

Taiwan Star Telecom Co., Ltd.

Supreme Administrative Court (2019)

Case: Supreme Administrative Court overruled the administrative litigation filed by Taiwan Star over FTC's decision

Keyword(s): Advertisement, keyword, telecommunications

Reference: Supreme Administrative Court Judgment (2019) Pan Tzu No.359

Industry: Wireless Telecommunications Activities (6102)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. On August 22, 2015, when the third party outside the litigation Taiwan Mobile Co., Ltd. (hereinafter referred to as "Taiwan Mobile") entered its own name on Google to conduct keyword search, a caption appeared at the top of the search result page saying that "Exclusive (Taiwan Mobile) monthly fee half price within a limited period" (hereinafter referred to as the advertisement), and at the bottom of the page was the URL of the website of the appellant Taiwan Star Telecom Co. Ltd. (the appellant). However, Taiwan Mobile did not offer the said half-price package within a limited period. Therefore, Taiwan Mobile filed a complaint with the appellee FTC. The FTC made an investigation and concluded that the appellant had purchased a keyword advertisement using the name of its competitor and the posting of the advertisement was obviously unfair conduct that could have an impact on trading order in violation of Article 25 of the Fair Trade Law. Therefore, the FTC issued the Disposition Kung Ch'u Tzu No.105064 on June 16, 2016 and imposed an administrative fine of NT\$600,000 on the appellant. The appellant found the sanction unacceptable and filed an administrative litigation. It was rejected by the court of original instance and thus the appellant further filed this litigation with the Supreme Administrative Court.

2. As the Internet became increasingly accessible for the public and e-commerce rapidly developed, purchasing keywords to increase the exposure of products or services of businesses became a common marketing approach. However, if the keyword a company purchased was the name or brand name of its competitor and some disputable wordings were added to attract the potential customers of the competitor to visit the company's website so that the company could promote its own products or services or increase transaction opportunities by exploiting the results of efforts made by another business, the practice could have an impact on fair competition order in the market and had to be considered obviously unfair conduct likely to affect trading order as described in Article 25 of the Fair Trade Law.

3. The appellant commissioned Bizin Digital Marketing Co., Ltd. (hereinafter referred to as "Bizin Digital") to produce the advertisement at issue. When it was completed, the appellant inspected the content and emailed its opinion and suggestion to Bizin Digital. Bizin Digital then followed the suggestion and purchased from Google the advertisement in question which allowed keyword insertion. Apparently, the appellant had the authority to inspect and revise the content as well as to decide whether the advertisement would be posted. Bizin Digital was not a competitor for Taiwan Mobile,

but the appellant was. When Internet users clicked the advertisement, they were directed to the website of the appellant. In other words, the effect of the advertisement belonged to the appellant. Therefore, the appellant shall be held responsible for the advertisement.

4. The advertisement carried the wording of “Exclusive (Taiwan Mobile) monthly fee half price within a limited period” to attract the potential trading counterparts of Taiwan Mobile to visit the appellant’s website so that the appellant could promote its products or services. It was an exploitation of the efforts of its competitor that had invested considerable endeavors to build up its reputation, yet the results of such efforts which attracted consumers were exploited by the appellant. Moreover, Taiwan Mobile, which did not offer the half-price monthly fee package, ended up getting questioned by consumers. It was unfair competition and the breach of business ethics was condemnable. In addition, during the period the advertisement was posted, many consumers clicked the advertisement and ended up browsing the appellant’s website and becoming victims of the unlawful act. For this reason, the FTC considered the practice could indeed affect trading order on the market. Consumers were misled to believe the name of Taiwan Star, URL link, and monthly fee package were associated with Taiwan Mobile and clicked on them as a result. The practice misled consumers to think the products they saw on the appellant’s website came from Taiwan Mobile or both companies were related. It was obviously unfair.

5. Accordingly, this court decided that the court of original instance had made the right decision and then maintained the original sanction by rejecting the appellant’s appeal. The purpose of the appeal this time was to accuse the court of original instance of making the original decision in violation of the law and to request this court to discard the original decision. The accusation and the request were ungrounded and had to be rejected.

Appendix:

Taiwan Star Telecom Co., Ltd.’s Uniform Invoice Number: 70769567

Summarized by: Lin, Li; Supervised by: Ren, Han-Ying □