

Jieshun Construction & Anjia International

Supreme Administrative Court (2019)

Case: Supreme Administrative Court rejected the administrative litigation filed by Jieshun Construction and Anjia International over the sanctions from the FTC for their violations of Fair Trade Law

Keyword(s): False advertisement, show house, mezzanine structure

Reference: Supreme Administrative Court Judgment (2019) Pan Tzu No.160

Industry: Real Estate Development Activities (6700)

Relevant Law(s): Article 21 of the Fair Trade Law

Summary:

1. The FTC (the appellee) received complaints saying when marketing a housing project between May 10 and Aug, 20, 2014, the appellants Jieshun Construction Co., Ltd. (hereinafter referred to as “Jieshun Construction”) and Anjia International Enterprise Co., Ltd. (hereinafter referred to as “Anjia International”) displayed A and B advertising booklets (hereinafter referred to as the advertisements in question) carrying the wording of “Investor and Builder—Anjia International.” Booklet A also contained the text of “B1 space like a ground floor lobby exhibiting modern fashion sense with metal and glass similar to Bvlgari Hotel London—a multifunction communal space and the second hall for your cars.” Meanwhile, the space over the restroom by the bedroom curtain appeared to be a mezzanine structure through the window. It was Jieshun Construction that invested the capital to build the housing project. Moreover, the building license indicated that B1 was approved to be used as an air raid shelter and for parking, and there was also the wording that no mezzanine structure was to be constructed on any floor. Therefore, the advertisements in question and the show house were a false and misleading representation that could affect transaction decision. It was false advertising in violation of Article 21(1) of the Fair Trade Law. For this reason, the FTC issued Disposition Kung Ch’u Tzu No.106058 and imposed 1.8 million NT dollars (same currency applies hereinafter) on Jieshun Construction as the administrative fine and 600,000 dollars on Anjia International. The appellants found the sanctions unacceptable and filed administrative litigations, but it was rejected. Therefore, they filed this appeal.

2. The information posted in advertisements for consumers is often an important basis for consumers to decide whether they will make purchases. If an enterprise posts false or misleading advertisements about its product or service, it can cause consumers to have wrong perceptions that lead to incorrect decision-makings. In consequence, the original market competition order will cease to function whereas competitors will also lose customers and then unfair competition will arise. Therefore, as long as an enterprise makes any false or misleading representation about its product or service through advertising or other approaches to make such information known to the public, it is considered in violation of Article 21(1) of the Fair Trade Law.
3. The FTC's investigation revealed that Jieshun Construction invested the money and built the housing project, not Anjia International. The advertisements in question already caused general consumers to have the wrong perception that the housing project had been built by Anjia International. In addition, the building license indicated that B1 was approved to be used as an air raid shelter and for parking and there was also the wording that no mezzanine structure was to be constructed on any floor. When the builder intended to turn the air raid shelter and parking space into a lobby or multifunction room, it had to apply for permission on floor area transfer and then change the design according to law. However, such important information was not available in the advertisements in question. Consumers could therefore easily have wrong perceptions. Furthermore, the show house gave people the impression that mezzanines could be constructed to divide the space into upper and lower levels to increase the interior space after the housing project was completed. It was evident that this part of the advertisements in question could have an effect on transaction decisions. It was a false and misleading representation and definitely in violation of Article 21(1) of the Fair Trade Law.
4. In conclusion, the original sanctions in the original decision shall be maintained and the decision to reject the appeal from the appellants was correctly made. The purpose of the appeal to claim the original decision was in violation of law and had to be discarded was groundless. The appeal is thus rejected.

Appendix:

Jie Shun Construction Ltd.'s Uniform Invoice Number: 29076675

An Jia International Co., Ltd.'s Uniform Invoice Number: 23009622

Summarized by: Lee, Chun-Ying; Supervised by: Ren, Han-Ying