

Agoda Company Pte. Ltd.

1568th Commissioners' Meeting (2021)

Case: Agoda Company Pte. Ltd. violated the Fair Trade Law for using the company name of another in a keyword advertisement

Keyword(s): Keyword advertisement, online hotel room booking platform, self-learning

Reference: Fair Trade Commission Decision of November 3, 2021 (the 1568th Commissioners' Meeting); Disposition Kung Ch'u Tzu No.110075

Industry: Web Portals (6311)

Relevant Law(s): Article 25 of the Fair Trade Law

Summary:

1. Easytravel Agency Co., Ltd. (hereinafter referred to as "Easytravel") keyed in "easytravel," "easytravel net" and "easytravel agency" on Google and "easytravel" on Yahoo! several times, but the advertisements for the website of Agoda would always come out first. Then, when any of the advertisements was clicked, it would be connected to the Agoda website. In other words, any user trying to search for the website of Easytravel would be intercepted. Therefore, Easytravel accused Agoda Company Pte. Ltd. (hereinafter referred to as "Agoda") of using the name of another company in a keyword advertisement. It was exploitation of the efforts and achievements of another in violation of the Fair Trade Law.
2. Findings of the FTC after investigation:
Between 2017 and Mar. 17, 2021, Agoda purchased and posted the keyword advertisement in question. In the advertisements, the name of Easytravel, its competitor, was used as the keyword. When consumers entered the word "easytravel" on Google and Yahoo, the keyword advertisement at issue would appear. Easytravel, the name of Agoda's competitor, was the title and above or below the title was a link to "www.agoda.com/lodging/room booking discounts".
3. Grounds for disposition:
 - (1) "Easytravel" was the registered trademark of Easytravel. Agoda's machine of self-learning recommended "easytravel" in the keyword advertisement and therefore the company name of Easytravel complied with the description of "involving certain economic profit in the market after

investment of considerable effort.”

- (2) Agoda used “easytravel” in the keyword advertisement at issue. The word was applied as the title whereas the URL of Agoda also appeared in the advertisement. The arrangement could easily make users think Easytravel and Agoda were the same company or affiliates. If consumers were confused and clicked the advertisement or did so unknowingly, they would be intercepted and connected to the online room-booking platform of Agoda. In consequence, the opportunities for Easytravel to make contacts with potential customers would be reduced and the economic profit behind the company name of Easytravel would be jeopardized.
- (3) Judged according to the number of times the keyword advertisement was clicked each year during the period the advertisement was posted, it was obvious that there were consumers originally searching for Easytravel getting directed to the online booking platform of Agoda. It was wrong for Agoda to take advantage of its own reputation to exploit the efforts and achievements of another. The practice ended up suppressing or impeding performance competition in the market. Apparently, by purchasing and posting the keyword advertisement, Agoda created negative influence on the trading order in the online booking platform market.
- (4) Agoda contested that since the owner of the “Easytravel” trademark rights had not registered with web portals or search engines, the company could present the name of Easytravel and the word Agoda together in the keyword advertisement. However, a business that purchased a keyword advertisement was supposed to check whether the keyword adopted was the name or trademark of another company, and make sure the overall content would not cause Internet users to make the mistake of thinking the product or service offered and the product or service of another company came from the same source or the two enterprises were affiliates. Furthermore, Agoda had indeed received a letter from Easytravel in 2014 and replied that it would stop using the word “easytravel” in keyword advertisements. That means Agoda had the responsibility to remind itself not to make the same mistake again. Nevertheless, Agoda used the name of Easytravel again in 2017. Whatever arguments Agoda had offered could not help the company shirk its responsibility.
- (5) By using the company name of Easytravel, a competitor, in the keyword advertisement, Agoda exploited the efforts and achievements of another. It was obviously unfair conduct able to affect trading order in violation of Article 25 of the Fair Trade Law. Therefore, the FTC imposed an administrative fine of NT\$1 million on Agoda.

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