

Evolutive Labs Co., Ltd.

1592nd Commissioners' Meeting (2022)

Case: Evolutive Labs violated the Fair Trade Law for using the logo of a competitor in key word advertisements

Keyword(s): Key word advertisement, obviously unfair

Reference: Fair Trade Commission Decision of March 30, 2022 (the 1592nd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.111015

Industry: Other Retail Sale in Non-specialized Stores (4719)

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

Summary:

1. Hao Best Protector trademark owner complained that after entering “Hao Best Protector” on Google as the keyword, he discovered that Evolutive Labs Co., Ltd. (hereinafter referred to as “Evolutive Labs”) had used “Hao Best Protector” as the keyword to post an advertisement carrying the wording of “Rhinoshield screen protector, cell phone screen Hao Best Protector – non-glass explosion-proof screen protector” and the advertisement could link to the website of Evolutive Labs. The practice could mislead people to think the two parties were cooperators and direct consumers to the website of Evolutive Labs. Thus, the company could promote its products by exploiting the achievement of the effort of Hao Best Protector. The practice was in violation of Article 25 of the Fair Trade Law.
2. Findings of the FTC after investigation:
 - (1) Evolutive Labs purchased the keyword advertisement on Google and inserted four keywords, namely “Hao,” “Hao Best Protector,” “Hao Best Protector price range” and “Hao Best Protector prices” in the advertisement that carried the wording of “Rhinoshield screen protector, cell phone screen Hao Best Protector (or Hao, Hao Best Protector price range, Hao Best Protector prices), non-glass explosion-proof screen protector.”
 - (2) Between Jun. 18 and Oct. 7 in 2021, the keywords of “Hao” and “Hao Best Protector” were clicked 724 times. However, there were no clicks on “Hao Best Protector price range” and “Hao Best Protector prices”. The conversion rate was zero.
3. Grounds for disposition:
 - (1) After founding “Hao Best Protector”, the trademark owner used the

name to apply for approval to use six related trademarks as his business symbols between 2013 and 2020. He also invested an amount of money to post advertisements and shoot promotional videos to assure other businesses and consumers could distinguish “Hao Best Protector” from competitors. The practice was in line with the requirement of “investing considerable efforts to possess certain economic benefit in the market.”

- (2) Evolutive Labs presented the keyword advertisements by placing its own brand name and product (Rhinoshield screen protector) side by side with “Hao Best Protector” and the three other keywords, along with the wording of “non-glass explosion-proof screen protector.” Overall, the presentation could easily mislead Internet users to think that “Rhinoshield” and “Hao Best Protector” were the symbols of the same business or both sides had certain cooperative relations. Either out of confusion or unawareness, when consumers clicked on the keyword advertisements, they would be intercepted and directed to the official Rhinoshield website managed by Evolutive Labs. In consequence, the engagement rate for “Hao Best Protector” with potential customers was reduced and the economic benefit the symbol of “Hao Best Protector” stood for was damaged. The practice was apparently an exploitation of the achievement of efforts of another and able to affect trading order. It was in violation of Article 25 of the Fair Trade Law. Therefore, the FTC imposed an administrative fine of NT\$300,000 on Evolutive Labs.

Appendix:

Evolutive Labs Co., Ltd.’s Uniform Invoice Number: 53995694

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