

Taiwan Star Telecom Co., Ltd

Supreme Administrative Court (2019)

Case: Supreme Administrative Court overruled the administrative litigation filed by Taiwan Star over sanctions imposed by the FTC

Keyword(s): False advertising, mobile Internet, telecommunications

Reference: Supreme Administrative Court Judgment (2019) Pan Tzu No. 303

Industry: Wireless Telecommunications Activities (6102)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. The appellee (FTC) received complaints and found out the appellant posted on its website an advertisement containing the wording and pictures of “Congratulations! Taiwan Star network speed at New Year’s Eve Celebration rated No. 1 for the third consecutive year” and also issued a news release in January 2017 containing the claim that “at the beginning of 2017, Taiwan Star once again exhibited extraordinary performance in the telecommunications industry, succeeded in winning first place in 4G speed rating for the third consecutive year, and perfectly showed Taiwan Star subscribers enjoyed the advantage of having the largest personal bandwidth. When measured during the peak hour from 22:00 to 00:30 at the New Year’s Eve celebration, the 4G speed of Taiwan Star achieved 67.6Mbps each time, 10 times faster than the speed of competitors, and won first place once again.” The wording was a false and misleading representation with regard to the quality of service and also could affect transaction decision in violation of Paragraph 4 of Article 21 and Paragraph 1 of the same article was applicable mutatis mutandis. Therefore, the FTC issued the Disposition Kung Ch’u Tzu No. 107102 and imposed an administrative fine of NT\$600,000 (same currency applies hereinafter) on March 2, 2018. The appellant found the sanction unacceptable and filed an administrative litigation application. The application was overruled and the appellant therefore filed this appeal.
2. The appellant claimed the purpose of the advertisement and news release in question was to promote a free-of-charge trial package. However, since the intention to create opportunities to provide telecommunications services at the time or in the future was to engage in business competition, the company had the obligation to post advertisement with truthful contents. The advertisement and news release gave people the overall impression that the company’s mobile Internet connection speed was the fastest three years in a row from 2014 to 2016 and in 2016 the speed measured during the New Year’s Eve celebration was ten times faster than that of its competitors. Nonetheless, the company only had its own test results to support the Internet connection speed on New Year’s Eve in 2014. There were no data at all from any tests conducted under same conditions by any impartial and objective organizations for comparison. Consumers were likely to have wrong perceptions under such circumstances. As for the appellant’s Internet connection speeds measured on New Year’s Eve in 2015 and 2016, the speed test results presented by the appellant were respectively 22.72Mbps and 20.22Mbps, 47Mbps slower than the 67.6Mbps indicated in the advertisement and news release.

In addition, they were only 2.4 to 3.1 times faster than the speeds of other telecommunications service providers and far less than the 10 times claimed in the news release. Apparently, it was a false and misleading representation.

3. The factors that affect mobile Internet connection speeds are many, including the density of cellular base stations, range of signal coverage, cell phone functions, and the surrounding environment. Picking the right test site where the signals of cellular base stations of competitors are relatively weaker could affect the results of Internet connection speed tests. For this reason, the results of test performed by the appellant at certain times and locations, not conducted by an impartial and objective third party, could not be considered representative enough. The appellant contested that there was the wording of “a considerate reminder” at the end of the advertisement and consumers would be able to understand the advertisement was only about the results of tests performed at certain times and locations. However, the print of “a considerate reminder” at the end of the advertisement was far smaller than the wording and pictures of “Congratulations! Taiwan Star network speed at New Year’s Eve Celebration rated No. 1 for the third consecutive year.” It was unlikely that consumers, when reading the advertisement, could know the aforementioned test results were in lack of publicly recognized comparison standards and necessary objectivity.
4. According to the abovementioned, the Supreme Administrative Court thought the original decision of overruling the appellant’s appeal based on the determination that the contents of the advertisement and news release in question were the results of tests conducted without using any impartial and objective comparison standards, as well as the determination of the practice of the appellant was indeed a false and misleading representation, had been a correct decision. As a result, the argument behind this appeal was not justifiable and had to be discarded. The Supreme Administrative Court therefore overruled the appeal.

Appendix:

Taiwan Star Telecom Co., Ltd.’s Uniform Invoice Number: 23060248

Summarized by Chen, Cheng-Yang; Supervised by: Ren, Han-Ying