

The Duty to Inform in Contract Initiation and Regulation of Advertising  
— Focusing on Taiwanese and German Laws

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Abstract

Advertisements are the main source of information for consumers in modern transactions. As a result, the content of advertisements constitutes a major incentive for customers to make transaction-related decisions. Even before entering into the phase of contract negotiation, consumers are already deeply influenced by advertisements. If important information is distorted or concealed in the advertisement, the fairness of the contract will be negatively affected. Accordingly, in the area of unfair competition law, the regulation of information practices in contract initiation has become a critical issue.

Recently, under the influence of the EC Directives, the Act Against Unfair Competition has been focusing on the duty to disclose in response to the above-mentioned issue. Moreover, the Act has been emphasizing more on the disclosure of specific information than merely prohibiting incorrect information. The enhancement of the regulation re-garding information practices in the Act is expected to eliminate the barrier of self-determination at an early stage. In addition, it is also expected to ensure that a contract is made on the basis of both parties' free will. In this respect, the Act can be seen as a supplement to the general contract law.

This article analyses the relation between the foregoing two laws, and discusses the importance of information to protect self-determination from the viewpoints of consumer model and consumer sovereignty. By comparing the duties of disclosing essential information specified in the German Act against Unfair Competition and EC Directives, this article then elaborates the factors in determining the establishment and scope of such duties. Cases and provisions in Taiwan Fair Trade Law are also considered in this article.

In conclusion, this article argues that the duty to disclose in the unfair competition

law provides general protection, which pursues the goal of market transparency and takes objective elements into consideration. On the contrary, the general contract law aims at protecting individual contacting parties. These two laws, nevertheless, share the same mission-protecting the freedom of contract-and, therefore, complement to each other.

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