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Trade Association Violating Fair Trade Act for Restricting Members from Advertising

Xiao Ji was a certified public bookkeeper who had just started a bookkeeping service. Being new to the profession and without any reputation, plus facing the burden of office rents and operating expenses, finding more customers was the only way to make ends meet. After repeatedly mulling over the situation, Xiao Ji decided to advertise and offer lower service charges than the competitors to gain business. Months later, the advertisement brought satisfactory results and Xiao Ji's business gradually picked up. However, Xiao Ji received a phone call from a cadre of the bookkeepers association telling Xiao Ji that the association prohibited the members from advertising to gain business and Xiao Ji was expected to abide by the association's regulations. Since Xiao Ji did not believe the content of the advertisement to be false, untrue or misleading, he therefore wondered if the association could restrict its members from advertising.


Case Background

In 2012, the FTC investigated the Certified Public Bookkeepers Association which had been accused of restricting its members

from advertising to gain business. The membership rules of the association stipulated, “No members may adopt inappropriate measures or use advertising to gain business.” The association pointed out that the purpose of the restriction on advertising was to prevent members from engaging in price competition and bringing down the service charges below the market rate and it had issued warnings to some members who had posted price advertisements in the past.

Prohibition of Advertising Still Considered a Restraint on Competition

The FTC regarded advertising as an important approach to competition in terms of offering a choice other than price, service, and quality, especially “informative advertising” (price advertising, for example), because it could provide trading counterparts with more information to help them make their transaction decisions, thus promoting price or quality competition. Hence, restricting businesses from advertising was the same as confining the range of competition instruments that businesses could employ; it could lead to anti-competitive behavior. Above all,


the restriction the association in question imposed was a comprehensive restriction on advertising – even advertisements that contained no false or misleading information were prohibited. Although the association did not directly place any limit on the charges or production of its members, restricting the members from posting price advertisements stopped the members from resorting to price competition as an effective competition measure. Members who offered lower charges could not advertise to gain business and create trading opportunities, and this not only reduced the incentive for the members to engage in competition but also increased the costs borne by consumers in searching for the trading counterpart they preferred and indirectly affected the supply-demand function of the market. Such acts were in violation of the regulation against concerted actions in the Fair Trade Act. Therefore, trade associations needed to take note that, unless specified in other regulations, restricting their members from advertising to gain business could lead to the violation of the regulation against concerted actions in the Fair Trade Act. 

Financial Arrangement Company Violating Fair Trade Act for Posting False Advertisements

The Fair Trade Commission decided at the 1070th Commissioners' Meeting that the wording of "29 franchisees so far" and "achieving net profits of 5 to 7.8 million in five years" posted in an advertisement on its "elite franchise network" website by Diamond Service Center Co., Ltd. was in violation of Article 21 (3) of the Fair Trade Act. Acting according to Article 41 of the same Act, the FTC ordered the company to immediately cease the unlawful act after receiving the disposition and also imposed on it an administrative fine of NT\$500,000.

Diamond Service Center Co., Ltd. claimed on the "elite franchise network/current franchise profile" webpage that there were "29 franchisees in total." However, the investigation by the FTC showed that there were only 10 franchisees at the time when the said advertisement was posted. After subtracting the 3 franchisees that had closed down and having informed the FTC of the untruthful wording, the actual number of franchisees at the time the advertisement was posted was only 7. The content of the advertisement was apparently inconsistent with the fact and could generate misconceptions in interested parties about the limited number of franchisees and the remaining quota available. In addition, the advertisement did not specify how the number of franchisees was

calculated. The public would only find it difficult to accept the difference between the alleged number of franchisees and the actual number of franchisees. Therefore, the advertisement was considered a false, untrue and misleading representation.

Meanwhile, in the advertisement on the "elite franchise network/franchise regulations" webpage, the company claimed that "DSC nets 5 to 7.8 million in five years." The figure was calculated based on "monthly sales of 1 million" and the company also admitted that a franchisee with monthly sales falling below 1 million could not achieve the net profit of 5 to 7.8 million in five years as claimed in the advertisement. Furthermore, the said net profit was calculated by the company according to the estimated expenses and ratios instead of the actual business data of any franchisee or the average sales of all the franchisees. As a matter of fact, regardless of whether they were specially approved franchisees or delegated franchisees, none of the franchisees were able to make the monthly sales of 1 million, proving that the claim did not have any support from objective statistical figures. Obviously, it could generate misconceptions in parties interested in joining the franchise and was therefore a false, untrue and misleading representation. 

FTC Decides Not to Prohibit Merger between Japan-based Taiyo Holdings and Onstatic Technology

After reviewing the merger notification filed by Japan-based Taiyo Holdings Co., Ltd. regarding its intention to merge with Onstatic Technology Co., Ltd., the Fair Trade Commission decided at the 1093rd Commissioners' Meeting not to prohibit the merger as the overall economic benefits would be greater than the disadvantages from the competition restrictions thereof incurred.

Taiyo Holdings intended to acquire over 51% of the shares of Onstatic Technology and the condition complied with the merger patterns described in Subparagraphs 2 and 5, Paragraph 1 of Article 6 of the Fair Trade Act. Meanwhile, the companies in which Taiyo Holdings had invested accounted for 26% of the domestic PCB finishes market in 2011, achieving the threshold for merger filing with the FTC as specified in Subparagraph 2, Paragraph 1 of Article 11 of the Fair Trade Act while the proviso set forth in Article 11-1 of the same Act was inapplicable. Therefore, Taiyo Holdings was required to file the merger notification.


By nature, it would be a horizontal merger and the relevant market affected would be the PCB finishes market. After the merger, there would still be a number of suppliers of PCB finishes competing in the market and the finishes from each supplier would be products with a high cross elasticity of demand. Therefore, the costs to be borne by downstream businesses in switching to a different supplier would not be

high. At the same time, since no laws or regulations restricted suppliers of PCB finishes from entering the relevant market in the country and there were no non-tariff barriers to the importation of related products, domestic manufacturers of PCB finishes would have to compete with importers of similar products; hence, there would be no significant difficulties faced by other businesses when entering the relevant market.

The production of PCB finishes in the country was not capital-intensive. In addition to the products manufactured and marketed by domestic suppliers, there were also the imports from overseas brought in by downstream businesses. Furthermore, there was no law requiring manufacturers of such products to obtain patent authorization; potential competitors could either set up their own production operations or import similar products from other countries. Apparently, there would be no significant obstacle to market entry for any business. Meanwhile, as there were no non-tariff restrictions on the importation of PCB finishes, international corporations were also competing in the domestic market and the competition was fierce.

Since there were many sources of raw materials for PCB finishes, manufacturers had no difficulty in acquiring raw materials. Meanwhile, as there was a high cross elasticity of demand in the PCB finishes market, the costs to be borne by downstream

businesses in switching to new suppliers would not be high. Therefore, it would be impossible for the merging parties to adjust the prices of PCB finishes arbitrarily after the merger. The trading counterparts in the markets concerned or the potential trading counterparts would still be able to cope with the capacity of the merging parties to increase the prices of their products. This meant that the merger would


have no negative effect on either the upstream or downstream trading counterparts. By taking all of the above into consideration, the FTC was of the opinion that the overall economic benefits of the merger would outweigh the disadvantages from the competition restrictions thereof incurred and therefore acted according to Article 12 (1) of the Fair Trade Act and did not prohibit the merger. 

Concerted Action by Ice Manufacturers in Violation of Fair Trade Act

The Fair Trade Commission decided at the 1095th Commissioners' Meeting that Mi Jiu Enterprise Co., Ltd., Zhen Shun Ice Manufacturing Co., Ltd., Yong Quan Enterprise Co., Ltd., and Sheng Xing Ice Manufacturer, four ice suppliers at Yanpu Fishing Port, Donggang Town, Pingtung County, had violated Article 14 (1) of the Fair Trade Act by jointly increasing the price of ice for fishery purposes. The conduct was likely to affect the supply-demand function of the market for ice for fishery purposes in the local area. The FTC therefore ordered the said companies to immediately cease the unlawful act and also imposed an administrative fine of NT\$50,000 on each of them.

The product market involved in this case was the market for ice for fishery purposes. The ice was to be used for refrigerating catches only and was not edible. Each chunk of ice weighed between 80 and 100 kilograms. The ice chunks produced by each ice manufacturer were of the same size and had the same appearance. Meanwhile, the ice manufacturers involved in this case sold ice only to the fishing boats operating from Yanpu Fishing Port and the fish businesses around the port. The ice chunks were bulky and weighty, melted quickly, and were difficult to preserve. Therefore, the business was regional. Furthermore, in the fisheries statistics from the Fisheries Agency of the Council of Agriculture, Yanpu

was an independent unit. Therefore, the geographic market in this case was defined as Yanpu Fishing Port in Donggang.

The FTC's investigation revealed that Zhen Shun Enterprise Co., Ltd. called the ice manufacturers to meet in July 2011. During the meeting, the four companies achieved a consensus and made the decision to raise the price of ice for fishery purposes. The price of each chunk of ice was increased to NT\$150. After the meeting, they jointly produced signs to inform their customers of the price increase. The sign said, "Notice: Due to a cost increase, the price of each chunk of ice is raised to \$150, starting from today. We apologize for any inconvenience incurred. XXX (name of business)." Secondly, the FTC inspected the invoices of the said businesses. They indicated that the price had indeed gone up in Aug. 2011. After assessing the aggregate market share of the four businesses in the relevant market, the FTC considered that the joint increase in the price of ice for fisheries through the mutual understanding achieved did lessen the competition in the market for ice for fishery purposes in Yanpu Fishing Port. Hence, the conduct was in violation of the regulation against concerted actions set forth in Article 14 (1) of the Fair Trade Act. 

Construction Company Violated the Fair Trade Act for Posting False Advertisements

The Fair Trade Commission decided at the 1097th Commissioners' Meeting that Shan Lin Construction Co., Ltd. and Pu Shi Development Co., Ltd. had violated Article 21 (1) of the Fair Trade Act for including pictures of illegal public leisure activity facilities in an advertisement for the "San He Yan" housing project and indicating that the machine room space in the suggested furniture arrangement layout plan was part of the living room. It was a false, untrue and misleading representation with regard to content and use of product. The FTC therefore imposed an administrative fine of NT\$500,000 on Shan Lin Construction Co. and NT\$300,000 on Pu Shi Development Co.


The FTC's investigation showed that the advertisement for the "San He Yan" housing project contained pictures of a "Karaoke," "Lounge bar," and "Body gym" as public facilities. However, the space where these facilities were indicated was supposed to be the air raid shelter in basement level 1. According to the New Taipei City Government, the said companies had never applied for the permission to use the air raid shelter space for the aforementioned public leisure activities. In addition, the total floor area in the application had already reached the floor area limit. If the basement level 1 of the housing project would not be used as the air raid shelter as originally

approved after the use permit was issued, it would be in violation of Article 73 (2) of the Building Act and sanctioned according to Article 91 (1) of the same act.

The FTC also discovered that in the suggested furniture arrangement layout plan distributed at the site and posted on the Internet for the said housing project, the machine room was incorporated as part of the bedroom or living room. According to the New Taipei City Government, the said companies had never applied for the permission to alter the design and use the machine room as part of the bedroom or living room. Furthermore, the total floor area had already reached the limit under the current regulation. The said alteration of design or change of purpose of use would bring the total floor area to exceed the total floor area allowed. If the machine room would not be used for the purpose as originally approved and incorporated as part of the bedroom or living room, it would be in violation of Article 73 (2) of the Building Act and sanctioned according to Article 91 (1) of the same Act.

The public facilities, use of building, and usable internal space were important factors when consumers decided whether they would make the transaction. After seeing the advertisement and the suggested furniture arrangement layout plan, most


consumers would establish the understanding that, after making the purchase, they would have access to the public leisure activity facilities and make interior arrangements according to the suggested layout plan. They had no idea that the facilities and use of space was actually in violation of building regulations and they could be fined, prohibited from using the space, and forced to make restorations, or else they could

even have a part of their homes torn down by the competent authority. The content of the advertisement was inconsistent with the fact and could lead to misconceptions and wrong decisions by consumers. The conduct was a false, untrue and misleading representation of use and content of product in violation of Article 21 (1) of the Fair Trade Act. 

False Advertisements for Pre-purchased Homes in Violation of Fair Trade Act

The Fair Trade Commission decided at the 1099th Commissioners' Meeting that Chang Yu Construction and Development Co., Ltd., Da Yong Construction Co., Ltd., and Hao Yang Advertising Co., Ltd. had violated Article 21 (1) of the Fair Trade Act for posting in an advertisement for the "W Tower Trans-century" housing project a "suggested rooftop panoramic public leisure activity facility layout plan" which included the "S Video-audio Theater," "U Family Aerobics Room" and "T Chess Room" and indicating in the advertising brochure that buyers would be able to enjoy public facilities such as the "77 video-audio theater + family aerobics room + chess room" and "73 Leader Banquet Hall." The wording was a false, untrue and misleading representation with regard to use and content of product. The FTC imposed an administrative of NT\$500,000 on Chang Yu Co., NT\$500,000 on Da Yong Co., and NT\$300,000 on Hao Yang Co.

In their cooperative operation to market the "W Tower Trans-century" housing project, Chang Yu Co., Da Yong Co., and Hao Yang Co. provided the rooftop panoramic public leisure activity layout plan that included pictures of a vaideo-audio theater and other public facilities as mentioned above. The conduct could create misconceptions in consumers that they would have access to the said public facilities after making the purchases. However, the FTC's investigation showed that levels 2 and 3 above the roof and the ground floor where the public facilities allegedly would be had been indicated in the corresponding floor plans had been designated as the

machine room and bicycle parking area. According to the New Taipei City Government, the public facilities on levels 2 and 3 above the roof belonged to "living space." This was not the content of the original plan approved. Such conduct was in violation of the floor space regulation and would be sanctioned according to Articles 73 and 91 of the Building Act. Moreover, according to the original plan approved, the alleged public facility area on the ground floor was to be the parking lot for 29 bicycles, If the change was to be made to the content of urban design that had been reviewed and approved, the said companies were required to apply for a change of urban design and building license before applying for the use permit. Meanwhile, Chang Yu Co. and Da Yong Co. admitted that the video-audio theater, family aerobics room, chess room, and the Leader Banquet Hall were indeed inconsistent with the blueprint originally approved, and they had not applied to the New Taipei City Government for approval of the changes. Under such circumstances, when the home owners or users would use the public facilities in the future as advertised, they would face the risk of getting penalized or ordered to restore these sections or even have these facilities torn down by the competent authority. Hence, there was apparently a gap between the content of the said advertisement and the understanding of consumers and the gap was too huge to be acceptable to the public. It could create misconceptions in consumers and lead to wrong decisions. It was unfair competition in violation of Article 21 (1) of the Fair Trade Act. 

Statistics on Cases in Which the Investigation Was Initiated by the FTC

Besides processing complaints, concerted action applications, merger notifications, and requests for statutory interpretation, the FTC also initiates investigations when violation of the Fair Trade Act or the endangerment of the public interest is suspected. In 2012, the FTC initiated investigations in 441 cases, the highest since the agency was created. Up till the end of 2012, the cases for which the FTC had initiated investigations totaled 2,292. 2,155 of these cases were closed, signifying a case-closing rate of 94.0%.

When observed according to the resources put into these investigations, 2,958 person-times of FTC staff members were assigned to work on the 378 cases closed in 2012, 4 public hearings and seminars were held, and 1,477 businesses were investigated. When analyzed according to the handling results, sanctions were handed down in 102 of the cases in which the investigation had been initiated by the FTC (accounting for 27% of the closed cases, with 107 dispositions issued and 190 businesses sanctioned), no sanctions were administered in 112 cases, 7 administrative disposals were made, and the investigation was suspended in 118 cases. As of the end of 2012, 2,155 cases in which the investigation had been initiated by the FTC were closed. Sanctions were administered in 835 cases (accounting for 38.7%), with 966 dispositions issued and 1,399 businesses sanctioned.

Table 1 Cases in Which the Investigation Was Initiated by the FTC

Unit: case

Year	Sanction			No Sanction	Administrative Disposal	Investigation Suspended	Others
	No. of Cases	No. of Dispositions Issued	No. of Businesses Sanctioned				
Total	835	966	1 399	582	109	439	190
1992-2002	200	258	346	42	37	43	-
2003	33	64	89	9	8	26	-
2004	34	34	38	16	8	26	-
2005	44	44	54	27	10	41	6
2006	58	74	91	131	4	35	31
2007	66	72	100	32	23	34	21
2008	61	68	93	27	1	21	5
2009	42	43	103	31	2	25	68
2010	44	46	65	41	2	28	7
2011	151	156	230	114	7	42	13
2012	102	107	190	112	7	118	39

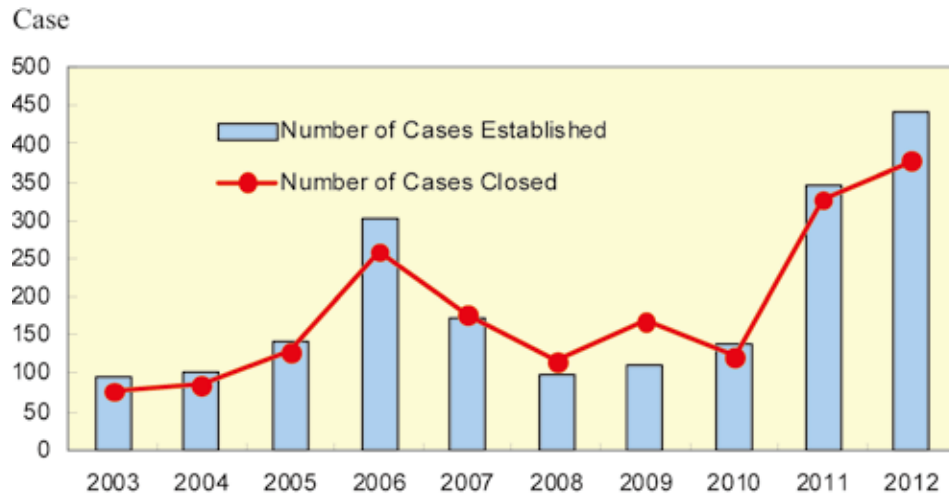


Fig.1 Numbers of Cases Established as a Result of Investigations Initiated by the FTC and Completed in Recent Years

107 dispositions were issued for the cases in which the investigation had been initiated by the FTC. The administrative fines totaled NT\$327,150,000. When analyzed by type of violation of the Fair Trade Act (those violating two or more regulations are repeatedly calculated), the 57 cases of false or misleading advertising in violation of Article 21 topped the list (accounting for 53.3%), followed by 26 cases of illegal multilevel sales practices (24.3%), and then 14 cases of concerted actions (13.1%). When observed according to the fines imposed, those imposed on illegal concerted actions added up to NT\$281,610,000 (accounting for 86.1% of the total fine), followed by the NT\$30,020,000 imposed on false or misleading advertising (9.2%), and then the NT\$5,250,000 imposed on deceptive or obviously unfair practices (1.6%).

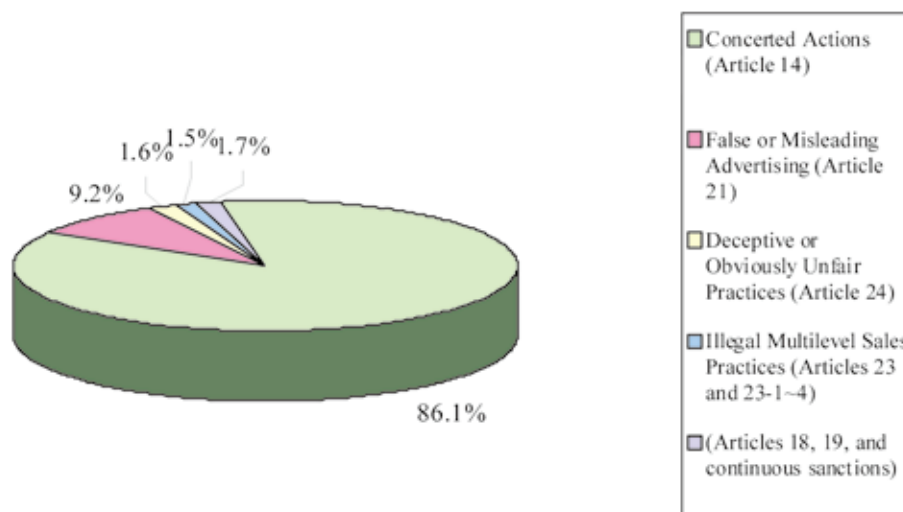


Fig. 2 Administrative Fines Imposed in the Cases in Which the Investigation Was Initiate the FTC in 2012 - by type of violation of the Fair Trade Act

FTC Activities in January and February 2013

- ▲ On Jan. 3, the FTC held a public hearing on the intended joint venture of Chunghwa Telecom, Taiwan Mobile, Asia Pacific Telecom, VIBO Telecom, EasyCard Corporation, and Far Eastone Telecom to set up a company to run a trust service management (TSM) platform.
- ▲ On Jan. 22, the FTC held the “International Antitrust Experience Sharing Seminar” at the FTC’s Competition Policy Information and Research Center.
- ▲ On Jan. 24, the FTC conducted the “Presentation on Multilevel Sales Regulations” for the indigenous people in Taitung County.
- ▲ On Jan. 25, the Council of Agriculture, the Department of Health, the Ministry of Economic Affairs, the Ministry of Justice, and the Department of Consumer Protection of the Executive Yuan were invited and met at the FTC to consult on the “Application of Related Laws and Regulations to Untruthful Labeling and Advertising for Seedlings, Fertilizers, Ranch Products, Prepackaged Rice, and Organic Foods” at the FTC.
- ▲ On Jan. 29, Professor Tsai Ming-cheng of the College of Law of National Taiwan University gave a special topic speech on “A Discussion on the Civil Liabilities Involved in Violations of the Fair Trade Law” at the invitation of the FTC.
- ▲ On Feb. 1, the inauguration of the new FTC chairperson was held, officiated by Minister without Portfolio Yang Chiu-hsing.



1. The FTC holding the "International Antitrust Experience Sharing Seminar" at the FTC's Competition Policy Information and Research Center
2. The FTC conducting the "Presentation on Multilevel Sales Regulations" in Taitung County
3. Professor Tsai Ming-cheng of the College of Law of National Taiwan University speaking on "A Discussion on the Civil Liabilities Involved in Violations of the Fair Trade Law" at the invitation of the FTC
4. The inauguration of the new FTC chairperson, officiated by Minister without Portfolio Tang Chiu-hsing (fourth from right)

FTC International Exchanges in January and February 2013

- ▣ On Jan. 9, 17, 21, and 23, the FTC respectively attended the teleconference of the ICN's Operational Framework Working Group, Merger Working Group, Advocacy Working Group, and Cartel Working group.
- ▣ On Jan. 31, the FTC attended the First Teleconference of the Leniency Policy Teleconference Series of Subgroup 1 (SG1) of the Asia Pacific Region of the ICN's Cartel Working Group.
- ▣ From Feb. 1 to 4, FTC representatives attended the First Meeting of APEC's Economic Committee (EC1) and the Meeting of APEC's Competition Policy and Law Group (CPLG) in Jakarta, Indonesia.



FTC representatives attending the First Meeting of APEC's Economic Committee (EC1) and the Meeting of APEC's Competition Policy and Law Group (CPLG) in Jakarta, Indonesia

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Co-editor	Hu, Tzu-Shun
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	Li, Yueh-Chiao
	Chang, Chi-Chuan
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FAIR TRADE COMMISSION, R.O.C.

12-14 F., No. 2-2 Jinan Rd., Sec. 1, Taipei, Taiwan, R.O.C.

Tel : 886-2-2351-7588

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