Forum

Fair trading in Taiwan

The following article by Hsing-Feng Tu about the Fair Trade Law in Taiwan outlines its points of similarity with the Trade Practices Act, and describes some unfair trading cases which have been dealt with recently in Taiwan.

The Fair Trade Law (FTL) in Taiwan is similar to the *Trade Practices Act 1974* in Australia. It aims to ensure fair competition in every market as well as to protect consumers' interest by regulating against anti-competitive practices and unfair trading. Consumer protection is achieved through successful market competition.

Under the FTL, anti-competitive practices covers monopolies, mergers and acquisitions, and concerted actions. It prohibits any business misusing its market power to prevent other businesses from competing or to change prices inappropriately. Any concerted action (such as agreement in price-fixing or reduction of production quantity) is per se illegal, unless approved under exemption clauses of Article 14 of the FTL. Mergers or acquisitions of businesses, whose annual revenue exceed the threshold (currently New Taiwan $5 billion, which is about A$250 million), should apply for the Fair Trade Commission's approval.

Unfair trading includes passing-off, untrue, false or misleading advertising, damage of another business's reputation, and the regulation of multi-level sales schemes. This is similar to sections of Part V of Australia's Trade Practices Act.

The FTC, an independent Commission under the Cabinet with nine full-time Commissioners, has sole authority to enforce the Fair Trade Law. A major difference between the FTC and the ACCC is that the FTC has the power to decide whether the applicants violate the FTL and impose penalties directly, while the ACCC has to take the case to court and let the judge decide.[1]

The followings are some case examples from Taiwan related to unfair trading.

False claims made about Filly scooters

Kuang Yang Motors Co. Ltd. (KYM), a motorcycle manufacturer in Taiwan, stated in an advertisement that its two new scooters — Filly 50 cc and 80 cc — could run more than 50 kilometres per litre of gasoline. It also claimed that, compared with other manufacturers' 50 cc scooters, the new Filly scooters could save half the fuel.

The investigation by the FTC found that, based on a test report from the Industrial Technology Research Institute, the distance per litre of gasoline travelled by the two Filly scooters at constant speed (40 kilometres per hour) was 69.1 and 51.4 kilometres. However, when driven in the city with frequent stopping, they travelled only 46.8 and 41 kilometres per litre of gasoline respectively. Compared with other manufacturers' 50 cc scooters, the Filly does have higher gas efficiency but it's not as big as the ad claimed.

The FTC decided that KYM breached the Fair Trade Law because the ad contained false and misleading representations. It claimed that 'one litre of gasoline can run more than 50 kilometres' without differentiating the models nor specifying that the efficiency could be met only under constant conditions. The ad's claim of higher performance compared with other scooters was also untrue.

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1 The penalties may include ordering the respondents to cease the conduct, rectify the conduct or take necessary corrective action within the time prescribed in the order. In addition, the FTC may impose a fine up to NT$25 million (approximately A$1.25 million) on first time offenders

The FTC ordered KYM to stop making the misleading statements immediately.

The hard sell for holidays

A Hong Kong company's Taiwan branch, which sold membership of a vacational resort centre in Taiwan, was found to breach the Fair Trade Law by using undue harassment and coercion. By calling or sending postcards informing consumers they had won big prizes and gifts, the company hoped to coax consumers to attend 'seminars', which proved to be hard-sell promotional activities.

The FTC investigation found that the company first hired students to do 'surveys' at bus and railroad stations, department stores and supermarkets to identify people interested in travelling. The prizes used to entice consumers included TVs, motorcycles and hi-fi stereo sets — prizes the company either had no intention of giving away or substituted with cheaper goods. The company asked consumers to 'come in to pick up the prize with your spouse and carry your credit cards with you'. When customers arrived, salespeople would take each couple to a separate room, not allowing any communication between couples. The big sell then began and if consumers refused to sign a contract (which could amount to NT$300 000 or about A$15 000), salespeople of higher rank would come into the room to increase the pressure. Only after the couple signed a contract and paid the membership fee (in several credit card payments) were they allowed to leave with the prizes the company had promised. After five or more hours of 'seminar', consumers often were so exhausted that they signed the contract just to be able to escape.

The FTC decided that the company's conduct breached the FTL because it was a deceptive and obviously unfair act 'sufficient to affect trading order'.[2] It found that the company engaged in excessive harassment and coercion by encouraging consumers to sign a contract, which they didn't have time to read in detail, on the day of the 'seminar'. Such promotional activity disturbed consumers' free will to trade and affected their ability to make rational judgements. Moreover, the membership contract only contained the name of the resort village, time of vacation, membership fee, maintenance fee and sketchy details on rights and obligations. It failed to provide information such as the location and facilities of the resort village, related services, and rights and obligations for members. The company did not provide a seven-day period, required by the FTC, for consumers to cancel the contract.

The FTC thus made the decision against the company and ordered it to cease the unfair trading conduct immediately.

Real estate sales obscure the truth

At Kaohsiung, the largest city in southern Taiwan, a construction company claimed in an advertisement for a pre-sale house project that it would provide a 2600 sq metre central courtyard and 25 five-star recreational facilities, as a free gift for the house buyers. It was alleged that the company concealed the fact that the courtyard had an eight-metre road planned to run through the middle that could be expropriated by the government at any time, and that in reality the occupants would not have permanent and legal use of the facilities.

The FTC found that when the government decided to use the reserved land, anything on it would be considered illegal construction and could be removed.

The FTC decided that the company breached the Fair Trade Law and that the ad would cause house buyers to believe mistakenly that the central courtyard space and the public facilities in it could be used permanently. The FTC decided that the advertisement was a misleading and false representation and ordered the company to stop making the representation.

Two prices offered for BMW

An imported car dealer stated in a newspaper advertisement that the company was offering a 'special program for purchasing a BMW 318isA at 0% interest rate at a suggested retail

2 Article 24 of the Fair Trade Law states that: 'In addition to what is provided for in this Law, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order.' This is a general provision regarding unfair trading conducts not governed by other Articles of the FTL.

price of NT$1 310 000'. However, it was alleged the ad was misleading because the company also offered a cash price of NT$1 250 000.

The FTC found that, under the program, a car buyer had to make a down payment of NT$410 000 and the balance would be paid in 36 instalments of NT$25 000 each by cheque. The company also offered the cash price of NT$1 250 000 because some customers couldn't or didn't want to pay the instalments.

The FTC decided the company breached the FTL because the ad was false and misleading. The claim of '0% interest rate' should mean no interest burden on the car buyers — that is, the total instalment price (the sum of the down payment and all the instalments) should be equal to the cash price since the stated interest rate is zero. Consumers were encouraged to believe they could buy the car in instalments at a price not higher than the cash price. However, the difference between the stated instalment price (retail price) and the cash price should be regarded as 'interest income' in this case.

The FTC ordered the dealer to stop making the statements.

Work-at-home tasks too hard for most

A craft company advertised in newspaper classifieds to recruit people for a work-at-home scheme with deceptive and misleading representations. It used statements such as 'high profitability', 'cash compensation', and 'long-term business', but concealed important information such as workers have to spend a lot of money buying raw materials and the task could be very difficult for a novice.

The investigation by the FTC found that people who applied had to sign a work contract and spend a large sum of money buying dyestuffs. According to the contract, the dyestuffs were not refundable if the work could not be finished in time or the work was not 'acceptable'. Most of the people recruited by the advertisements were housewives, students or recent graduates. Once they started to work, they found it far more difficult than they had imagined, but because of the contract, they could not return the dyestuffs.

The FTC decided that the company breached the FTL because the conduct was deceptive and obviously unfair, 'sufficient to affect trading order'. The Commission found that such work-at-home tasks could be carried out but were usually very technical and difficult. If the worker could not finish the task and said so, their appeals simply fell on deaf ears. Most of the contracts between the company and the workers were effective for only one to three months, and would become invalid as soon as the time limit expired. Therefore, by the time the workers could master the techniques and come up with finished products, the contract would have expired.

The investigation showed that the company did not aim to manufacture handicrafts and sell them for profits, but to reap windfall profits by selling the dyestuffs. Workers had nowhere to go to seek compensation since the contract had specified that they were responsible for the raw materials they had bought.

The FTC ordered the company to cease the unfair trading conduct.