

A study of the Relations between Illegal Marketing Practices of Gas Safety Equipment Businesses and the Fair Trade Law and Criminal Code

1. Background of study

Gas safety equipment generally refers to liquefied petroleum gas (LPG) pressure adjustment devices with the functions of shutting down the LPG bottle when gas flow is excessive, indicating the remaining amount of LPG in the bottle, and having a leak detector or timer. However, there are similar devices designed for natural gas pipes.

Since the FTC was established, it has continuously received complaints from private citizens about the illegal marketing practices of gas safety equipment businesses. Investigations conducted by the FTC revealed that gas safety equipment businesses often took advantage of consumers' fear of gas accidents and lack of proper knowledge about gas safety and the functions of such safety devices. They misled consumers into believing they were associated with their natural gas providers and used the pretext of performing gas safety inspections or gas accident prevention to entice consumers into purchasing their products. So far, the FTC has received a considerable number of complaints. Some of the violations have been confirmed with sufficient evidence. The FTC has imposed sanctions and ordered the offenders to cease their unlawful acts or make corrections. However, some gas safety equipment businesses continue to adopt the same marketing approach by setting up a number of small-sized companies and changing the company name or the name of the person in charge again and again. Such practices have a huge impact on the interests of consumers.

These cases showed there is a common problem in the profession and giving out sanctions in individual cases was not enough to maintain trading order in the relevant market. In order to assure related businesses can be aware of the regulations to follow, avoid breaking the law and reduce transaction disputes, the FTC paid visits to domestic manufacturers who had produced or were producing gas pressure adjusters with the aforesaid functions and importers of such devices between July and November 1994, and urged related businesses not to engage in illegal marketing conduct which had been adopted for years. Nevertheless, gas safety equipment businesses went on changing their marketing practices and market competition and social justice were seriously affected. Therefore, according to related regulations in the Administrative Procedure Act, the FTC sorted out cases associated with illegal marketing practices of gas safety equipment businesses that it had processed and given sanctions and, starting from Dec. 21, 2006, amended the "Fair Trade Commission Guidelines on Cases Concerning Sales of Gas Safety Equipment" several times to assure trading order can be maintained and consumers' interests can be safeguarded.

The cases the FTC processed in the past showed that gas safety equipment businesses often adopted names similar to the natural gas providers for certain local areas, distributed safety inspection notices to win the confidence of private citizens and entered their homes for gas safety inspections. Then, they lied to the home owners that there was a gas leak or the pipeline was too old and it was necessary to install a gas safety device or replace the old one. Eventually, such home owners were afraid of the gas leak leading to an explosion and would agree to make the purchase and have the device installed. The practice was intended to obtain unlawful gains by using deception to cause others to deliver their belongings to achieve the purpose of selling gas safety equipment. Depending on the nature of each case, such conduct may

involve the crime of acquisition of property of others by fraud as specified in Article 330 of the Criminal Code. As stated in the article, the purpose of such practices is to obtain illegally property or illegal benefits from others. Such offenders not only infringe the property right of the victims but also cause harm to social order by applying illegal and deceptive means to acquire property or benefits from others. For this reason, related regulations have been established to stop and punish such offenders. In other words, the provisions in the Criminal Code are designed to protect people's property. In comparison, the provisions in the Fair Trade Law are intended to remove damage caused by businesses to trading order in the market. The legal interest the Criminal Code and the Fair Trade Law try to protect is different. Based on the regulation regarding double jeopardy in the Administrative Penalty Act, the FTC therefore established the "Fair Trade Commission Procedures for Handling Cases Concerning Sales of Gas Safety Equipment" on Jun. 19, 2013 to be the guideline when processing related cases. As for natural persons, once the personal information of a natural person illegally marketing gas safety equipment was obtained, the FTC would act according to Paragraph 1, Article 26 of the Administrative Penalty Act and request the prosecutors' office to investigate. However, in principle the FTC would not stop its own investigation and would impose an administrative sanction and order the concerned party to immediately cease the unlawful act once concrete evidence of violation was confirmed. After the prosecutors' office informed the FTC that the situation described in Paragraph 2, Article 26 of the Administrative Penalty Act did exist, the FTC would impose an administrative fine and request the judicial agency to call the offender to account to deter such illegal conduct.

Although most sectors hold negative views toward the marketing practices of gas safety equipment businesses at the moment, there are many gas safety equipment marketing channels and such devices can indeed help protect the safety of private citizens. Therefore, it is inappropriate to have negative ideas about all gas safety equipment businesses because only a small number of them would resort to illegal marketing means. The problem is the investigations and sanctions from the FTC and judicial agencies seem unable to stop such illegal practices. Therefore, it is necessary to analyze the marketing practices and the cost effectiveness of gas safety equipment businesses as well as the effects of enforcement of the Fair Trade Law and Criminal Code systematically and work out measures to guide gas safety equipment businesses to adopt legal approaches to market their products, so that consumers' interests can be protected.

It is hoped that through this study, the functions and benefits of gas safety equipment and the marketing channels and cost structure of gas safety equipment businesses can be well understood. At the same time, the cases involving illegal marketing of gas safety equipment handled by the FTC and judicial agencies over the years are sorted out while issues related to the law enforcement of the FTC and judicial agencies are also analyzed and reviewed in order to come up with concrete suggestions from different angles and viewpoints and offer them to the FTC and judicial agencies for reference in their law enforcement against illegal gas safety equipment marketing practices.

2. Scope and methods of study

A. Scope of study

Since the FTC was established, it has continuously received complaints from private citizens about the illegal marketing practices of gas safety

equipment businesses. The FTC's investigations revealed that gas safety equipment businesses often took advantage of consumers' fear of gas accidents and lack of proper knowledge about gas safety and the functions of such safety devices. They misled consumers into believing they were associated with their natural gas providers and used the pretext of performing gas safety inspections or gas accident prevention to entice consumers into purchasing their products. The phenomenon drew the attention of various sectors mainly because of the controversialness of the marketing approaches. The people whom the products are sold to are often women and elderly people at home. Another concern is the outrageous profit that drives the businesses to adopt the illegal practices. In order to obtain the huge profit, unscrupulous gas safety equipment businesses do everything they can and adopt various debatable marketing practices to push their gas safety equipment. In spite of the investigations and sanctions from the FTC and judicial agencies, similar events continue to occur and seem unstoppable. Hence, the FTC needs to analyze the outrageous profit and marketing practices to work out measures to enhance cooperation with judicial agencies. It is necessary to analyze the marketing practices and the cost effectiveness of gas safety equipment businesses as well as the effects of enforcement of the Fair Trade Law and Criminal Code systematically to find the way to guide gas safety equipment businesses to adopt legal approaches to market their products, so that consumers' interests can be safeguarded. For this reason, the scope of study is defined as consolidation and analysis of the data associated with the gas safety equipment industry and gas safety equipment cases the FTC and judicial agencies have processed over the years.

B. Methods of study

- (1) On-site empirical study: When the study was in progress, the researcher visited five gas safety equipment manufacturers in Chiayi County and City, Taoyuan City and Taichung City to learn about the various functions and effects of gas safety equipment, as well as the marketing channels and cost structure for analysis.
- (2) Solicitation of opinions of specialists: When the study was in progress, the researcher paid visits to the Gas Appliance Manufacturers Association of Taiwan to seek the opinions of specialists and establish an in-depth understanding of the current status of the gas safety equipment industry, the marketing approaches and reasons, the positive and negative effects of illegal marketing practices on the industry and consumers, and the opinions about and suggestions for the future of the industry.
- (3) Data collection: Cases related to the study subject and processed by the FTC and judicial agencies were extensively collected, studied, sorted out and analyzed. Related literature was also scrutinized to set the basis of empirical study and develop the conclusions and suggestions to serve as references for the FTC and judicial agencies in future law enforcement.

3. Framework of study

- A. Initially, the various functions and effects of gas safety equipment are studied and the results of study of the marketing channels and cost structures of gas safety equipment businesses are consolidated.

- B. Cases in which gas safety equipment businesses engaging in illegal marketing practices were sanctioned by the FTC are sorted out to classify different patterns of illegal conduct associated with gas safety equipment.
- C. Court decisions on cases involving illegal marketing of gas safety equipment are sorted out and analyzed to establish constituent elements of fraudulence associated with illegal marketing of gas safety equipment. Issues related to the law enforcement of the FTC and judicial agencies are also analyzed and reviewed.
- D. In the end, concrete suggestions established from different angles and viewpoints are offered to the FTC and judicial agencies for reference in their law enforcement against illegal marketing of gas safety equipment in the future.

4. Conclusions and suggestions

A. Conclusions

- (1) The LPG in the bottle is high in pressure and cannot be directly supplied to be used by burners. Gas safety equipment (pressure adjuster) is needed to reduce the pressure and make the LPG suitable for use. Therefore, this function of gas safety equipment is important for devices that consume LPG. In other words, gas safety equipment can indeed help protect the fire safety of consumers and should not be regarded useless or simply associated with fraudulence.
- (2) The profit of a gas safety device with the function to shut down supply when the gas flow is excessively high. It can be more than NT\$2,000. On average, each salesperson only needs to sell one piece per day to achieve his monthly pay level. No wonder after all investigations and sanctions made by the FTC and judicial agencies over the years, the salespeople, lured by the attractive profit, are still willing to take the risk of breaking the law.
- (3) The FTC has always stressed the importance of trading order in the gas safety equipment market. Since it was established, the FTC has sanctioned 102 gas safety equipment businesses and imposed NT\$48.62 million in total. The number of sanctions and the amount of fines imposed were meant to deter further attempts while the FTC also ordered the offenders to stop or to correct their unlawful acts. However, most of those businesses either refused to pay the fines, or kept changing the name of company or person in charge and set up many small companies to continue the marketing practices. As a result, besides giving out sanctions to fulfill the duty as the competent authority, the FTC has achieved close to nothing.
- (4) Since the regulations in the Fair Trade Law apply to business entities, when finding out any employee of an enterprise engages in fraudulence, the FTC can transfer the case to be investigated by a judicial agency as soon as the personal information is obtained. In the event that the personal information of the employee is not obtained, the FTC can transfer the person in charge of the enterprise to be investigated by a judicial agency. So far, there have been 29 cases involving natural persons investigated and sanctioned by local judicial agencies. Among these cases, some of the violations are similar, but the decisions of judicial agencies were not entirely the same. The offenses in some cases were regarded fraudulence as described in the Criminal Code whereas in some others it was decided that there was not enough evidence to prove

deception had been adopted as, for example, the company names on the gas safety inspection notices were different from the names of local natural gas providers and it had also been indicated the companies to perform the safety inspections were not the local natural gas providers. Hence, the judicial agencies found it hard to conclude the offenders had deceived consumers and misled them into making wrong decisions. The offenders used promotional practices or marketing language to push victims into making purchases without the opportunity and time to think about the reasonableness of the product prices. The outcome was consumer disputes, not application of deception constituting the crime of fraudulence as specified in the Criminal Code since the offenders had not delivered substitutive products or concealed product defects. Even if the victims became aware later that the prices they had paid were higher than the normal market rates, there was no proof the offenders had applied deceptive means to mislead the victims into purchasing the products at prices set by the offenders. Meanwhile, some court decisions were made based on the fact that the offenders had promised to perform gas safety inspections on the products they sold. Therefore, even if the prices consumers had paid were higher, the possibility that the price difference was justifiable profit could not be ruled out. For this reason, the judicial agencies either closed such cases or decided not to prosecute the suspects by reaching the conclusion that there was no fraudulence involved. Obviously, judicial agencies have not achieved any consensus on the aforementioned illegal marketing practices.

B. Suggestions

- (1) The FTC values the trading order in the gas safety equipment market. The determination of the FTC to give heavy punishments can be seen from the number of sanctions and amounts of fines imposed. In addition, the FTC has also ordered offenders to cease or to correct their unlawful acts. However, most businesses refused to pay the fines, set up many small companies, kept changing the names of the company and the person in charge, and continued to market their products. In consequence, besides giving out sanctions to fulfill the duty as the competent authority, the FTC has achieved close to nothing. The reason behind this phenomenon is gas safety equipment businesses take advantage of information asymmetry to seek outrageous profit in spite of the risk of breaking the law. They are difficult to stop. The sanctions from the FTC alone are not enough to curtail the illegal practices of gas safety equipment businesses. To achieve the administrative objective, the FTC needs judicial agencies to file criminal charges to deter the illegal marketing practices.
- (2) Reinforcement of key investigative measures: In the past, the focus of the FTC was set on ordering offenders to cease their unlawful acts or imposing administrative fines. However, as gas safety equipment businesses keep changing their company names and continue to market their products without paying the fines, the FTC ought to switch from placing the emphasis on giving administrative sanctions to assisting judicial agencies in investigation of illegal marketing by gas safety equipment businesses. Hence, it is suggested that the FTC enhances its investigations in the following areas to boost the prosecution rates of judicial agencies in order to deter the illegal marketing practices of gas safety equipment businesses:

- a. Interview as many victims as possible to gather the personal information of salespeople who pushed them into making purchases and transfer them to be investigated by judicial agencies.
 - b. Make more investigative efforts to find out the purchasing costs of gas safety equipment businesses. If necessary, request manufacturers or related trade unions and associations to provide the purchasing costs and reasonable market prices of such products in order to prove the intent of gas safety equipment businesses to seek outrageous profit through illegal marketing.
 - c. Interview as many victims as possible to find out how gas safety equipment businesses actually used deceptive measures to engage in illegal marketing, such as lying to victims about performing safety inspections, pushing victims into making purchases and how they detected gas leaks, etc. The investigations should not be limited to safety inspection notices or receipts, so that more comprehensive evidence can be collected to prove how gas safety equipment businesses used deception to mislead victims into making purchases.
 - d. Make more investigative efforts to find out the actual sales of related businesses to prove how extensive the impact of the illegal marketing practices can be and how many victims there are, instead of regarding each single case as a consumer dispute.
- C. Enhancement of promotion: Gas safety equipment businesses are able to carry out their illegal marketing practices mainly because of the information asymmetry between them and the public. Consumers are totally unaware of the illegality of their marketing approaches and the language applied. Consumers also know nothing about the reasonable prices of the products and therefore can make wrong decisions to make purchases in a hurry under pressure. To address the problem of information asymmetry, it is suggested that the FTC steps up its promotional activities. The targets should not be just related businesses but also every village head and borough chief and residential building management committee. Simple and easy-to-understand flyers can also be distributed to help consumers understand the patterns of illegal means likely to be adopted by related businesses, so that information asymmetry can be eliminated.
- D. Reinforcement of cooperation with natural gas providers to deter the illegal marketing together: In recent years, the illegal marketing practices have gradually evolved. Today, related businesses adopt names similar to local natural gas providers to mislead consumers into believing they are associated. Then, they distribute safety inspection notices and use the pretext of performing safety inspections to enter private homes and market their gas safety devices. Therefore, it is necessary that the FTC cooperates with local natural gas providers and educate the public not to mistake gas safety equipment businesses for local natural gas providers. Thus, fewer consumers will be deceived.