

Fair Trade Commission Disposal Directions (Guidelines) on Internet Keyword Advertisements

Passed by the 1724th Commission Meeting on October 29, 2024
Promulgated by Order Kung Jing Tzu No. 1131461659 on December 12, 2024

1. Purpose

To maintain trading order and prevent enterprises from improperly exploiting the results displayed on internet search pages or webpage programming, thereby committing obviously unfair conduct of reaping the fruits of others' efforts through the keyword search mechanism of internet search engines, the Fair Trade Commission (hereinafter referred to as the "Commission") specifically adopted these Guidelines.

2. Basic Principles regarding Internet Keyword Advertisements

Internet search engines function to provide users with search results "related" (rather than "identical") to the keywords they enter. When a user enters the name, brand, or other business symbols (hereinafter collectively referred to as "symbols") of a specific enterprise as the search keyword, the objective of the search is not limited to the enterprise represented by that symbol. The more diverse and relevant the search results are, the more beneficial it is for the users to obtain comprehensive information and reduce search costs.

When an enterprise uses the symbol of another enterprise in its keyword advertisement or through webpage programming, it does not inherently constitute a violation. Comprehensive assessments must be conducted based on the specific circumstances of each case to determine whether such use yields social benefits such as providing consumers with a greater variety of beneficial information, promoting the dissemination of market information, and reducing search costs.

3. Obviously Unfair Conduct

Enterprises shall not commit obviously unfair conduct of reaping the fruits of others' efforts through the keyword search mechanism of internet search engines. Examples include the following:

- (1) In keyword advertisements, using the symbol of another enterprise in the results (e.g., title, URL link) displayed on the search page to free-ride on the

goodwill of others and to mislead people into believing that the two enterprises derive from the same source, or, are related for the promotion of its own products or services. Such conduct may include the following types:

- A. In keyword advertisements, the results displayed on the search page show both the symbol of the enterprise itself and that of another enterprise, with the overall presentation misleading people into believing that the two enterprises derive from the same source or are related.
 - B. In keyword advertisements, the results displayed on the search page use the symbol of another enterprise together with URL link of the enterprise itself, with the overall presentation misleading people into believing that the two enterprises derive from the same source or are related.
- (2) Using webpage programming to improperly display the symbol of another enterprise in natural search results to increase online traffic to the website of the enterprise itself.

In determining whether the conduct described in Item (1) of the preceding paragraph has occurred, the following factors shall also be considered:

- (1) Whether a considerable amount of effort has been invested by another enterprise in its symbol and is then been exploited by the disputed conduct.
- (2) Whether the riding of goodwill has the effect of misleading people into believing that both are derived from the same source or have certain relationship (such as a cooperative relationship, affiliated enterprises, or a sub-brand).

4. Legal Effect

Where an enterprise's conduct violates Point 3 of the Guidelines and is sufficient to affect trading order, it constitutes a violation of Article 25 of the Fair Trade Law.

Whether the conduct is "sufficient to affect trading order" shall be determined in accordance with the relevant provisions of the Fair Trade Commission Disposal Directions (Guidelines) on the Application of Article 25 of the Fair Trade Law. Where it does not meet the criteria of "sufficient to affect trading order," remedies shall be sought through the Civil Code, the Consumer Protection Act, or other laws.

If a case involving internet keyword advertisements also involves other conduct of unfair competition, the Commission shall, based on the specific circumstances of the case, assess whether any other provisions of the Fair Trade Law have been violated.

5. Supplementary Provisions

In addition to being governed by these Guidelines, cases involving internet keyword advertisements shall also be governed by Articles 21 and 25 of the Fair Trade Law and related guidelines.