

A Study of the Promotional Advertising Regulations and Cases in relation to the Fair Trade Law

1. Background of Study

The regulatory measures stipulated in the Fair Trade Law against false advertising have been designed to prohibit enterprises from adopting false or misleading trading information to obtain transaction opportunities illegitimately in order to protect performance competition and safeguard the interests of consumers. Use of advertising to promote products or services is a common practice among businesses. As a result of the emergence of new media and innovative marketing approaches, a number of new marketing practices seem likely to challenge the regulations of the Fair Trade Commission (hereinafter referred to as “the FTC”) against promotional advertising. Therefore, this study is intended to understand whether the existing regulations of the FTC can cope with new promotional advertising practices. Therefore, related theories and regulations and various types of promotional advertising that the FTC has handled are reviewed to analyze the possibility and feasibility of bringing new advertising practices under the current regulatory framework in order to come up with some suggestions with regard to the existing regulations of the FTC.

2. Methods and Process of Study

Literature analysis is adopted as the principal research method in this study. Books and related literature from different countries are collected and online searches are conducted to examine regulations regarding false advertising in the Fair Trade Law, the US, Germany, Japan and the Mainland China while certain cases processed by the FTC in the past are also reviewed. The results will be offered to the FTC as a reference in future enforcement. Chapter One of this study is the introduction. In Chapter Two, literature associated with domestic promotional advertising and measures adopted in foreign countries and the Mainland China to regulate promotional advertising are reviewed. Chapter Three gives a description of the regulations on promotional advertising in the Fair Trade Law. In Chapter Four, cases involving false advertising are reviewed, analyzed and explained. Chapter Five are the conclusions and suggestions.

3. Main Suggestions

After the aforementioned study issues are consolidated, the suggestions are as follows:

- (1) Due to the prevalence of promotional advertising, the FTC established the Disposal Directions (Guidelines) on Handling Promotional Advertisements for businesses to follow in order to avoid breaking the law. In recent years, more than half of the unlawful promotional advertisements that the FTC has handled have been posted through online channels. Furthermore, adoption of multimedia has grown increasingly common and various measures are integrated. As a consequence, advertising through new channels such as Facebook landing pages, LINE, live streaming, Youtube, Instagram, etc. has become the mainstream in marketing. For this reason, it is suggested that the FTC sets the focus on unfair competition practices resulted from online promotional advertising and having an impact on marketing trading order.
- (2) Online promotional advertising can involve cross-border websites or false advertising posted on social networking websites. It may happen that the advertiser is not in the territory or the operator of the website where the advertisement in concern cannot be identified. Frauds can often be found in these cases and criminal liability is involved, such as an enterprise posting an advertisement on Facebook using the name of

another and thus infringing the rights and interests of this individual or company. Facebook would only cooperate in criminal investigations and the victim has to request Facebook to remove the posting by indicating the specific URL, marking out the specific content on the web page, and giving a description of the specific regulation violated and the reasons. Then, Facebook will review the case and decide whether the posting will be removed. The victims in such cases may file their complaints with the 165 Anti-fraud website of the National Police Agency of the Ministry of the Interior to find solutions in accordance with the Criminal Law.

- (3) Promotional advertisements used to be posted through conventional media, including newspapers, TV and radio. With the increasing prevalence of the Internet and mobile phones, promotional advertisements can now be posted on the websites of enterprises or through text messages or social networking websites. Promotional advertising intended to scam others has grown rampant on Facebook and inexperienced consumers are very likely to be attracted by such advertisements and get cheated. In order to protect consumers' safety of online transactions, it is suggested that the FTC can advise or propagandize to request online platform operators, like Facebook and others, to adopt self-management measures and ask advertisers to post their names and contact information before posting their advertisements as well as confirm the authenticity of such information. Moreover, after an incident has taken place, online platform operators must also post correction notice or remove the advertisement in question. These measures can prevent illegal practices associated with false promotional advertising and remedy the harm cause by such unlawful conduct.