

H Bank Technology and H Bank Biopharma

1613th Commissioners' Meeting (2022)

Case: H Bank Technology and H Bank Biopharma were complained for violating the Fair Trade Law for spreading lies

Keyword(s): Hydrogen, health care, therapeutic effect

Reference: Fair Trade Commission Decision of August 23, 2022 (the 1613th Commissioners' Meeting); Letter Kung Zhi Tzu No. 1111360417

Industry: Manufacture of Raw Chemical Material (1810), Other Human Health Activities Not Elsewhere Classified (8699)

Relevant Law(s): Article 24 of the Fair Trade Law

Summary:

1. The FTC received a complaint from Epoch Energy Technology Corp. (hereinafter referred to as Epoch Energy) accusing H Bank Technology and H Bank Biopharma (together hereinafter referred to as the accused) of spreading lies on blogs and web pages about hydrogen oxygen generators. It was described as a violation of Article 24 of the Fair Trade Law. As the complaint was associated with damages to business reputation and involved criminal liability, the FTC transferred the case to be investigated by the Taiwan Shilin District Prosecutors Office. Later, Taiwan Shilin District Prosecutors Office replied to the FTC that the conditions for prosecution in this case did not exist since no legal charges had been filed and therefore the case was closed. Consequently, the FTC launched an investigation to find out if the accused had really violated Article 24 of the Fair Trade Law.
2. Findings of the FTC after investigation:
 - (1) The main products of Epoch Energy were hydrogen oxygen beauty machines and the accused primarily produced hydrogen supply system tanks and deuterium-depleted water. Hydrogen oxygen beauty machines were for users to inhale hydrogen-oxygen gas. Hydrogen supply system tanks were for the storage of hydrogen and deuterium-depleted water was for drinking. The products of both sides were different in price and size. In addition, the components, sales channels and marketing approaches were not the same. In other words, they were not similar products. Therefore, both sides could not be

competitors in the relevant market and the essential element of “for the purpose of competition” stated in Article 24 of the Fair Trade Law did not exist.

- (2) Epoch Energy applied to the Ministry of Health and Welfare for a medical device license for its hydrogen oxygen beauty machine in 2014 and the application was never approved. Therefore, the advertisements for the machine could not imply or suggest any therapeutic effect. In the decision of the Kaohsiung Branch of Taiwan High Court Prosecutors Office to reject Epoch Energy’s request for reconsideration after the company finding it unacceptable that the office decided earlier not to prosecute the representatives of the accused, it was clearly stated that Epoch Energy had been fined by health authorities for claiming the Hydrogen oxygen beauty machine had therapeutic effects. It meant that the machine was not a medical device permitted according to the Pharmaceutical Affairs Act and related laws and the news was extensively spread online. Even if the accused had really criticized the hydrogen oxygen beauty machine as harmful to the human body, it was not a lie. Objectively speaking, the texts on web pages, such as “those already inhaled the gas from hydrogen oxygen machines or purchased industrial hydrogen oxygen generator recommended by dishonest physicians and suppliers...you are probably taking the risk of getting poisoned,” “Stop sucking that toxic gas” and “No one should inhale from such machines,” could not be considered telling or spreading lies.
- (3) The full name of the product of Epoch Energy was hydrogen oxygen generator for beauty and health. The company claimed that it had researched and developed the health care product which was not the same as industrial hydrogen oxygen generators. However, the aforementioned web pages and texts did not indicate any specific target or point at the machine produced by Epoch Energy. For this reason, consumers would not automatically associate the texts with Epoch Energy’s product after reading the comments about hydrogen oxygen machines on the Internet. The Ministry of Health and Welfare, the competent authority, also concurred that consumers would not link the abovementioned texts to the product Epoch Energy marketed. Therefore, it was impossible to conclude that the web pages and texts could have any effect on the business reputation of Epoch Energy.
- (4) Furthermore, the accused denied spreading any information on the Internet, and insisted that the web pages and texts did not point out any specific product. It was hard to say the accused were responsible just because the name of Epoch Energy was mentioned or any specific opinions about hydrogen oxygen machines were presented in additional links on the aforesaid web pages. In conclusion, the FTC found it impossible to determine that the accused had violated Article 24 of the

Fair Trade Law.

Summarized by: Fang, Yen-Hsiu; Supervised by: Ho, Yen-Jung