

An Analysis of False and Misleading Advertising Enforcement in Taiwan: The Concurrent Application of the Fair Trade Act and Competent Regulations

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Abstract

In addition to the Fair Trade Act (FTA), stipulations regarding false advertising also exist in the regulations of other competent authorities. Currently, the Taiwan Fair Trade Commission (TFTC) and competent authorities are coordinating their jurisdiction over false and misleading advertising in accordance with the principle of “special laws prevailing over ordinary laws.” For example, advertisements claiming products as having medical effects are subject to the jurisdiction of the Ministry of Health and Welfare, instead of the TFTC. However, whether a specific advertisement is subject to special laws is sometimes controversial. Furthermore, the concurrent application of the FTA and competent regulations raises problems because the substantial standards and procedural stipulations regarding the false advertising thereof are different. How the TFTC and competent authorities should coordinate and cooperate with each other poses a significant question.

This research intends to clarify the TFTC’s and other competent authorities’ enforcement strategies for false and misleading advertising regulations. This research will also analyze the cases concerning the enforcement of false and misleading advertising by the TFTC and competent authorities in an attempt to provide suggestions on how to urge the TFTC and other competent authorities to coordinate and cooperate in a more efficient and effective way.

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This research makes the following suggestions:

(1) Based on the experience of the Ministry of Health and Welfare, one of the ways to ensure the efficiency of their law enforcement is to sort out and summarize clear examples and phrases for the reference of law enforcement. This research suggests that the TFTC could try to compile more concrete examples, common patterns, or phrases that might constitute false advertising for industries involved in major cases. Doing so could effectively help businesses to comply with the relevant laws and regulations.

(2) The shift in the burden of proof

The TFTC could amend the FTA to clearly stipulate that under certain circumstances (such as in relation to those who actively claim to have specific effects and efficacy in the advertisements of their goods or services), the TFTC could, if deemed necessary, require that the parties prove that it is true in respect of the specific effects claimed in their advertisements. If the relevant evidence is not presented within the statutory period, the advertisement shall be deemed to be false advertising.

(3) Coordinate with other competent authorities to increase the normative density and the amount of fines for false advertising in individual fields

The TFTC could try to coordinate with other competent authorities to increase the density of norms in individual areas related to false advertising (including mandatory legal norms and non-mandatory industry self-regulatory norms). In addition, this research would like to suggest that the Executive Yuan actively review the relevant laws and actively promote the amendment of the amount of fines imposed on false advertising in other individual regulations.

Keywords: False and Misleading Advertising, Fair Trade Act, Allocation of Administrative Jurisdiction, Concurrence, Consumer Protection Act, Behavioral Economics.