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TAIWAN FTC NEWSLETTER

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KuoBrothers Corp. Violated Fair Trade Act by Adopting Deceptive Means to Market Products of Specific Brands

The FTC decided at the 1594th Commissioners' Meeting on Apr. 12, 2022 that KuoBrothers Corp. and Mobix Corp. had violated Article 25 of the Fair Trade Act by using "search engine optimization (SEO for short)" techniques to display names of specific brands to mislead consumers to think their outlets were selling such products in order to increase the visit rates of their websites. The FTC imposed administrative fines of NT\$2 million on KuoBrothers Corp. and NT\$800,000 on Mobix Corp.

When entering the name of a specific brand, such as Joy Dream Mattresses, on Google, consumers would be directed to "Joy Dream Mattresses search result – buy123" and "best-selling Joy Dream Mattresses recommended through word of mouth – pcone.com." After clicking and entering buy123 and pcone.com, they discovered the two websites did not have Joy Dream mattresses. The outcome was created by KuoBrothers Corp. and Mobix Corp., the two companies managing the websites, by using SEO techniques.

The FTC's further investigation revealed that KuoBrothers Corp. and Mobix Corp. had specifically designed the web pages on buy123 and pcone.com so that the website programs would automatically show the advertising copy pages when net users searched for Joy Dream mattresses on the two websites even though the two websites did not sell the mattresses. Any time consumers entered the name Joy Dream Mattresses on Google, the search results would display the wording "Joy Dream Mattresses search result – buy123" and "best-

selling Joy Dream mattresses recommended through word of mouth – pcone.com.” Then, when clicking on the wording, they would be directed to buy123 and pcone.com.

The FTC has nothing against the use of SEO techniques. However, search results should not mislead consumers. Those entering “Joy Dream mattresses” on Google were likely to be misled by the texts shown in the search results and end up visiting buy123 and pcone.com. It was not any different from misleading consumers to shop at wrong places. Besides increasing the visit rates of the websites, buy123 and pcone.com could also attract consumers to make product comparisons or purchase products available there. As a consequence, the opportunities for the products consumers originally wanted to look for to be sold were reduced. This applied not just to Joy Dream mattresses, for the website programs also generated marketing copy pages for other products that were not sold on buy123 and pcone.com to attract consumers to shop at wrong places.

In the past, the FTC had reached the conclusion that an enterprise using the name of a competitor to make keyword advertisements and placing such a name next to its own in keyword advertisements was in violation of Article 25 of the Fair Trade Act. In this case, although KuoBrothers Corp. and Mobix Corp. did not directly use the brand names of Joy Dream Mattresses and other products in keyword advertisements, the means was still by nature a deceptive bait-and-switch practice. In addition to disrupting consumers’ normal product search and shopping process, the conduct also led to unfair competition in relation to other businesses selling the products of such brands. Allowing such conduct to occur without bringing it under control could end up causing other competitors to follow suit. As a consequence, the competition and order in the e-commerce market and the interests of consumers would be under threat. For this reason, the FTC decided that the practice was deceptive and obviously unfair conduct able to affect trading order and imposed administrative fines of NT\$2 million on KuoBrothers Corp. and NT\$800,000 on Mobix Corp. 

Taiwan Treasure Appraisal Posted False Advertisements in Violation of the Fair Trade Act

The FTC decided at the 1608th Commissioners' Meeting on Jul. 20, 2022 that Taiwan Treasure Appraisal Media Channel Co., Ltd. had violated Paragraph 4 of Article 21 of the Fair Trade Act by using the name of the Gemological Institute of the Republic of China to publicize its jewelry and precious stone appraisal services as well as opening appraisal courses and issuing appraiser certificates. Meanwhile, the company also posted on its website the claim "jewelry and precious stone appraisal services – all the courts in the country, the National Taxation Bureau, the National Police Agency and all the quality assurance associations commission GGL to conduct the most professional appraisals," along with pictures of several government agency documents. The practice was a false and misleading representation with regard to identity and service quality and could also affect transaction decisions. Citing Paragraph 1, *mutatis mutandis*, of the same article, the FTC imposed an administrative fine of NT\$200,000 on the company.

The content posted on the website of Taiwan Treasure Appraisal Media Channel Co., Ltd. gave people the impression that it was the Gemological Institute of the Republic of China promoting its jewelry and precious stone appraisal services and appraisal courses, and that the services were offered nationwide. In addition, the institute was often commissioned by government agencies; therefore, the professional capacity could be trusted. However, the FTC's investigation revealed that the Gemological Institute of the Republic of China had no business registration and was not a legally recognized

independent entity. Moreover, the inclusion of the "Republic of China" in the title to imply that the institute was offering its services nationwide could have misled consumers into thinking it was a national social group engaging in non-commercial activities. As a consequence, consumers could have had wrong perceptions about the identity of the service provider or have made wrong decisions. In addition, the appraisals made for government agencies as indicated on the website had been performed by the Stamford Gem and Jewelry Grading Corporation which was founded by the person in charge of Taiwan Treasure Appraisal Media Channel Co., Ltd. Both companies were managed by the same individual, but they were different juristic persons. In other words, by using the jewelry and precious stone appraisal services of another company to indicate the quality of its own services, Taiwan Treasure Appraisal Media Channel Co., Ltd. failed to fulfill its obligation to make truthful representations in advertisements. The practice misled consumers into believing that the appraisal services conducted for government agencies were those performed by Taiwan Treasure Appraisal Media Channel Co., Ltd. It was in violation of Paragraph 4 of Article 21 of the Fair Trade Act and Paragraph 1 of the same article was applicable *mutatis mutandis*.

The FTC would like to remind related businesses that skill certification and licensing are indeed conducted through multiple channels. Related government agencies either perform certification and issue licenses on their own or outsource the task to external services, but private enterprises are also allowed to do so in accordance with the needs of the industry or

the market. Nevertheless, presently no government agencies conduct jewelry and precious stone appraiser certification and licensing. Consumers who need precious stone grading and appraisal services should confirm the true identity of license issuers in order not to have erroneous perceptions. On the other hand, related businesses offering services on their

websites are required to fulfill the obligation to fully disclose truthful information to prevent consumers from having unnecessary misunderstandings. Only by doing so will they be able to show their professionalism and integrity to win the recognition of consumers. 

Household Air Conditioner Businesses Engaged in Concerted Action in Violation of the Fair Trade Act

The FTC decided at the 1597th Commissioners' Meeting on May 5, 2022 that 15 domestic air conditioner businesses had violated Article 15 (1) of the Fair Trade Act by getting together for meals to establish a mutual understanding to jointly reduce the warranty period. Therefore, the FTC imposed an administrative fine of 2.5 million New Taiwan dollars on each of Johnson Controls – Hitachi Air Conditioning Taiwan Co., Ltd., Panasonic Sales Taiwan Co., Ltd., Ho Tai Development Co., Ltd. and Ya-kuang Electric Appliance Co., Ltd.; NT\$800,000 on each of Sampo Corporation, Heran Co., Ltd. and Taiwan Sanyo Electric Co., Ltd.; NT\$200,000 on each of Taiwan Gree Co., Ltd., Mitsubishi Electric Taiwan Co., Ltd., Action Electronics Co., Ltd., Nexgen Mediatech Inc., Maxe Taiwan Co., Ltd., Sharp (Taiwan) Electronics Corporation, and New Widetech Industries Co., Ltd.; and NT\$100,000 on Yu Hwei Technology Co., Ltd.. The fines totaled NT\$13.90 million.

A number of private citizens filed complaints that domestic air conditioner businesses had held meetings and decided to jointly reduce the household air conditioner warranty period. There were also talks on the Internet saying the air conditioner warranty period was about to become shorter. Therefore, the FTC launched an investigation. The findings revealed that the top three air conditioner businesses, namely, Hitachi, Panasonic and Daikin had extended the household air conditioner warranty period from three years to seven years one after another starting in March 2019. Other lesser brands with smaller market shares followed suit in order to remain in competition as far as warranty conditions were concerned. However, at a professional peer dinner on Nov. 26, 2019, air conditioner businesses discussed and exchanged ideas about the possibility of reducing the

warranty period for household air conditioners and in the end 15 air conditioner businesses achieved a mutual understanding to shorten the warranty period to three years beginning on Jan. 1, 2020. They also wrote down the content of the mutual understanding to make it a written document that was passed around for signature.

Household air conditioners were highly homogeneous and substitutable. Any air conditioner business reducing the warranty period alone would have risked losing its market. Hence, by achieving the mutual understanding to jointly shorten the warranty period, the businesses could protect their mutual interests. Since the warranty period was an important consideration when consumers shopped for air conditioners and the total market share of the air conditioner businesses involved was more than 90%, objectively speaking, the conduct could have affected the market supply-demand function. It was in violation of the regulation against concerted actions set forth in Paragraph 1 of Article 15 of the Fair Trade Act.

The FTC would like to remind enterprises that mutual understandings regarding prices, production, trading counterparts, trading areas or agreements to restrict the business activities of one another established among businesses of the same trade and likely to affect the market supply-demand function are considered concerted actions. Whether the businesses actually execute the mutual understanding or not is irrelevant. When businesses of the same trade get together, they should avoid exchanging information about product prices, transaction conditions and so on in order not to violate the regulations against concerted actions set forth in the Fair Trade Act. 

Merger between Hoya Corporation and Beijing BOE Vision-Electronic Technology Not Prohibited

The FTC decided at the 1609th Commissioners' Meeting to approve the merger between Japanese company HOYA Corporation and Chinese company Beijing BOE Vision-Electronic Technology Co., Ltd. by citing Article 13 (1) of the Fair Trade Act on Jul. 27, 2022.

HOYA Corporation and Chinese company BOE Vision-Electronic Technology intended to set up a joint venture in China, with each company holding over one third of the shares to be jointly in charge of management and personnel appointment and dismissal. Since the condition met the filing threshold, a merger notification was therefore filed with the FTC.

HOYA Corporation was the parent company of the HOYA Group which engaged in research and development and sales of medical and healthcare materials, photomask billet, photomasks and glass substrates for conventional hard drives. Beijing BOE Vision-Electronic Technology was a subsidiary of BOE Technology Group (hereinafter referred to as the

BOE Group), which mainly engaged in the innovation of displays, sensors and intelligence systems. Both the HOYA Group and the joint venture would sell photomasks for monitors, but the joint venture, being located in China, would not be selling photomasks for flat panel displays to Taiwan. Therefore, the structure of the domestic flat panel display photomask market and competition would not have any significant changes. In addition, there would be several international manufacturers competing in the flat panel display photomask market. Makers of large-size panels all adopted the management strategy of collaborating with a number of photomask suppliers. The merger was unlikely to create any foreclosure in the market and the impact on the domestic flat panel display photomask market and large-size panel market would not be significant.

After reviewing the case, the FTC concluded that the merger would not lead to competition restraints and, therefore, approved the merger by citing Article 13 (1) of the Fair Trade Act. 

Sunshine Development Posted False Housing Project Advertisements in Violation of the Fair Trade Act

The FTC decided at the 1604th Commissioners' Meeting on Jun. 22, 2022 that Sunshine Development Co., Ltd. (hereinafter referred to as Sunshine Development) had violated Article 21 (1) of the Fair Trade Act by showing in an advertisement for the "Sunshine Blue Sky (translation) housing project pictures of a model home with a mezzanine and the bed in it. The advertisement also carried the wording "3.6m-high thinking space" as well as "more ingenuity: double multilayered storage space, multiple functions, and same floor area size to give you more freedom." Moreover, a model home with a mezzanine design was actually constructed at the venue where the housing project was marketed. The false advertising was in violation of Article 21 (1) of the Fair Trade Act. Therefore, the FTC imposed an administrative fine of NT\$1.5 million on the company.

It is legal to apply for permission to use a housing unit with a mezzanine provided that such construction will not affect the structural safety of the building since the increased vertical space can enhance the benefits of the users of the unit. However, if the builder of a

housing project did not apply for permission to put in a mezzanine and the homebuyer has a mezzanine constructed in accordance with the advertisements and the model home after the unit is handed over, there will be the risk of having the structure dismantled.

Sunshine Development displayed the mezzanine design in online advertisements and the model home at the venue where the housing project was marketed. It gave people the impression that a mezzanine could be built in the 3.6m-high space to have an extra bedroom. The FTC requested that the Taichung City Government provide its opinion and the reply was that the builder had not applied for permission to put in a mezzanine. If the main structure was different from the approved engineering drawings, it could be torn down according to building regulations. Apparently, the content of the advertisements could have caused consumers to have wrong perceptions and also have an effect on transaction decisions. It was a false and misleading representation. 

RIWAY Taiwan in Violation of Multi-level Marketing Supervision Act

Participants promote and market the products or services of multi-level marketing businesses and introduce others to join multi-level marketing organizations. Therefore, multi-level marketing businesses have the responsibility to regulate the conduct of their participants, especially the inappropriate sales practices specified in Article 15 of the Multi-level Marketing Supervision Act as reasons to consider that participants have breached the contract. Therefore, multi-level marketing businesses are required to establish effective measures to stop such specific contract-breaching practices.

Sales of deer placenta capsules by a number of participants of RIWAY Taiwan involved exaggerated curative effects likely to cause misunderstandings. Between 2019 and 2021, the health authorities concluded that the practices were in violation of Article 28 of the Act Governing Food Safety and Sanitation and imposed fines. However, the FTC still found several participants posting information related to deer placenta capsules and curative effects on Facebook in 2022. Although the contract signed between RIWAY Taiwan and its participants included stipulations that the company could disconnect supply and suspend issuance of bonuses to participants breaching the contract and even terminate the

contract after confirmation of such breaches, the company only gave “written warnings to some of the participants without taking the measures specified in the contract. As for the participants sanctioned by the health authorities for violating the Act Governing Food Safety and Sanitation, some had their rights suspended but others were only given written warnings. Apparently, RIWAY Taiwan was unable to execute the established measures for handling breaches of contract to effectively stop inappropriate sales practices. As a consequence, the FTC decided at the 1612th Commissioners’ Meeting on Aug. 17, 2022 that the company had violated Article 15 of the Multi-level Marketing Supervision Act and imposed on it an administrative fine of NT\$600,000.

Currently, most multi-level marketing businesses in the country mainly sell foods. The FTC would like to urge participants to keep in mind the regulations set forth in the Act Governing Food Safety and Sanitation when promoting and marketing products and not to exaggerate curative effects or say things that are likely to cause misunderstandings. On the other hand, multi-level marketing businesses should also take the responsibility to supervise and control their participants to jointly maintain trading order in multi-level marketing. 

Statistics on Real Estate Activities Cases

Real estate transactions involve large amounts of money. To attract more consumers to make purchases, real estate businesses design all kinds of advertisements and adopt various sales tactics to draw people’s attention. After putting in their life savings, consumers discover that the builder built mezzanines in the units without obtaining the permission of the competent authority but claimed in advertisements that the home had 1+1 rooms, including a mezzanine. For instance, an area that is obviously a landing space, a water tank or a machine room, may be denoted as a public area in advertisements. It is said that sometimes homebuyers even need to pay extra money to have presale homes handed over or leave a deposit to read the purchase agreement. How much false or misleading real estate advertising and deceptive or obviously unfair conduct is there?

Statistics show that the FTC closed 996 real estate activities cases between 2017 and October 2022 (hereinafter referred to as the six recent years). 120 of them involved violations of the Fair Trade Act and were investigated (hereinafter referred to as initiating investigations). Administrative decisions were made in 73 of these cases (accounting for 60.8% of the cases with initiating investigations. No-action decision was decided in 47 cases. The review (investigation) was terminated in 866 cases because they involved civil or criminal procedures, the jurisdiction of other agencies or procedural inconsistency. Ten cases were combined with other cases (Table 1).

Table 1 Statistics on Real Estate Activities Cases

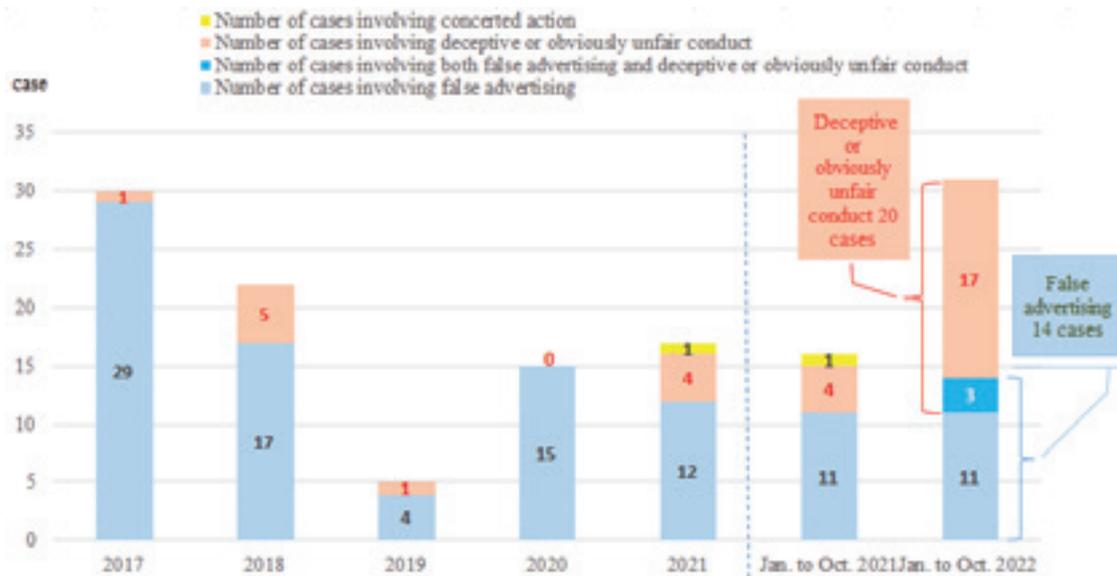
Unit: case; %

Year	Number of closed real estate activities cases	Initiating Investigation				Termination of Review (investigation)	Cases Consoli-dated
		Total	Administrative decision	Ratio to total cases with Initiating investigations	No-action decision		
Total (2017 to Oct. 2022)	996	120	73	60.8	47	866	10
2017	156	30	25	83.3	5	120	6
2018	152	22	12	54.5	10	129	1
2019	100	5	3	60.0	2	95	-
2020	171	15	10	66.7	5	155	1
2021	233	17	9	52.9	8	215	1
Jan. to Oct. 2022	184	31	14	45.2	17	152	1

The 120 cases with initiating investigations in the six recent years include one concerted action case, 88 cases involving false advertising (Article 21 of the Fair Trade Act), 28 cases associated with deceptive or obviously unfair conduct (Article 25 of the new Fair Trade Act and Article 24 of the old version) and three cases involving both false advertising and deceptive or obviously unfair conduct. Apparently, false advertising remained the main cause of real estate transaction disputes (Fig.1).

Observed by type of conduct, from January to October in 2022, there were 31 real estate activities cases in which investigations were initiated because false advertising or deceptive or obviously unfair conduct was involved, increasing by 16 cases compared with the same period the year before and the highest in the six recent years (Fig.1).

Fig.1 Statistics on Real Estate Cases Activities with initiating Investigations



In the six recent years, the FTC made administrative decisions in 73 real estate activities cases (all associated with false advertising and/or deceptive or obviously unfair conduct), issued 73 administrative decision statements and sanctioned 116 businesses. The fines imposed totaled NT\$82.30 million, or NT\$709,000 per business on average. Observed by type of conduct, 106 businesses were sanctioned for posting false advertisements and the fines totaled NT\$74.10 million, or NT\$699,000 per business on average. Meanwhile, NT\$820,000 per business on average was imposed for engagement in deceptive or obviously unfair conduct (Table 2).

Table 2 Statistics on Fines Imposed on Real Estate Activities Businesses

Unit: case; per business, NT\$10 thousand

Year	Decision statements		Number of businesses		Total fine		Fine per business on average		
	(case)	False Advertising	(business)	False Advertising	(NT\$10 thousand)	False Advertising	(NT\$10 thousand)	False Advertising	Deceptive or obviously unfair conduct
Total (2017 to Oct. 2022)	73	68	116	106	8,230	7,410	70.9	69.9	82.0
2017	25	25	40	40	3,205	3,205	80.1	80.1	-
2018	12	12	18	18	940	940	52.2	52.2	-
2019	3	3	6	6	320	320	53.3	53.3	-
2020	10	10	19	19	1,155	1,155	60.8	60.8	-
2021	9	8	14	12	1,330	980	95.0	81.7	175.0
Jan. to Oct. 2022	14	10	19	11	1,280	810	67.4	73.6	58.8

Activities in September and October 2022

- ▲ On Sep. 2, the FTC held the “Seminar on Reflection and Prospects after 30 Years of Law Enforcement.”
- ▲ On Sep. 2 and 5, the FTC conducted the “Fair Trade Commission Presentation on Regulations against False Advertising and Past Cases” in Taichung City and Kaohsiung City, respectively.
- ▲ On Sep. 16, the FTC held a presentation on “Various Aspects of Trading Traps” at the Senior Citizens’ Welfare Promotion Association in Guantian, Tainan City.
- ▲ On Sep. 23, the FTC held the “Fair Trade Act and Multi-level Marketing Supervision Act Training Camp” at the Department of Economics of National Dong Hwa University.
- ▲ On Sep. 23, the FTC held a presentation on “Fair Trade Commission Regulations on Multi-level Marketing” in Taipei City.
- ▲ On Sep. 28 and 29, the FTC’s staff members attended the 17th East Asia Top Level Officials’ Meeting on Competition Policy and the 14th East Asia Conference on Competition Law and Policy in the Philippines.
- ▲ On Oct. 14, the FTC held a presentation on “Fair Trade Commission Regulations on Multi-level Marketing” in Hualien County.
- ▲ On Oct. 24, the FTC held a workshop on the “Verification of False Advertising Associated with the Odds of Winning Prizes by Purchasing Products (Services).”
- ▲ On Oct. 27, the FTC held a presentation on “Fair Trade Commission Regulations on Marketing of Presale Homes” in Taipei City.



1. The FTC holding the “Seminar on Reflection and Prospects after 30 Years of Law Enforcement”



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- 2.The FTC conducting the "Fair Trade Commission Presentation on Regulations against False Advertising and Past Cases" in Kaohsiung City
- 3.The FTC holding the "Fair Trade Act and Multi-level Marketing Supervision Act Training Camp" at the Department of Economics of National Dong Hwa University
- 4.The FTC's staff members attending the 17th East Asia Top Level Officials' Meeting on Competition Policy in the Philippines
- 5.FTC Vice Chairperson Chen Chih-min delivering a report at the 17th East Asia Top Level Officials' Meeting on Competition Policy

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