

Kuobrothers Corp.

Case: Taipei High Administrative Court rejected the administrative litigation by Kuobrothers Corp. over Fair Trade Law Incident

Keyword(s): Programming, search result, sit visit rate

Reference: Taipei High administrative Court Judgment (2022) Su Tzu No. 705

Industry: Retail Sale via Mail Order Houses or via Internet (4871)

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

Summary:

1. In 2018, Kuobrothers Corp. (hereinafter referred to as the appellant) started applying web page programming to use product information of others to make web pages of search results displaying “best-selling XX search results – buy123,” “No more price comparison needed! All sorted out: Best XX rated by netizens available right here on buy123 in 2019,” “Front page for XX – buy123” and “All XX sought after by everyone right here on buy123...” The purpose was to boost the rate of visits paid to its website, but the information was inconsistent with the fact. It was obviously unfair conduct able to affect trading order in violation of the Fair Trade Law. The FTC (hereinafter referred to as the appellee) issued Disposition Kung Ch’u Tzu No. 111020 (hereinafter referred to as the original disposition) on April 21, 2022 to order the appellant to cease the aforementioned conduct and also imposed on the company NT\$ 2 million (same currency applies hereinafter). The appellant found the sanction unacceptable and filed an administrative litigation.
2. In light of Article 25 of the Fair Trade Law being a general regulation, the appellee specifically established the Fair Trade Commission Disposal Directions (Guidelines) on the Application of Article 25 of the Fair Trade Law to make its application more concrete, precise and standardized. As specified in Paragraph 1 of Point 7, “obviously unfair” as used in Article 25 refers to “engaging in market competition or commercial transactions by obviously unfair means.” Also stipulated in Item 3 of Subparagraph 2 of Paragraph 2 of the same point are “the types of obviously unfair conduct are as listed below: ... (2) Exploiting the fruits of others’ work, such as ... (C) For the purpose of increasing

one's website bounce rate, improperly use the symbol of others by taking advantage of website programming and designing.”

3. The appellant did not market Joy Dream mattresses on buy123 or purchase any keyword advertisement that included any word related to Joy Dream mattresses. However, the company started to use search engine optimization techniques in 2018 to increase visits paid to buy123. When a consumer entered the keyword “Joy Dream” to search, the resulted web page automatically appeared on buy123 and the keyword was included in the database. From then on, each time any consumer used the keyword “Joy Dream” to search on Google, the search would be connected to the buy123 database and the aforesaid search result web page would be displayed. The text on the web page was decided by the marketing personnel of the appellant and edited by programmers. The program design of the web page was not intended to focus on mattress-related products. It was similar to the web pages for all the products marketed on buy123. There was a keyword replacement function. In this case, “Joy Dream” was the keyword in the search result title and web page outline. It could replace other keywords. It was solid evidence that the appellant applied web page programming techniques to use the symbols of others to increase the rate of visits paid to the company’s own website. Apparently, the practice was in violation of Article 25 of the Fair Trade Law.
4. Therefore, the original disposition of fining the appellant NT\$ 2 million dollars for violating Article 25 of the Fair Trade Law was a justifiable decision. The appellant’s request for revocation of the original disposition was groundless and had to be rejected.

Appendix:

Kuobrothers Corp.’s Uniform Invoice Number: 43455509

Summarized by: Chiang, Hui-Yi; Supervised by: Ren, Han-Ying