

## The Prohibition of Misleading Advertising<sup>\*</sup>

Supreme Administrative Court Judgment No. A. 655/2560, dated 17<sup>th</sup> July B.E. 2560 (2017)

*Watta Classifieds Co., Ltd. (P)*

v.

*The Committee on Advertisement (D1)*

*The Consumer Protection Board (D2)*

The Plaintiff, a publisher of a weekly magazine, “Car Today” and “Education Today,” made a statement claiming that the magazines were the bestselling magazine. In “Car Today” magazine, the bestselling claim was based on surveys of magazine sales, but the Plaintiff did not disclose that the surveys were conducted solely in Bangkok metropolitan region, and a period of the surveys was in a small print which it is difficult to read. Most consumers would not read the small print as shown in the magazine. The statement would mislead consumers or the public that “Car Today” magazine had been the No.1 bestselling magazine in Thailand. In “Education Today” magazine, the Plaintiff referred to the survey result of other types of magazines – not an education magazine – to support its bestselling claim, and the statement, “Job Advertisement, Home, and Car Book,” was printed in very small font size. Consumers would be misled that “Education Today” magazine was the No.1 bestselling education magazine. The claim displayed in the Plaintiff’s magazines would materially mislead consumers about goods; as a result, the use of the misleading statement in “Car Today” and “Education Today” magazine violated the Consumer Protection Act B.E. 2522 (1979). The Defendant No.1 lawfully exercised its discretion to issue orders prohibiting the use of misleading advertisement in the Plaintiff’s magazines.

**Legal Principles:** *Administrative Act, Revocation of Orders*

**Administrative Court Procedure:** *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) : Section 9 paragraph one (1)*

**Legal Provisions:** *Consumer Protection Act, B.E. 2522 (1979) : Section 22 paragraph two (2)*

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### Judgment (Summary)

The Plaintiff was a publisher of a weekly magazine, “Car Today” and “Education Today.” Consumers filed a complaint to the Defendant No.2 about advertisements appeared in the Plaintiff’s magazine, “Car Today” and “Education Today,” respectively. In “Car Today” magazine Vol.325, there was a statement, “Watta, the No.1 Bestselling Book, SMEC Thai Chamber of Commerce,” with a small print, “\*surveyed between May – June 2006,” under the statement, and “Bangkok University Research Center” with a small print, “\*surveyed between September – October 2004”, under the statement, and “Suan Dusit Poll” with a small print, “\*surveyed between August – September 2003,” under the statement. Furthermore, on the first page of “Education Today” magazine Vol.328, there was a statement displayed, “Watta, No.1 Bestselling Job Advertisement, Home, and Car Book, SMEC Thai Chamber of Commerce” with a small print, “\*surveyed during May – June 2006,” under the statement, and “Bangkok University Research Center” with a small print, “\*surveyed during May – June 2004,” under the statement, and “Suan Dusit Poll” with a small print, “\*surveyed during September – October 2003,” under the statement. The Defendant No.2 determined that the Plaintiff violated Section 22 paragraph two (1) or (2) of the Consumer Protection Act, B.E. 2522 (1979) by making a false or exaggerated statement, or a materially misleading statement about goods. The Defendant No.1 reviewed the decision of the Defendant No.2 and concluded that the claims appeared in the Plaintiff’s magazines would materially mislead consumers about goods, under Section 22 paragraph two (2) of the Consumer Protection Act; as a result, the Defendant No.1 issued orders to prohibit the Plaintiff from using the misleading statement in “Car Today” and “Education Today” magazine. The Plaintiff then filed the case with the Court seeking relief to revoke the orders issued by the Defendant No.1.

The Supreme Administrative Court held that the claim advertising in “Car Today” magazine was evidence-based. The information was produced by research centers hired by the Plaintiff to conduct a survey of magazine sales. The research centers’ name was clearly presented in large font size. However, the information indicating that surveys were conducted solely in the Bangkok metropolitan region was not disclosed. In addition, a period of the surveys was in a small print which is difficult to read. Most consumers would not read the small print as shown in the magazine. The statement would mislead consumers or the public that “Car Today” magazine had been No.1 bestselling magazine in Thailand. Therefore, the claim was a materially misleading advertisement of goods, pursuant to Section 22 paragraph two (2) of the Consumer Protection Act. Furthermore, the Plaintiff did not specifically conduct a survey of education magazine sales but it referred to the survey result of other types of magazines. A statement, “Watta, No.1 Bestselling Job Advertisement,

Home, and Car Book,” and the survey result, were displayed in a frame next to a name of the magazine “Education Today.” The claim, “No.1 Bestselling,” could be clearly seen in large font size, while the statement, “Job Advertisement, Home, and Car Book,” was printed in very small font size. Consumers would be misled that “Education Today” magazine was the No.1 bestselling education magazine, while there was no survey of sales supporting the claim, and the result of the survey referred in the advertisement was irrelevant. Thus, the statement would materially mislead consumers about goods, pursuant to Section 22 paragraph two (2) of the Consumer Protection Act. Accordingly, the Defendant No.1 lawfully exercised its discretion to issue orders barring the Plaintiff from using the misleading statement in its magazines.

The Supreme Administrative Court affirmed the decision of the Administrative Court of First Instance to dismiss the case.