

Pao Lien Optical

1635th Commissioners' Meeting (2023)

Case: Pao Lien Optical violated the Fair Trade Law by restricting business activities of contact lenses suppliers

Keyword(s): Contact lens, chain optical stores, most preferential supply price

Reference: Fair Trade Commission Decision of February 1, 2023 (the 1635th Commissioners' Meeting); Disposition Kung Ch'u Tzu No. 112006

Industry: Manufacture of Eyeglasses (3321), Retail Sale of Pharmaceutical and Medical Goods in Specialized Stores (4751)

Relevant Law: Article 20 of the Fair Trade Law

Summary:

1. Pao Lien Optical Co., Ltd. (hereinafter referred to as Pao Lien Optical) made joint purchases for Formosa Optical Technology Co., Ltd. (hereinafter referred to as Formosa Optical) and supplied glasses products to chain optical stores affiliated to the latter. Pao Lien Optical could use the large number of retail outlets of Formosa Optical as its leverage to acquire better supply prices and payment terms from contact lenses suppliers (hereinafter referred to as suppliers). The FTC was informed that CooperVision Taiwan (hereinafter referred to as CooperVision), a contact lenses supplier, was requested by Formosa Optical to restrict the informer from selling contacts lenses at prices lower than the retail prices of Formosa Optical stores. Otherwise, the business relations with CooperVision would be terminated or its supply would be disconnect.

2. Findings of the FTC after investigation:

(1) The distribution contract signed between Pao Lien Optical and CooperVision included the clauses of "CooperVision guarantees the prices of products supplied to Pao Lien Optical are cheaper than the prices offered to competitors by a certain margin" and "Before offering competitors promotional deals, CooperVision will inform and acquire the consent of Pao Lien Optical; otherwise, CooperVision will give Pao Lien Optical a discount equivalent to a certain percentage of the net promotional price." The contracts Pao

Lien Optical signed with other suppliers also carried similar restriction clauses. The content of the restriction clauses would be slightly different, but the stipulations were still “Suppliers guarantee to give Pao Lien Optical the most preferential supply prices” and “Suppliers are required to inform Pao Lien Optical in advance when offering competitors promotional deals.”

- (2) Due to the retail channel advantage of Formosa Optical, Pao Lien Optical had considerable market power when purchasing contact lenses. However, the agreement regarding promotional deals it made with suppliers reduced the incentives for suppliers to make promotional offers to other retailers and that created concern about restraints on market competition.
- (3) The clause Pao Lien Optical stipulated to make suppliers guarantee to give the most preferential supply prices referred to wholesale prices. Although they were not retail prices Formosa Optical sold products to consumers for, the screenshots of conversations and emails between Pao Lien Optical, the informer and other concerned parties showed that Pao Lien Optical had indeed acted through CooperVision to request competitors not to sell contact lenses at prices lower than the retail prices of the outlets of Formosa Optical. There were also texts indicating other suppliers asking the informer to cooperate and adjust the prices of contact lenses, or requesting other chain optical stores to make price adjustments because Pao Lien Optical had designate personnel to check on them. All these proved that Pao Lien Optical did extend the aforesaid restriction clauses to cover retail prices. In other words, Pao Lien Optical not only demanded its suppliers to provide products at low prices but also requested them to ask other contact lenses retailers not to sell products at prices lower than the retail prices of the outlets of Formosa Optical by the design of the clause regarding promotional deals and sending designated personnel to check prices and then informing suppliers of the price competition situation.

3. Grounds for disposition:

- (1) The distribution contracts Pao Lien Optical signed with CooperVision and other suppliers carried the restrictive clause that supply prices had to be better than the prices for competitors and Pao Lien Optical had to be informed in advance when there were promotional deals for competitors. The clause restricted the business activities of contact lenses suppliers and would lead to market competition restraints. The practice was in violation of Subparagraph 5, Article 20 of the Fair Trade Law.

(2) After assessing the market status of Pao Lien Optical, the type of violation, the average level of cooperativeness throughout the investigation, the violation being the first, the motive and purpose behind the illegal act, and considering other factors listed in Article 36 of the Enforcement Rules of Fair Trade Law, the FTC cited the first section of Article 40 of the Fair Trade Law, ordered the company to cease the unlawful act, and imposed on it an administrative fine of NT\$500,000.

Appendix:

Pao Lien Optical Co., Ltd.'s Uniform Invoice Number: 12974203

Summarized by: Li, Yi-Shan; Supervised by: Wang, Yi-Ming