

Glenn Doman Co., Ltd.

Supreme Administrative Court (2020)

Case: Supreme Administrative Court overruled the administrative litigation filed by Glenn Doman Co., Ltd. against the FTC's decision for its violation of Fair Trade Law

Keyword(s): False advertising, learning material, teaching institute, fabrication

Reference: Supreme Administrative Court Judgment (2020) Pan Tzu No.16

Industry: Book Publishing (5813)

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

Summary:

1. Between 2014 and 2017, Glenn Doman Co., Ltd. (hereinafter referred to as “the appellant”) participated in maternity and baby product fairs for 34 times and each time the company put up posters and banners that carried the wordings of “US Glenn Doman Teaching Institute,” “prenatal education methods for prodigious babies,” as well as the picture of Dr. Glenn Doman, founder of the US Glenn Doman Institute for the Achievement of Human Potential (hereinafter referred to as “the Potential Institute”). The company introduced Dr. Doman as a contemporary authority on education for geniuses and rehabilitation of children with brain damages. It also claimed that the Doman teaching methods could provide assistance and services across the board to attract consumers to purchase “Glenn Doman Learning Materials (hereinafter referred to as “the teaching materials in question”), including Mandarin, English and math books, as well as flashcards carrying encyclopedia knowledge. However, it turned out that the wordings of “Glenn Doman Teaching Institute” and “prenatal education methods for prodigious babies” were merely the company’s fabrication. As a matter of fact, the US Glenn Doman Teaching Institute did not exist, and Dr. Glenn Doman and the Potential Institute never proposed or taught any prenatal education methods. The teaching materials in question were the creation of the representative of the appellant. They had nothing to do with Dr. Glenn Doman or the Potential Institute. After conducting an investigation, the FTC (hereinafter referred to as “the appellee”) concluded what the appellant did was using the non-existent “US Glenn Doman Teaching Institute” and the picture of Dr. Glenn Doman, a renowned authority on child education, to attract consumers. The conduct was intended to mislead people to believe in the sources of the teaching materials in question, so that the company could sell them. In other words, it was a false and misleading representation that was able to affect transaction decision and in violation of Article 21(1) of the Fair Trade Law. Hence, the FTC issued Disposition Kung Ch’u Tzu No.107007 (hereinafter referred to as “the original sanction”) on January 18, 2018 in which the FTC ordered the appellant to immediately cease its unlawful act after receiving the disposition and also imposed an administrative fine of NT\$500,000. The appellant found the sanction unacceptable and filed an administrative litigation to request the inferior court to revoke the original sanction. The request was rejected and the company appealed to a higher court.
2. The legislative purpose of Article 21(1) of the Fair Trade Law is to assure fair

competition among enterprises, protect the interests of consumers and forbid enterprises to present false or misleading representations or symbols on their products or in advertisements or through other approaches adopted to market their products. Such a practice is reproachable because it involves use of a false or misleading representation to gain transaction opportunities. It is an illegitimate competing means. The so-called “false” means that the representation or symbol which is inconsistent with the fact. The difference is not acceptable by the general or concerned public and also can lead to wrong perceptions or wrong decisions. Meanwhile, the so-called “misleading” means whether the representation or symbol was consistent with the fact, it can cause the general or concerned public to have wrong perceptions or make wrong decisions. Therefore, if an enterprise used a false or misleading representation with regard to the quality or content of the product or in an advertisement, or through the adoption of other approaches to make its product known to the public, it has to be considered as a violation and the appellee could order the violator to cease or correct its conduct or take necessary corrective measures within a given period and at the same time impose an administrative fine.

3. To facilitate sales of the teaching materials in question, the appellant hung up at maternity and baby product fairs posters and banners conspicuously carrying the fabricated wordings of “US Glenn Doman Teaching Institute” and the “prenatal education methods for prodigious babies” that had nothing to with the Potential Institute and its founder Dr. Glenn Doman. The appellant also posted the picture of Dr. Glenn Doman who was not the creator of the teaching materials in question. The intention was to mislead people to believe the teaching materials in question had something to do with Dr. Glenn Doman, founder of the Potential Institute and the “US Glenn Doman Teaching Institute” that did not exist at all. The practice was undoubtedly a false and misleading representation and based on such solid evidences the appellee concluded that the appellant had violated of Article 21(1) of the Fair Trade Law.
4. In conclusion, the decision of the inferior court maintaining the original sanction and rejecting the appeal from the appellant was justifiable. Although the appellant argued that the original sanction contradictory to related regulations and had to be discarded, the Supreme Administrative Court decided the appeal was groundless and had to be overruled.

Appendix:

Glenn Doman Co. Ltd.’s Uniform Invoice Number: 80301990

Summarized by: Fang, Hsing-Yuan; Supervised by: Ren, Han-Ying