

A Study of Compensation for Damages and Related Cases under the Fair Trade Law

1. Background of Study

Chapter V of the Fair Trade Law is set up in relation to compensation for damages. The civil liability resulted from violation of the Fair Trade Law by an enterprise is set forth therein. The legislative purpose is to specify the means of civil remedy. On the one hand, the perpetrator is required to compensate the victim for damages. On the other hand, it is also intended to deprive the perpetrators of the illegal gains obtained through the unlawful acts. By doing so, it is hoped that such lawful acts can be deterred more effectively.

Although regulations regarding the aforementioned civil liability of damage compensation exist in the Fair Trade Law, an action seeking for civil remedies needs to be commenced by the victim, and litigation costs, statute of limitations and amount of recovery are involved. In reality, it is rare for a court to invoke related regulations prescribed in the Fair Trade Law to decide damages cases. Nevertheless, since the Fair Trade Law is designed to include a system regarding administrative liability and a system associated with civil liability, it means the two systems have their separate functions. If they can complement each other and fulfill their functions, it will be easier to achieve the legislative purpose of the Fair Trade Law to maintain trading order in the market. The authors of this study have reviewed related cases to inspect how the damage compensation system specified in the Fair Trade Law has been applied and to analyze the viewpoints of civil courts toward related regulations in the Fair Trade Law. It is hoped that the results can serve as reference for the FTC in law enforcement in the future,

2. Study Methods and Process

To achieve the abovementioned purpose of study, this study report focuses on practicality. The viewpoints of civil courts are applied as the main axis. Except for related civil court decisions and the dispositions of the FTC, the authors have also referred to academic publications for additional information to analyze the important elements and results of application of the damage compensation system set forth in the Fair Trade Law.

Case analysis is the principal method adopted in this study. The civil court decisions made between 2011 and November 2021 with regard to compensation for damages as prescribed in the Fair Trade Law are collected and sorted out. According to types of violation of the Fair Trade Law, cases with reference value are selected. In subsequence, the discourse in each court decision related to damage compensation regulations in the Fair Trade Law is taken out and analyzed. It is to pinpoint the viewpoint of the civil court toward the damage compensation principles in the Fair Trade Law and the key issues taken into consideration during the review.

3. Main Suggestions

(1) The conclusions of this study are as follows:

A. The legal elements of violation of the Fair Trade Law by an enterprise:

Regarding whether the legal elements of violation of the Fair Trade Law by an enterprise exist, if the FTC has already concluded that the enterprise violated the Fair Trade Law and has made the disposition, the civil court tends to accept the opinion of the FTC, adopt the FTC's discourse in the disposition in its decision, or directly list the FTC's disposition as part of the evidence. Meanwhile, if the FTC has established guidelines or policy statements with regard to the type of violation in question, it will also be helpful for the court to make its decision.

B. Other legal elements regarding compensation for damages:

As for other legal elements regarding compensation for damages, the court will be likely make the decision in accordance with regular civil damage compensation regulations, the court will be likely make the decision in accordance with regular civil damage compensation regulations. Therefore, there is concurrence of rights claiming compensation for damages between the Fair Trade Law and other civil laws.

(2) The Fair Trade Law has been entered into force for nearly three decades. After years of dedication and efforts, the FTC has achieved significant results in administrative law enforcement. However, there is still considerable room for improvement in the area of civil damage compensation. It is so designed in the Fair Trade Law that the systems respectively associated with administrative liability and civil liability. Each one has its characteristic and function. If they can fulfill their separate functions, it will create synergy in law enforcement and the purpose of the Fair Trade Law to maintain trading order in the market will be achieved more efficiently.