

A Study of the New Tendencies of False Advertising from the Standpoint of the Fair Trade Law

1. Background of study

Along with the development of the Internet and online shopping, marketing has gradually transitioned from the conventional media era of AIDMA (Attention -> Interest -> Desire -> Memory -> Action) to the Internet era of AISAS (Attention -> Interest -> Search -> Action-> Share). Regarding AIDMA, the content of an advertisement focuses on the product or service itself. As for AISAS, the Internet users apply search engines to make queries and obtain information from advertisements for products or services that they are interested in, and then disseminate and share the content of advertisements through various social media. As a result of the difference between platforms on which advertisements are posted, the responsibilities of advertisers have become a subject of discussion. At the same time, presentation of keyword advertising through integration of advertising content with users' search targets to increase the exposure of advertisements has also triggered public debate. For this reason, this study is intended to induct and analyze the new tendencies or patterns of advertising to provide reference for the FTC in handling of false and misleading advertising in the future.

2. Methods and process of study

Literature review and case analysis are adopted in this study. Initially, dispositions the FTC issued in the past and court decisions are sorted out to establish the basis of discourse, and then literatures related to research conducted by scholars and specialists are collected. By comparing cases and the observations of scholars to study issues likely to arise in the new trends, inductive analysis is applied to identify possible violation patterns and the handling processes. Through systematic review to come up with more clear measures for dealing with problems resulted from new advertising tendencies in recent years. This paper is divided into five chapters: Chapter 1 is the introduction. Chapter 2 is a description of the new tendencies through analysis of statistics on false advertisements in recent years. Chapter 3 provides the developments and discussions on court judgments in relation to the new patterns of false advertising. Chapter 4 reviews advertising practices that are likely to violate Articles 21 and 25 of the Fair Trade Law. The conclusion and suggestions are presented in Chapter 5.

3. Main suggestions

The following suggestions are established after consolidation of the aforementioned study issues:

- (1)With the advances in network technology and new developments in networks, the number of users escalates. Transaction disputes increase day by day and illegal practices also grow by a percentage. Since the Internet is borderless, increase of cross-border transaction disputes can be expected. As new online advertisements continue to emerge in the new economic era, how to strengthen the regulations on online advertising in order to enhance the effect and scope of investigation of false online advertising has become an important issue today. Except for investigating and sanctioning common violations closely related to everyday life (such as real estate, electrical appliance, etc.), the FTC has also established disposal directions regarding handling of online advertising and specify the definition of "advertiser", the principles of "honest representation," "immediate

correction: and “full disclosure of restrictive conditions” as well as the violation patterns of “online payment,” “website hyperlink” and “social media users (including bloggers). However, in order to protect trading order and consumer interests, the FTC should continue to review the related regulations and make additions or amendments in response to new tendencies in online advertising.

- (2) As the rapid development of online media, more and more people share their experience and related information regarding products or services they purchased by social media or mobile video. However, since changes happen incessantly in the online world, existing legal regulations may not be enough to respond. Except for the professional opinions from specialists and scholars by integration of theory and practice, urging businesses to follow government regulations as well as promoting compliance of businesses under government supervision to reduce the risk of violation have become a common goal. In addition to inviting specialists, scholars and related businesses to give speeches or exchange ideas on new models of online advertising to help prevention and investigation of false advertising, the FTC may also hold discussion with online platform operators to establish consensus on the clearness and precision of online advertisements to avoid false or misleading representations, etc. Thus to improve compliance of the entities and to maintain trading order.
- (3) With the access of the Internet and the development of e-commerce, online media have become an important means for enterprises to acquire transaction opportunities. Website exposure or visit rates represent opportunities for enterprises to reach potential customers over even conclude deals. However, when an enterprise purchases keyword advertising with the name, trademark or other symbols of another enterprise in order to increase chances of visits, it can be considered unfair competition as specified in the Fair Trade Law. The decisions of the FTC’s law enforcement in the past have been supported by the court. However, from the view of the influence of court practices on individual cases, except for handling in accordance with the constituting elements prescribed in Article 25 of the Fair Trade Law, it should be taken into consideration that whether Article 21 of the same Law is also applicable. The FTC should continue to accumulate cases in practice and review the law enforcement guidelines and standards comprehensively.