

Guangming Construction Co., Ltd.

Taipei High Administrative Court (2021)

Case: Taipei High Administrative Court rejected the administrative litigation filed by Guangming Construction over the sanction from the FTC for their violations of Fair Trade Law

Keyword(s): False advertisement, mezzanine

Reference: Taipei High administrative Court Judgment (2021) Su Tzu No.558

Industry: Construction of Buildings (4100)

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

Summary:

1. In August 2020, the appellee (FTC) was informed that when the appellant was marketing the “Humeiyue” housing project located in Neihu District, Taipei City, the company’s salespeople would give potential buyers a tour and showed them a 5F unit in which there was a mezzanine structure. However, the informant thought the mezzanine design was not in compliance with building regulations and therefore false advertising was suspected. After notifying the appellant and the marketing agent Shunyongxing Advertising Co., Ltd. to provide their statements, requesting the Department of Urban Development of Taipei City Government for its opinion and investigating the case, the FTC concluded that the appellant had violated Article 21(1) of the Fair Trade Law by showing potential buyers the display home between January and December in 2020 because the practice was a false and misleading representation with regard to product and also could affect transaction decisions. Therefore, the appellee issued Disposition Kung Ch’u Tzu No.110009 dated Mar. 18, 2021 and imposed on the appellant an administrative fine of one million New Taiwan dollars (same currency applies hereinafter). The appellant found the sanction unacceptable and filed this administrative litigation.
2. The legislative purposes of Article 21(1)(2) of the Fair Trade Law are to maintain market order and market function for fair competition. Therefore, enterprises are expected not to adopt false or misleading advertisements or other ways of making known to the public to market their products or services and gain transaction opportunities. At the same time, according to the Building Act, builders have the obligation to construct homes according to the approved items in the building license while homebuyers are obliged to use the homes they purchase

in compliance with related regulations set forth in the Building Act. If there is any violation, they will be subject to the Building Act and related regulations.

3. The appellant was the builder of the housing project and constructed the display home. Between January and December in 2020 when the housing project was marketed, the space above the dining room in the sample home exhibited at the reception center was a two-level design. The Department of Urban Development of Taipei City Government confirmed that the as-built drawings did not include any mezzanine design. In other words, the illegal structure was constructed without applying for approval in advance. It was therefore in violation of the Building Act. It would be inspected in accordance with the Taipei City Government Regulations governing Disposal of Illegal Buildings and dismantled. Apparently, the upper level of the space above the dining room in the sample home was an illegal structure constructed without application for approval in advance. As home prices in Taipei City were excessively high, due to limited financial capacities and actual needs, most homebuyers would try to find larger spaces sold at lower prices. The mezzanine design in the display home gave consumers the perception that the interior space was increased and they would therefore make the decision to purchase a unit as a result of this perception. The practice of the appellant was a false and misleading representation with regard of product and also could affect transaction decisions. The conduct could have an impact on the market order and market function for fair competition. It was in violation of Article 21 of the Fair Trade Law. For this reason, the request of the appellant for revocation of the original sanction was groundless.
4. As described above, all the claims made by the appellant asserting that the original sanction had been illegal could not be accepted. The original sanction was legally sound. The request of the appellant for revocation of the original sanction was groundless. Hence, the application was rejected.

Appendix:

Guangming Construction Co., Ltd.'s Uniform Invoice Number:
50973892

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