internet. In other words, Horia's sofas and fabric were by no means the only products passing tests performed by SGS and the company was not the only business entity posting the test reports on the company website.

Horia Sofas also posted the text "the sofas passed the SGS high pressure endurance test of having a weight of 100kg put on them 100,000 times without collapsing or getting damaged." The wording gave the impression that the company's sofas had passed the SGS high pressure resistance test of having a weight of 100kg put on them 100,000 times. However, according to SGS, the test had been conducted by pushing the cushion 15cm downward, and not putting 100kg on the sofa 100,000 times.

As for the claim of "using non-toxic eco-friendly MDI to replace conventional TDI that emits toxic gases during the production process," Horia Sofas misled consumers into believing that TDI (Toluene Diisocyanate) would release toxic gasses and MDI (Diphenylmethane Diisocyanate) would not. It would further influence consumers' perceptions of TDI foam sofas. The FTC's investigation revealed that such a claim did not have any objective data or experimental reports to support it. The practice was likely to give wrong perceptions to the general public about the sofa material production process.

After reviewing the entire advertisement, the FTC concluded that the above-mentioned wordings were inconsistent with the facts and could give consumers wrong perceptions about sofa quality and the production process or lead them to make wrong decisions. Horia Sofas was in violation of Article 21(1) of the Fair Trade Act.

The FTC indicated that a business often highlights the quality of its own products by the length of time the company or brand has been in existence, using superlatives, or by citing test results of institutions in advertisements in order to enhance the consumers' impression of their products. The FTC would like to remind businesses that they should make sure the claims and information posted in advertisements are consistent with the facts in order to avoid the violation of law.

Statistics on Cases with Sanctions Administered

As the competent authority, the FTC conducts investigations into activities that are likely to involve the Fair Trade Act or the Multi-level Marketing Supervision Act. If there is any violation, the FTC will impose sanctions on businesses or individuals to maintain the trading order of the society and ensure fair competition in the market. According to statistics, from 2017 to April this year (2022) (hereinafter referred to as “the five recent years”), the FTC made administrative sanctions and issued 474 dispositions. Analyzed according to types of violation as indicated in the disposition, 250 cases were associated with unfair competition, which accounted for 52.7% of the total. Among them, 207 cases were related to false or misleading advertising and formed the largest group. Besides, 38 cases had to do with the exercise of competition restraints and accounted for 8% of the sanctions. Further, 181 cases were violations of the Multi-level Marketing Supervision Act and accounted for 38.2% of the total (Table 1).

Table 1 Statistics on Cases with Sanctions Made in the Five Recent Years—By Types of Violation Indicated in the Dispositions

Unit: Case

Year	No. of Dispositions	Competition Restraints	Concerted Actions	Unfair Competition	False or Misleading Advertising	Multi-level Marketing Supervision Act	Others
Total (2017 to Apr. 2022)	474	38	15	250	207	181	5
2017	116	13	1	61	46	38	4
2018	115	9	1	62	55	43	1
2019	72	2	2	26	24	44	-
2020	66	3	2	32	28	31	-
2021	84	10	8	55	44	19	-
Jan. to Apr. 2022	21	1	1	14	10	6	-

Observed according to the types of industry indicated in the dispositions, the 326 cases (68.8%) involving wholesale and retail businesses formed the largest group, followed by the 60 cases (12.7%) associated with real estate businesses (Fig. 1). In the five recent years, the sustained administrative fines totaled NT$5.1964 billion. The NT$4.84699 billion (94.9%) imposed on manufacturing businesses accounted for the largest amount, followed by the NT$80.35 million (1.6%) imposed on wholesale and retail businesses.

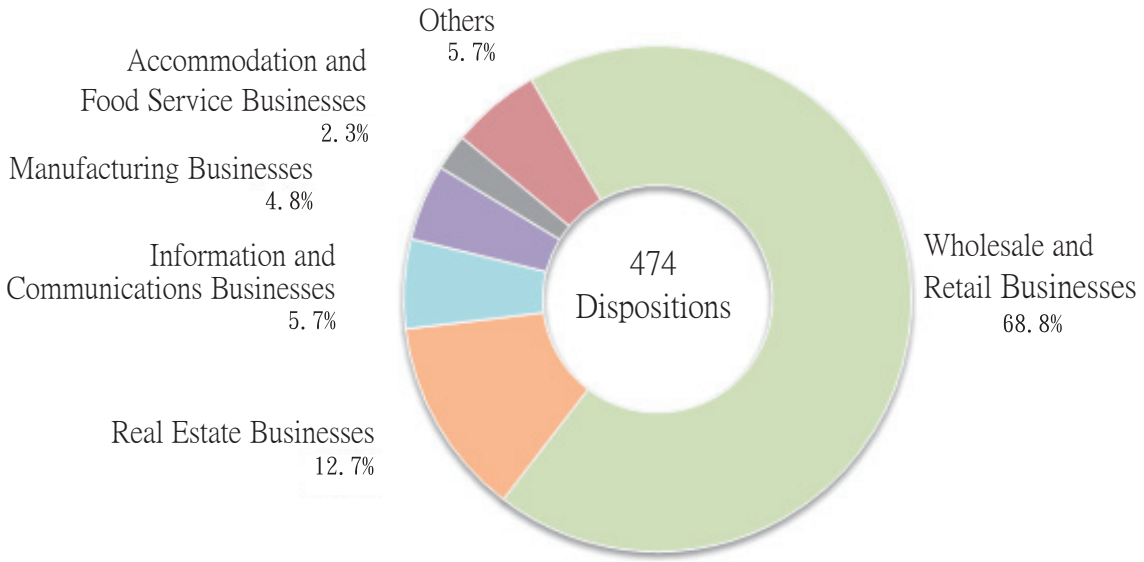

Fig. 1 Cases with Sanctions Made in the Five Recent Years—by Types of Industry Indicated in the Dispositions

In order to protect the rights of the sanctioned enterprises, those finding the sanctions unacceptable can apply for administrative remedies according to the litigation procedures. The FTC has issued 474 dispositions in the five recent years, and 606 enterprises were sanctioned. Among them, 96 of them have applied for administrative remedies, accounting for 15.8%. Observed according to types of conduct, 77 enterprises were sanctioned for engaging in competition restraints, and 27 (35.1%) of them filed for administrative remedies. 338 enterprises were sanctioned for engaging in unfair competition conducts, and 32 (9.5%) of them filed for administrative remedies. A total of 186 enterprises were sanctioned for violation of the Multi-level Marketing Supervision Act and 34 of them (18.3%) applied for administrative remedies. As of the end of April this year, the FTC had issued 474 dispositions, and 469 cases were sustained (including cases with the original sanctions affirmed and those still in the administrative remedy application process yet to be finalized). The maintenance rate was 98.9%.

FTC Activities in March and April 2022

- On Mar. 7 and 14, the FTC held presentations on “Law Compliance and Competition in the Manufacturing Industry” in Yilan County and Taipei City, respectively.
- On Mar. 17, 24 and 31, the FTC held symposiums for opinions from the public regarding the draft of the “White Paper on Competition Policy in the Digital Economy.”
- On Mar. 21, the FTC held a symposium on the “Draft Amendment to the Fair Trade Commission Disposal Directions (Guidelines) on Handling Merger Filings.”
- On Mar. 22 and 23, the FTC attended the “2022 Unilateral Conduct Workshop” held by ICN (videoconferencing).
- On Mar. 23, the FTC conducted a presentation on “the Fair Trade Act” at the Tainan City Chamber of Commerce.
- On Mar. 23, the FTC attended the “Capacity Building Workshop on Data Science Tools for Sector Regulators and Competition Authorities amidst the New Normal” held by APEC (videoconferencing).
- From Mar. 30 to Apr. 1, the FTC attended the “2022 ICN Merger Workshop” (videoconferencing).
- On Mar. 31, the FTC attended the ICC & OECD Competition Webinar Series on “Competition Law and Sustainability.”
- On Apr. 8, the FTC held a public hearing on the amendment to the Multi-level Marketing Supervision Act.
- On Apr. 12, 25, 27 and 28, the FTC conducted the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp,” respectively, at the Graduate Institute of Science and Technology Law of National Kaohsiung University of Science and Technology, the Department of Business and Economic Law of CTBC Business School, the Department of Law of National Chung Hsing University and the College of Law of Tunghai University.
- On Apr. 18, the FTC held a “Various Aspects of Trading Traps” activity at the Tucheng District Office in New Taipei City.
- From Apr. 19 to 21, the FTC attended the “Competition Workshop on Digital Markets” held by OECD/KPC (videoconferencing).
- On Apr. 28, the FTC attended the ICN webinar on “Abuse of Dominance in Regulated Sectors and Recently Liberalized Markets” held by its Unilateral Conduct Working Group (UCWG).

1.The FTC holding presentations on “Law Compliance and Competition in the Manufacturing Industry” in Yilan County and Taipei City

2.The FTC conducting the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp,” at the Graduate Institute of Science and Technology Law of National Kaohsiung University of Science and Technology

3.The FTC conducting the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp,” at the Department of Law of National Chung Hsing University

4.The FTC holding a “Various Aspects of Trading Traps” activity at the Tucheng District Office in New Taipei City

Dear Readers,

In order to improve the quality of our Taiwan FTC Newsletter, we would like to request a few minutes of your time to fill in the questionnaire below. It would be appreciated if you could please directly fill in the questionnaire at the website (https://www.ftc.gov.tw). Thank you for your assistance and cooperation.

Regards

Fair Trade Commission

Taiwan FTC Newsletter Reader's Survey

- Nationality : _____
- Category of your organization

  ☐Government ☐Private Corporation☐Embassy☐NGO ☐Media ☐Scholars

  ☐Other (please specify)_____

1. What do you think of the design of the Taiwan FTC Newsletter, including style and photos?

   ☐ Very Good ☐ Good ☐ Average ☐ Bad ☐ Very Bad

2. Are the articles clear and understandable or difficult to understand?

   ☐ Very Clear ☐ Clear ☐ Average ☐ Difficult ☐ Too Difficult

3. Are you satisfied with the contents of the Taiwan FTC Newsletter, including choice of subjects, length and thoroughness of articles?

   ☐ Very satisfied ☐ Satisfied ☐ Average ☐ Dissatisfied ☐ Very Dissatisfied

4. Which section is your favorite one?

   ☐ Selected Cases ☐ FTC Statistics ☐ FTC Activities ☐ FTC International Exchanges

5. What more would you like to see in the Taiwan FTC Newsletter, e.g. different subjects? Do you have any other suggestions?

Your advice： _____

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