

Asia Pacific Telecom Co., Ltd.

Supreme Administrative Court (2019)

Case: Supreme Administrative Court overruled the administrative litigation filed by Asia Pacific Telecom against the FTC's decision for its violation of Fair Trade Law

Keyword(s): Restriction, contact retail outlets for details, telecommunication

Reference: Supreme Administrative Court Judgment (2019) Pan Tzu No.232

Industry: Wireless Telecommunications Activities (6102)

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

Summary:

1. The appellee (FTC) launched an ex officio investigation and found out that, between December 12, 2016 and January 19, 2017, the appellant posted its monthly rate promotion advertisements on the TV screen and inserted cards in each Taiwan Taxi's vehicle, the media tower of Syntrend Building, as well as banners at every one of its retail outlets, magazine covers and posters, claiming that "unlimited calls and Internet connection, including landline and mobile calls in and outside the network, for the monthly rate of NT\$999!" without fulfilling the obligation of disclosing related restrictions. It was a false and misleading representation with regard to content of service that could affect transaction decision in violation of Subparagraph 4 of Article 21 of the Fair Trade Law and Subparagraph 1 of the same Article was applicable mutatis mutandis. Therefore, the FTC issued Disposition Kung Ch'u Tzu No.106112 and imposed an administrative fine of 600,000 NT dollars (same currency applies hereinafter). The appellant found the sanction unacceptable and appealed. The appeal was rejected and the appellant further filed this administrative litigation.
2. It is clearly defined in Article 21 of the Fair Trade Law that whether or not a representation or symbol is false or misleading depends on whether the difference between such a representation or symbol and the actual condition is enough to have an effect on the rational judgments and transaction decisions of trading counterparts with common knowledge and experience. At the same time, whether the overall impression and effect of an advertisement is enough to cause trading counterparts to have wrong perceptions or make wrong decisions has to be determined in accordance with the important transaction information associated with the representation or symbol, the location where the advertisement is posted, and the font sizes and colors. How the content of an advertisement is displayed may allow certain creativity, but if the performance or special offer emphasized in an advertisement can lead to erroneous perceptions in consumers, it not only jeopardizes the rights and interests of consumers but also constitutes unfair competition to competitors, affects trading order in the market and, as a result, violates the regulation specified in Article 21 of the Fair Trade Law. Even if consumers obtain complete information later on after being told by salespersons or further learned about the complete information during the transaction process,

the enterprise in question will still be held liable for posting false advertisements which have an effect on trading order in the market.

3. In the monthly rate package advertisement, the appellant used fonts of inconspicuous sizes to indicate the restrictions. Most consumers could not be expected to notice the wording of “contact retail outlets for details.” In the advertisement posted online, related restrictions were not disclosed either and consumers were misled to believe paying 999 dollars each month would allow them to have unlimited Internet connection and make unlimited landline and mobile calls. In the meantime, as the important information in the advertisements was not conspicuous, consumers’ wrong perceptions of “unlimited calls and Internet connection” after seeing the advertisements would continue to exist. It was apparently a misleading representation. The advertisements posted through digital media did not disclose the restrictions associated with the monthly rate either. Take the one posted on the media tower of Syntrend Building for example. The height, the short display time, and the small black font used made it impossible for consumers to see “contact retail outlets for details” from afar below, not to mention the restrictions associated with the monthly rate. Such a practice was a false representation too. The original sanction from the FTC was made based on the decision that the monthly rate package advertisements posted by appellant were false and misleading representations with regard to content of service that could affect transaction decision in violation of Subparagraph 4 of Article 21 of the Fair Trade Law and Subparagraph 1 was applicable mutatis mutandis. It was a solid decision.
4. As described above, the Administrative Court’s rejection of the appeal from the appellant was justifiable. While in the administrative litigation the appellant continued to stick to the argument that the original sanction was contradictory to related regulations and requested the Supreme Administrative Court to discard the original decision, it was groundless and therefore had to be overruled by the Supreme Administrative Court.

Appendix:

Asia Pacific Telecom Co., Ltd.’s Uniform Invoice Number: 70771579

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