

# THE IDENTIFICATION AND REGULATION OF FALSE ADVERTISING BEHAVIORS UNDER THE ANTI-UNFAIR COMPETITION LAW -- THE CASE OF GUANGZHOU PHARMACEUTICAL GROUP V. JIADUOBABO FOR FALSE ADVERTISING

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**Abstract:** "False advertising" is one of the important illegal competitive acts regulated by China's Anti-Unfair Competition Law, and it is also a common malicious competitive act in practice and reality. Therefore, the criteria for determining "false advertising" have practical significance and research value. When determining whether a certain competitive act constitutes the improper competitive act of "false advertising", the commercial freedom of speech of the competing entities, the order of market competition and the demands of economic development should be comprehensively considered. Based on this, the Supreme People's Court of China has issued a guiding case: Guangzhou Wanglaoji Health Industry Co., Ltd. v. Jiaduobao (China) Beverage Co., Ltd. for false advertising dispute. This case not only provides a reference standard for judicial handling of similar false advertising disputes, but also can effectively guide market participants to conduct market competition activities in accordance with the principle of good faith. This article examines the case, explores the criteria for identifying and regulating false advertising behavior, and explores the balance and boundaries between restricting unfair competitive behavior and encouraging the free development of the market.

**Keywords:** False advertising; Unfair competition; Advertising; Market order

## 1 INTRODUCTION

In the context of the booming market economy, the advertising information of business operators has become a core element influencing consumers' purchasing decisions. Some market entities, in order to gain economic benefits, carry out misconduct that violates the principle of good faith in their commercial promotion activities. This is manifested in the following ways: by fabricating product performance and effects, fabricating false usage effects, exaggerating the scope of service guarantees, and selectively disclosing product information, etc., to create consumer cognitive biases and ultimately achieve the competitive goal of improperly occupying market share[1]. Nowadays, false advertising has gradually become a prominent problem that disrupts market competition order and infringes upon consumers' rights and interests.

In response to this, Article 8 of China's Anti-Unfair Competition Law stipulates that business operators shall not make false or misleading commercial publicity about the performance, function, quality, sales status, user reviews, honors received, etc. of their goods to deceive or mislead consumers. Business operators shall not assist other business operators in making false or misleading commercial publicity by means of organizing false transactions, etc.

However, although this regulation establishes the basic elements of false advertising, the legal theory community has not yet reached a consensus on the determination of false advertising[2]. For example, different types of advertisements have different audiences. If misleading is the purpose of a merchant's false promotion, there is no uniform standard for how to understand the "person" in misleading. In addition, when determining false advertising, it is not yet determined whether there is a competitive relationship between the subjects and how the concept of the competitive relationship should be given. As a result, courts at all levels and in all regions have struggled to establish uniform criteria for judgment in judicial practice. Therefore, how to accurately interpret the "false advertising" clause in Article 8 of the Anti-Unfair Competition Law has also become a key point of study.

Based on this, this paper chooses to analyze Article 8 of the Anti-Unfair Competition Law and the criteria and regulatory methods for identifying false advertising behavior in combination with "Guangzhou Pharmaceutical Group v. Jiaduobao False Advertising Case"[3], in an attempt to explore the criteria for identifying false advertising behavior that takes into account both market competition efficiency and consumer protection.

## 2 BASIC FACTS OF THE CASE

Guangzhou Pharmaceutical Group owns the trademark rights of "Wanglaoji" and authorizes Hongdao Group to use it. At the same time, it has signed an agreement with Jiaduobao China, a subsidiary of Hongdao Group, allowing it to exclusively use the "Wanglaoji" trademark to produce red canned herbal tea from 2000 to 2010. Through years of efforts, Jiaduobao China has developed the red can of "Wanglaoji" into a well-known brand. In 2012, Hongdao Group

was ordered to stop using the Wanglaoji trademark, and Guangzhou Pharmaceutical Group subsequently authorized the Big Health company to use the trademark. Since 2013, Jiaduobao China has been widely recognized by advertising slogans such as "The top-selling red can herbal tea in China has been renamed Jiaduobao" and "Jiaduobao is the former Wanglaoji" in Chongqing supermarkets and several media outlets. The big health company believed that the actions of Jiaduobao China constituted false advertising and misleading consumers, and thus filed a lawsuit demanding that it be confirmed as anti-unfair competition and false advertising and that the relevant advertisements be stopped.

Both the first and second instance courts held that Jiaduobao China's false promotion constituted unfair competition. However, the retrial court determined that Hongdao Group had legally held the trademark license of "Wanglaoji" for seventeen years, during which it promoted "Wanglaoji" red can herbal tea through Jiaduobao China and others, achieving high popularity and reputation, and leading sales for several years. After the license expired, Jiaduobao China switched to producing "Jiaduobao" herbal tea and objectively stated the fact of the name change. The promotion of "the top-selling red can herbal tea in the country" refers to the previously produced and sold "Wanglaoji" herbal tea, and the description is true and clear. As a result, the first and second instance court judgments were revoked and the lawsuit filed by the big health company was dismissed.

In order to conduct an in-depth analysis of this case and gain a deeper understanding of Article 8 of the Anti-Unfair Competition Law, I searched and read in detail the second instance and retrial judgments of this case. According to the relevant content of the judgment, the main points of contention in this case include: First, whether the description and promotion of the advertising slogan involved in the case are true and in line with objective facts. Second, whether there is a possibility that the advertising slogan may lead the relevant public to misunderstand. Third, whether the advertising slogan has improperly infringed upon the popularity of Wanglaoji's red can herbal tea and disrupted the market order.

### **3 ANALYSIS AND REVIEW OF THE CASE**

#### **3.1 Judgment of the Authenticity of Advertising**

There are various forms of advertising, and false advertising is particularly alarming. Its main forms include deceptive, misleading and exaggerated advertising. Business operators sometimes use "authoritative marks" such as the name of a well-known enterprise or a well-known trademark to attract consumers' attention, with the intention of making consumers mistakenly believe that the advertised goods or services are "authoritative" goods or services or that their quality level is similar, which should be judged as misleading false advertising. For exaggerated promotion, operators may use absolute terms such as "national", "the highest level", "the best" to describe the product. Such practices are likely to cause consumers to have a wrong perception and are strictly prohibited by China's Advertising Law.

In this case, the advertising slogan "The leading red can herbal tea in national sales has been renamed Jiaduobao" can be divided into two parts, and their authenticity can be judged respectively. First, the first half of the slogan, "The leading red can herbal tea in sales across the country", according to market research data, since Hongdao Group obtained the right to use the "Wanglaoji" trademark in 1995, the red can "Wanglaoji" herbal tea has led the market in sales and achieved remarkable results, and has won many honors from industry associations such as "sales champion", etc. Therefore, the slogan is clear in its direction. Based on conclusive statistics, it truly reflects its share in the herbal tea market. The second half "renamed Jiaduobao", although the trademark was changed from "Wanglaoji" to "Jiaduobao", the product formula, packaging and form remained unchanged. This fact can be expressed objectively and explained in a way that is easy for the public to understand, and does not violate the objective facts.

#### **3.2 Analysis of the Possibility of False Promotion Causing the Relevant Public to Misunderstand and Purchase**

False advertising against unfair competition actors is a business strategy aimed at seizing competitive advantages in the market, which means deliberately misleading consumers to make purchase decisions unfavorable to other competitors, thereby illegally occupying market share and depriving other legitimate business operators of their due commercial rights. For the general consumer group, they are often vulnerable due to a lack of in-depth understanding of commercial advertisements and promotional materials. Therefore, when assessing the misleading nature of promotional content, it is necessary to consider from the perspective of a diverse audience[4]. For example, infant formula advertisements are mainly targeted at pregnant and lactating women, and when assessing their misleading nature, particular attention should be paid to the cognitive level and consumption psychology of this specific group. However, when dealing with the advertising slogan of Jiaduobao as shown in this case, the attention level of the general consumer, that is, the average rational person, should be used as the criterion for judgment.

From the perspective of the Jiaduobao case as a whole, the information that Jiaduobao China conveys to consumers through its advertisements is essentially fulfilling the obligation of notification, that is, informing the public of the change of trademark rights, and the information is consistent with the actual perception of consumers and does not pose a risk of causing misunderstanding or misleading purchase[5]. In addition, based on the information already available to consumers, it is reasonable to infer that during the period of trademark licensing, Jiaduobao China has made "Wanglaoji Red Can Herbal Tea" a well-known brand through long-term marketing. Therefore, the "Wanglaoji Red Can Herbal Tea" in the common perception of consumers actually refers to the products of Jiaduobao China, rather than the products that the big health company was subsequently licensed to operate. In other words, consumers' purchasing decisions should be based on their understanding of the brand's history, that is, after the termination of the partnership

between Jiaduobao and Guangzhou Pharmaceutical Group, the "top-selling red can herbal tea" that consumers expected and recognized was still the "Wanglaoji Red Can herbal tea" operated by the original Jiaduobao China Company. According to this, consumers' understanding of the core facts is accurate and thus less likely to be misled by the advertising slogan.

### **3.3 The Determination of Whether False Advertising Disrupts Market Order and Infringes upon the Interests of the Counterparty**

First, objectively speaking, the Anti-Unfair Competition Law is most directly protected by good-faith market competitors. Therefore, the most direct way to determine whether an operator's publicity behavior is at fault is whether it maliciously infringes upon the interests of good-faith market operators. For example, by fabricating facts, defaming and other means to attack the products produced and marketed by other honest market operators, to belittle their reputation and credibility, to affect the regular business activities of these honest operators, and ultimately to cause them to lose their original market competitiveness and be eliminated[6]. In addition, the protection of the legitimate rights and interests of consumers and the order of market competition should also be given priority. Therefore, behaviors that damage the rights and interests of innocent consumers through false propaganda, distort the price mechanism of the market and affect fair competition in the market should also be regulated as a priority. Secondly, on the subjective level, if the operator's subjective intention is to cause consumers to misidentify and mispurchase through malicious market competition, thereby infringing upon the legitimate commercial interests of other good-faith competitors in the market, it should be determined that there is fault such as infringing upon the interests of the counterparty and disrupting market order.

In this case, objectively speaking, during the period when Hongdao Group held the right to use the "Wanglaoji" trademark, together with its subsidiary, Jiaduobao China, through long-term strict product quality control and extensive publicity investment, they jointly built the current reputation, popularity and consumer preference of the "Wanglaoji" series of trademarks. It is true that the advertising slogan in this case has to some extent exploited the positive image of the Wanglaoji trademark, but without the years of operation and cultivation by Jiaduobao China and Hongdao Group, the Wanglaoji trademark would not have reached its current level of popularity and wide influence. Therefore, the law does not force people to do so, and there is some legal leniency for such exploitation by Jiaduobao China. On a subjective level, Jiaduobao China does not violate the principle of good faith. As has been stated above, the purpose of Jiaduobao's use of the advertising slogan is to inform consumers of the basic information that the quality of the product remains unchanged despite the change of trademark. Although such promotional tactics may be somewhat brief and vague in description, they do not mislead consumers in general and should be regarded as a reasonable move to maintain a competitive advantage in the market competition.

## **4 CONCLUSION AND REFLECTIONS ON THE LAW AND THE CASE**

The Anti-Unfair Competition Law, as the core regulation in China's economic field, aims to promote the healthy development of the market economy and the intellectual property economy, regulate business practices in market economic activities, prohibit business operators from using unfair competitive means, and thereby promote the steady progress of the market economy. False advertising, as a violation of the principles of good faith and business ethics, should be effectively regulated by law.

In fact, apart from Article 8 of the Anti-Unfair Competition Law which regulates false advertising, other laws and regulations in China also focus on false advertising. For example, Article 28 of the Advertising Law stipulates that the following circumstances should be regarded as false advertising: the goods or services advertised in the advertisement do not exist; The information about the performance, function, origin, purpose, quality, specification, composition, price, producer, validity period, sales status, honors received, etc. of the goods, or the information about the content, provider, form, quality, price, sales status, honors received, etc. of the services, as well as the promises related to the goods or services, do not conform to the actual situation. Where there is a material impact on the act of purchase; Fabricating the effects of using the goods or receiving the services, etc. Article 20, Paragraph 1 of the Consumer Rights Protection Law stipulates that business operators shall provide consumers with true and comprehensive information about the quality, performance, purpose, expiration date, etc. of goods or services, and shall not make false or misleading publicity.

In determining whether advertising slogans constitute false advertising, based on common sense in daily life and using the cognitive ability of the general public as the measurement standard, the comprehensiveness and clarity of advertising slogans and the potential risk of public misunderstanding they may cause have been explored, and the benchmark and starting point for determining false advertising behavior have been established[7]. At the same time, taking into account the specific circumstances of the case and the actual situation of the advertised goods and trademarks, it was evaluated whether the advertising slogan had improperly damaged the business reputation of others. Based on this, suggestions that are in line with market reality were given regarding the reasonable boundaries and usage period of the advertising slogans, which not only protected the legitimate rights and interests of competitors but also promoted the continuous optimization and purification of the market competition environment.

At the same time, it is important to note that when judging whether a promotional act is at fault in disrupting the order of market competition, it is not advisable to directly and easily bring all competitive acts within the scope of legal regulation, because competition itself can cause "damage" within the normal range[8]. The key lies in clearly defining

the boundaries between qualified competitive behaviors that promote the development of a good competitive order in the market and malicious market competition, while precisely controlling the reasonable boundaries of promotional content, ensuring the proper transmission of advertising effects, maintaining the order of the market economy, and going further in judicial practice.

## **COMPETING INTERESTS**

The authors have no relevant financial or non-financial interests to disclose.

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