

# **A Study on Regulations against False Advertising Conducted in Different Countries**

## **1. Study Background**

Advertisements put out by enterprises to market their products and services are closely associated with the consumption behavior of the public. When some unscrupulous businesses try to obtain profits through false advertising, the rights and interests of many consumers will be jeopardized and the fairness and competitiveness in the market will also be affected. Besides the price, quantity, quality and content of products, enterprises often also make false statements about their identity, qualification, management condition and information related to their products, all likely to affect transaction decision, to attract trading counterparts. Discrepancies existed with regard to whether the concept of “product” in paragraph 1 of Article 21 before amendment included information related to the product and likely to have an effect on transaction decision. As a result, the wording of “the matter relevant to goods and is sufficient to affect trading decisions” was added in Paragraph 1 of Article 21 when the Fair Trade Law was amended in 2015. It was also stipulated that no false or misleading representations or symbols could be adopted. In other words, the provisions against false or misleading advertising in Article 21 of the Fair Trade Law after the amendment seemed to be extended after the amendment. .

Compared to regulations against false advertising in other countries, the false advertising regulations in Chinese Taipei carry the design of coordination and division of labor between administrative agencies. That is, in contrast to other special laws with regulations against false labeling or advertising for certain special products, Article 21 of the Fair Trade Law is a common regulation. Since special laws prevail over general laws, cases involving constituent elements meeting the description in the regulations of a special law regarding special products or services are to be handled first by the competent authority of the industry in accordance with the special law. This design does not exist in other countries.

As set forth in Article 21 of the Fair Trade Law, posting false or misleading representations or symbols or not disclosing related restrictions in advertisements by enterprises and leading to wrong perceptions of consumers about such representations or symbols that are able to affect transaction decision is prohibited. In practice, however, there remains the issue of whether other types of violation should be included, such as the one-page advertisement on Facebook, or new types of advertising for Line or Uber car service. Therefore, whether the provisions in the Fair Trade Law are enough to regulate such advertising, whether the regulations on such types of violation and their enforcement are similar to or different from those in the US, Germany and Australia, and even the difference in the standpoint of law enforcers against false advertising all call for scrutiny and discussion.

## **2. Study Methods and Process**

The main study method adopted in this paper is document analysis. Related publications and documents from in and outside the country and online search

results are analyzed to understand the regulations against false advertising in the Fair Trade Law as well as in the US, Germany and Australia, and also past cases to establish references for the FTC in future law enforcement. In chapter arrangement, Chapter 1 is the introduction. In Chapter 2, current regulations against false advertising in other countries are described. Current regulations against false advertising are introduced in Chapter 3. Chapter 4 analyzes cases of false advertising and the law enforcement practices in the US, Australia, Germany and Chinese Taipei. In Chapter 5, the conclusion and suggestions are presented.

### **3. Main Suggestions**

The regulations against false advertising and related law enforcement examples in the US, Australia and Germany are studied and compared with those in our country, and the conclusion and suggestions are as follows:

- A. Regulations: In the US, the regulation against unfair competition and unfair or deceptive conduct or practices is in Article 5 of the Federal Trade Commission Act. In the Australian Consumer Law, provisions against false or misleading practices are mainly in Articles 18 and 29. The former is a general regulation specifying that no one engaging in transactions or commercial activities may have misleading or deceptive conduct, whereas in the latter it is prescribed that no one engaging in transaction or commercial activities may give false or misleading representations with regard to product or service. In Germany, measures against deceptive or unfair trading conduct are stipulated in the Act against Unfair Competition, mainly in Articles 3 and 5, but the regulation regarding comparative advertising is in Article 6. Originally, Article 5 of the Act against Unfair Competition was designed to apply to misleading advertising only. After amendment, it now applies to all stages of trading conduct, including before entering into a contract, at the time of entering into a contract and after entering into a contract. Application is no longer limited to advertising only; therefore, the concept of advertising is not used in the provisions. Instead, “misleading trading conduct” is the main consideration. Examination of related laws and regulations in the US, Australia and Germany shows in these countries, false or misleading commercial activities are considered deceptive or unfair trading conduct or intentional non-action to mislead people. The illegal practices specified in these laws are the false advertising in Article 21 and other deceptive or obviously unfair conduct in Article 25 of the Fair Trade Law. Apparently, regulation differences exist.
- B. Division of labor between administrative agencies: Compared to the design in other countries, the regulations against false advertising in Chinese Taipei involve division of labor between agencies. According to the principle of special laws prevailing over general laws, violations meeting the description in the regulations of a special law associated with special products or services are to be handled first by the competent authority of the industry according to the special law. From the angle of law enforcement, this is not quite the same as the regulations and considerations in other countries.

- C. Agency system, the agencies in the US, Australia and Germany mentioned in this paper mostly handle only major violations and nationwide consumer disputes. The rest are for complainants to take civil procedures to resolve or file petitions to the local fair trade agency office of each region or each state. This is different from the FTC being the only administrative agency to handle all complaints about false advertising other than those subject to special laws. Whether the cases are serious or not, the FTC has to process them because no other agencies can share the responsibility. As a result, cases accumulate and take a lot of time to process because of the design of agency system.
- D. Protection of legal interests: In the US, besides taking cases to court, the Federal Trade Commission is authorized by the Federal Trade Commission Act to enforce related regulations by issuing orders to cease, prohibit or approve business activities. In Australia, the Competition and Consumer Committee has the authority to adopt administrative disposition against false or misleading commercial practices or take the offender to court. Apart from financial products and services, all other industries and types of advertising are subject to Australian consumer regulations. In Germany, regulations against deceptive or obviously unfair trading practices are specified in the Act against Unfair Competition. Civil litigations and criminal penalties are used in law enforcement for the court to review and decide on unfair trading practices. Law enforcement agencies transfer violation cases for the court to assess the level of violation and the amount of compensation. In comparison, the Fair Trade Law in our country is an administrative law. The FTC enforces the law and gives out sanctions with the level of influence on trading order taken into consideration. Hence, there are differences in the way legal interests are protected.

Suggestions for future law enforcement: Although the regulations in the US, Australia and Germany are slightly different from the characteristics of division of labor between administrative agencies, agency system and protection of legal interests, related cases and regulations in such countries still have their referential value. At present, it is not too difficult to handle false advertising in violation of the Fair Trade Law, but the FTC should continue to keep track of related cases and regulation revisions taking place in other countries and use them for reference. As for new types of advertising that has been growing in quantity, in addition to understanding the sources of problems and reinforcing inspections on online advertising, the FTC should also work with other administrative agencies to establish lateral communication channels as well as enhance the contents of educational propaganda to the public to assure businesses can abide by related regulations. After accumulating enough precedents and law enforcement experience, the FTC may consider the need and feasibility to revise related guidelines.