Gamania Digital Entertainment Co., Ltd.

Supreme Administrative Court (2023)

Case: Supreme Administrative Court overruled the appeal filed by Gamania Digital Entertainment Co., Ltd. over the FTC's decision
Keyword(s): False advertising; mobile game; probability
Reference: Supreme Administrative Court Judgment (2023) Shang Tzu No. 766
Industry: Publishing Of Video Games (5821)
Relevant Law(s): Article 21 of the Fair Trade Act

Summary

1. Gamania Digital Entertainment Co., Ltd. (hereinafter referred to as the "Appellant"), for the purpose of marketing the "Lineage M" mobile online game (hereinafter referred to as the "game in question"), held the "'Lineage M' NCSOFT Taiwan Workshop for Gamers" (hereinafter referred to as the "workshop") on December 14, 2019. At the workshop, a screen displayed Question 17 (hereinafter referred to as "Q17"): "What are the probabilities of production, card drawing and synthesization? Are the probability settings of the Taiwanese version the same as those of the Korean version?" The answer given on the spot was: "The probabilities of the Taiwanese version are exactly the same as those of the Korean version." The FTC determined that the foregoing response constituted a false or misleading representation regarding the content of services that was critical to transaction decisions, in violation of Paragraph 4 of Article 21 of the Fair Trade Act, to which Paragraph 1 of the same Article applies mutatis mutandis. Accordingly, by Disposition Kung Ch'u Tzu No. 111039 dated June 10, 2022, the FTC imposed an administrative fine of NT$2 million on the Appellant. The Appellant disagreed with the disposition and filed an administrative litigation. After its request was rejected by judgment, the Appellant filed the appeal in this case.

2. The legislative purpose of Paragraph 1 of Article 21 of the Fair Trade Act is to require enterprises to make truthful representations regarding the goods or services they sell in advertisements or through other means made known to the public, so as to ensure that the order of fair market competition and market efficiency are not impaired by false promotional content. What the provision condemns is an enterprise's

use of false or misleading advertisements or other means made known to the public concerning its goods or services as an improper means of competition to secure trading opportunities. Accordingly, where an enterprise makes false or misleading representations concerning the quality, content, or other aspects of its goods or services in an advertisement or through other means made known to the public, such conduct constitutes a violation of Paragraph 1 of Article 21 of the Fair Trade Act.

3. The Supreme Administrative Court found that a total of 45 people attended the workshop, including eight livestreamers. On the day of the workshop, the Appellant livestreamed the event through its Facebook page and broadly invited unspecified gamers to watch the workshop in real time on the livestreamers' YouTube channels. After the workshop, the Appellant also posted a highlights video of the workshop on its own official YouTube channel for public viewing. Accordingly, the purpose of the Appellant's organization of the workshop was to promote sales of the game in question. The workshop therefore clearly constituted an advertisement or other means made known to the public stated in Paragraph 1 of Article 21 of the Fair Trade Act. Moreover, before the workshop, the Appellant had compiled questions submitted by participating gamers in advance and selected those it considered important to be raised and answered at the workshop. This demonstrated that Q17 concerned an issue of interest to players of the game in question and could affect whether they were willing to spend money on the game. Q17 was therefore indeed related to the game in question and was important to transaction decisions. Furthermore, the Appellant itself acknowledged that, with respect to the production probability for Purple Fabric, the probability was 5% in the Taiwanese version and 10% in the Korean version. Consequently, the Appellant's statement at the workshop that "the probabilities of the Taiwanese version are exactly the same as those of the Korean version" constituted a false or misleading representation. The Supreme Administrative Court therefore found that the Appellant's conduct violated Paragraph 4 of Article 21 of the Fair Trade Act, to which Paragraph 1 of the same Article applies mutatis mutandis.

4. In conclusion, the original judgment committed no error in dismissing the Appellant's appeal before the lower court. The Appellant nevertheless reiterated its previous arguments on appeal, alleging that the original judgment was against the law and seeking its reversal. The

Supreme Administrative Court found the appeal to be without merit and therefore overruled the appeal.

Appendix:
Gamania Digital Entertainment Co., Ltd. ’s Uniform Invoice Number: 89550029

Summarized by: Lee, Chia-Ju; Supervised by Ren, Han-Ying ☐