

美國聯邦交易委員會法第五條之研究*

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比較法的研究對我國公平交易法之解釋及適用極為重要，因為(1)該法係我國繼受西方先進國家(特別是美國及德國)之相關規定而成，其學說及法院對該等規定所提出之理論及作成之判例，極具參考價值；(2)國際上有將公平交易法(習稱競爭法)整合之趨勢，以便各國能在相同的競爭條件下從事自由且公平之競爭，故我國應以國際通行之標準檢視我國之規定及實踐，以免自絕於國際社會。美國聯邦交易委員會法第五條之規定為我國公平交易法所採納，本文之研究即在於歸納整理該條在美國法上之精髓，以為我國之法律解釋奠下理論基礎。

一、緒論

二、不公平競爭方法

三、不公平或欺罔之行爲或手段

四、結論

一、緒論

公平交易法第二十四條(「除本法另有規定者外，事業亦不得爲其他足以影響交易秩序之欺罔或顯失公平之行爲」)，運用得當，足以用來網補公平交易法其他具體規定未能加以規範之妨礙自由競爭及公平競爭行爲，故在公平交易法的施行上，至爲重要。但是該條規定用語抽象(「欺罔」、「顯失公平」)，再加上本法在我國係屬新創，所以亟待具體化，以供吾人適用時之依循。職是之故，本文擬針對本條規定所宗法之美國聯邦交易委員會法(Federal Trade Commission Act)第五條(a)項(1)款之規定(：「商業上或影

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The Unfair Methods of Competition and the Unfair or Deceptive Acts under Sec. 5 of the US FTCA

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Abstract

According to Sec. 5 of US Federal Trade Commission Act, unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce are unlawful. This regulation has been copied by § 24 of our Fair Trade Law, which in essence reads: An enterprise shall not conduct deceptive or obviously unfair acts that are sufficient to affect trading order. This paper looks forward to study the historical background of Sec.5 of the FTCA, its relation to the Sherman and Clayton Act and its meaning in the face of changing diversity of commercial activities-in the hope that § 24 of the Fair Trade Law can thus be better understood and applied. The study leads to the following:

1. There is no general definition of "unfair methods of competition" and "unfair or deceptive acts" available.
2. Unfair methods of competition has in general three major types: that which violates antitrust laws; that which violates commerce standards, that are widely accepted as fair; and that which violates the public policies recognised by the FTC.
3. Acts which fulfill the following three criteria are deceptive: the tendency to mislead consumers, a substantial number of consumers

can be misled, and the misleading must have materiality.

4. Acts which injure the consumers in a substantial way, the injury is greater than the benefit done to the competition or consumers, and the injury can not be avoided under reasonable circumstances, are unfair. Acts which violate the well-established public policies are also unfair.