

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

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

1. Purpose

The Fair Trade Commission (the “Commission”) adopts these Guidelines specifically to maintain trading order and prevent enterprises from improperly taking advantage of the search results displayed for keyword advertising on internet search pages or the programming design of webpage, thereby committing obviously unfair conduct of exploiting the fruits of others’ work through the keyword search mechanisms of internet search engines.

2. Basic Principles Applicable to Cases Involving Internet Keyword Advertising

The function of internet search engines is designed with an aim to provide internet users with search results “relevant” to (rather than “exactly matching”) the keywords they enter. When an internet user enters a query in a search engine using the name, brand, or other business symbols (collectively, “symbol”) of a specific enterprise as a keyword for the search, what the internet user is looking for in the search query is not limited to the enterprise represented by that symbol. The more ample, diverse, and relevant the search results are, the more beneficial it is for the internet user in obtaining more comprehensive information while reducing search costs.

When an enterprise uses the symbol of another enterprise as a keyword in advertising or uses the symbol of another enterprise through taking advantage of webpage programming design, it does not inherently constitute a violation of law.

Comprehensive assessments must be conducted based on the specific circumstances of the case and taking into consideration whether such use yields social benefits, such as providing consumers with more diverse and beneficial information, promoting the dissemination of market information, and reducing search costs.

3. Obviously Unfair Conduct

Enterprises shall not make use of keyword advertising or webpage programming design in a manner that constitutes obviously unfair conduct of exploiting the fruits of others' work. Examples include the following:

(1) The search results (e.g., title, URL link) displayed for an enterprise's keyword advertising on the search page show that the enterprise uses the symbol of another enterprise and free-rides on the goodwill of another, thereby misleading people into believing that the two enterprises originate from the same source or are somehow related, for the purpose of promoting its own goods or services. Such conduct includes the following types:

A. The search results displayed for the keyword advertising on the search page show the enterprise's own symbol simultaneously and in conjunction with that of the other enterprise, with the overall content presentation misleading people into believing that the two enterprises originate from the same source or are somehow related.

B. The search results displayed for the keyword advertising on the search page show that the enterprise uses the symbol of the other enterprise in combination with the URL link of its own website, with the overall content presentation misleading people into believing that the two enterprises originate from the same source or are somehow related.

(2) Through taking advantage of webpage programming design, an enterprise improperly uses the symbol of another enterprise and has it displayed in organic search results, for the purpose of increasing the visit rate of its own website.

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

(1) Whether the other enterprise has invested a considerable amount of work on its symbol and the fruits of its work have been exploited by the conduct at issue.

(2) Whether the free-riding on the goodwill has the effect of misleading people into believing that the two enterprises originate from the same source or are somehow related (such as having a collaboration, affiliated enterprise, or sub-brand relationship).

4. Legal Effect

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

For the purposes of the preceding paragraph, whether the conduct is "able to affect trading order" shall be determined in accordance with relevant provisions of the Fair Trade Commission Disposal Directions (Guidelines) on the Application of Article 25 of the Fair Trade Act. If the conduct does not meet the required element of being "able to affect trading order," remedies shall be sought under the Civil Code, the Consumer Protection Act, or other laws.

If a case involving internet keyword advertising also involves other conduct of unfair competition, the Commission will, based on the specific circumstances of the case, assess whether the conduct has violated any other relevant provisions of the Fair Trade Act.

5. Supplementary Provisions

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