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KFTC's 2025 Key Operational Plans for the AI Sector - AI Washing

On January 8, 2025, the Korea Fair Trade Commission (the "KFTC") announced its key operational plans for the year. As part of its efforts to revitalize the economy and establish a solid foundation for fair trade practices, it outlined four key initiatives: (i) boosting economic vitality for small and medium-sized enterprises (SMEs) and small business owners, (ii) fostering innovation-driven competition to prepare for the future, (iii) strengthening consumer protection and enhancing consumer rights, and (iv) ensuring the reasonable application of regulations on conglomerate groups.

In this context, the KFTC highlighted its plans for the artificial intelligence ("AI")[1] sector. Under the innovation-driven competition initiative, the KFTC announced plans to conduct an in-depth analysis of new and emerging forms of collusion, such as those facilitated by AI, focusing on case studies, legal principles, and international trends, while developing response strategies. As part of its consumer protection efforts, it also intends to monitor "AI washing" practices and conduct market surveys on such activities.

The term "AI washing" refers to false or exaggerated advertising of products or services as AI-based, even when they are either unrelated to actual AI technology or make only limited use of it. As AI emerges as a key factor in corporate competitiveness, the KFTC appears focused on addressing such practices due to their potential impact on consumers and the market. We discuss below key aspects of the KFTC's recent focus on AI washing.

I. Labeling and Advertising Regulations

Labels and advertisements that may deceive or mislead consumers and disrupt fair trade practices are prohibited as unfair labeling or advertising under Article 3 of Korea's Act on Fair Labeling and Advertising (the "Advertising Act").

The concept of labeling and advertising under the Advertising Act is broad, encompassing not only traditional advertisements, but also a wide range of promotional activities. For example, information provided in the frequently asked questions (FAQ) section of a company's website can also be considered advertising. As such, businesses should be mindful that various activities undertaken to promote their AI capabilities to consumers could fall within the scope of labeling and advertising regulations.

1 The definition of AI may vary, but Article 2(1) of the Framework Act on the Development of Artificial Intelligence and Establishment of Trust Foundation enacted on January 21, 2025, and set to take effect on January 22, 2026, defines AI as "the electronic implementation of human intellectual abilities, such as learning, reasoning, perception, judgment, and language comprehension."

Furthermore, if a label or advertisement contains false or exaggerated claims, it may be sanctioned as false or exaggerated advertising. Omitting or concealing material facts or information that could influence a consumer's purchasing decision may constitute deceptive advertising and result in regulatory scrutiny.

II. Types of AI Washing Practices and Enforcement

In future enforcement actions against AI washing, the KFTC may refer to its existing guidelines on the Advertising Act as well as guidelines and enforcement cases from other jurisdictions.

1. Types of Potentially Problematic Practices

Based on the KFTC's notice on unfair labeling and advertising standards, its guidelines on reviewing deceptive labeling and advertising, and recent guidance from the Oregon Department of Justice,[2] it appears that the following practices could constitute AI washing:

- Misrepresenting that a product has AI functionality that it does not possess
- Providing false or exaggerated information about the characteristics, uses, benefits, or qualities of a product's AI functionality, such as:
  - Advertising limited or partial AI functionality as if it applies broadly or serves as a core feature
  - Claiming that AI functionality has reached a certain level of performance when it has not
  - Failing to specify the criteria for AI performance, resulting in vague claims about AI achieving certain outcomes
  - Presenting unverifiable or unproven AI functions as confirmed or guaranteed
- In comparative advertisements, misrepresenting a competitor's AI capabilities to create a misleading comparison, making partial comparisons appear comprehensive, or failing to compare under equal conditions
- Omitting or concealing significant flaws or limitations in a product's AI functionality, either in whole or in part

2 "What you should know about how Oregon's laws may affect your company's use of Artificial Intelligence," guidance from Attorney General Ellen Rosenblum of Oregon Department of Justice, dated December 24, 2024.

2. U.S. Securities and Exchange Commission's Enforcement Cases

Enforcement actions by the U.S. Securities and Exchange Commission ("SEC") involving false disclosures, which closely resemble false advertising practices, offer valuable references.

1) Delphia (USA) Inc. and Global Predictions Inc.

On March 18, 2024, the SEC announced that Delphia (USA) Inc. and Global Predictions Inc., two investment advisory firms, agreed to pay a combined civil penalty of USD 400,000 for their AI-washing practices:[3]

- Delphia (USA) Inc. claimed it "puts collective data to work to make [its] AI smarter so it can predict which companies and trends are about to make it big and invest in them before everyone else," despite lacking AI or machine learning capabilities.
- Global Predictions Inc. falsely promoted itself as the "first regulated AI financial advisor" and claimed it provided "expert AI-driven forecasts," which was untrue.

2) Presto Automation Inc.

On January 14, 2025, the SEC issued a consent order against Presto Automation Inc. for making false and misleading statements about its Presto Voice technology, which employs AI-assisted speech recognition to automate aspects of drive-thru order-taking at quick-service restaurants.[4]

- Presto failed to disclose that Presto Voice's AI technology was owned and operated by a third party for a period of time, yet it falsely claimed the technology as its own.
- Presto also misrepresented that Presto Voice eliminated the need for human order-taking, while in reality, most orders still required human intervention (manual input by remote workers).

III. Implications and Suggested Approaches

The KFTC's explicit inclusion of AI in its 2025 key operational plans underscores its commitment to ensuring fair competition and consumer protection in AI-related markets. This signals a clear direction for the KFTC's future enforcement activities.

3 https://www.sec.gov/newsroom/press-releases/2024-36
4 https://www.sec.gov/files/litigation/admin/2025/33-11352.pdf

Businesses should proactively assess their promotional activities for potential AI washing issues, drawing on the practices and enforcement cases discussed above. Strengthening internal compliance systems and seeking expert reviews are highly recommended.

BKL's Antitrust & Competition Group will continue to monitor developments in AI-related competition law and provide tailored insights and practical guidance to help businesses navigate these evolving challenges.

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