

**Chenming Construction Co., Ltd. &
Friendly Marketing Co., Ltd.**

1483rd Commissioners' Meeting (2020)

Case: Chenming Construction and Friendly Marketing violated the Fair Trade Law by posting false advertisements to market "Chenming Quanfeng" housing project

Keyword(s): Machine room, housing project, false advertising

Reference: Fair Trade Commission Decision of April 8, 2020 (the 1483rd Commissioners' Meeting); Disposition Kung Ch'u Tzu No.109022

Industry: Real Estate Development Activities (6700), Real Estate Agencies Activities (6812)

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

Summary:

1. On the floor plans for Buildings A, B and D in the advertisements for the "Chenming Quanfeng" housing project, Chenming Construction Co., Ltd. (hereinafter referred to as "Chenming Construction") and Friendly Marketing Co., Ltd. (hereinafter referred to as "Friendly Marketing") indicated the pent house levels 1 and 2, originally to be used for machine rooms, as bathroom and bedroom space. False advertising was involved in this indication.
2. Findings of the FTC after investigation:
 - (1) Chenming Construction constructed the housing project and commissioned Friendly to sale and market the units. Friendly Marketing would be rewarded a certain percentage of the final sale price as its service fee, but was responsible for all the personnel expenses, salaries, bonuses, referral fees, petty cash and telephone bills, and so on.
 - (2) In the advertisements, the machine rooms on pent house levels 1 and 2 were indicated as bathroom and bedroom space. However, according to Yilan County Government, Chenming Construction had not applied for any approval to turn the pent house levels into bathroom and bedroom space. In other words, it was inconsistent with the use and drawings originally approved by Yilan County Government. Moreover, it would not comply with the limitation of 14 meters in height at the maximum for a 4-story building and the regulation of the total floor space being 180% maximum. If a construction company violated Article 73 of the Building Act, it would be sanctioned according to Article 91 of the same Act.
3. Grounds for disposition:
 - (1) Chenming Construction invested and constructed the housing project. It had entered into a contract with Friendly Marketing and commissioned the latter to market and sell the units. Except for investing in the project, it was sufficient to justify that Chenming Construction, based on the intention of selling its own products, had commissioned Friendly Marketing to make related advertisements and market the project. Moreover, Chenming Construction also admitted that the company had provided the floor plans for Buildings A, B and D. In other words, Chenming Construction was indeed the advertiser in this case.
 - (2) Friendly Marketing accepted the commission to plan and produce advertisements for the housing project and to sell the units at the same time. Both parties had entered into a contract and a certain percentage of the final sale price would become the service fee for Friendly Marketing. Friendly Marketing financed the advertising and executed the

advertising activities, and it would make the effort to sell the units and collect its service fees from Chenming Construction according to how many units it has sold. For this reason, Friendly Marketing was also an advertiser in this case.

- (3) In the advertisements for the housing project, the machine rooms on pent house levels 1 and 2 were indicated as bathroom and bedroom space. It gave people the impression that such space arrangement was legitimate. However, according to the professional opinion from Yilan County Government, changing the two pent house levels to become part of the interior as indicated on the floor plans was inconsistent with the use and drawings originally approved by it and would be in violation of Article 73 of the Building Act. Therefore, the content of representation in the advertisements was inconsistent with the fact. The difference was difficult for the general public to accept and could also cause consumers to have misunderstandings or make erroneous decisions. It was a false and misleading representation in violation of Article 21(1) of the Fair Trade Law. After assessing the motive behind the unlawful conduct of Chenming Construction and Friendly Marketing, the level of harm to trading order, the duration, the business scale, operating condition and market position of the two companies, as well as past records of violations and attitude of cooperation in the investigation, the FTC, citing the first section of Article 42 of the Fair Trade Law, imposed administrative fines of NT\$500,000 on Chenming Construction and NT\$200,000 on Friendly Marketing.

Appendix:

Chenming Construction Co., Ltd.'s Uniform Invoice Number: 28556985

Friendly Marketing Co., Ltd.'s Uniform Invoice Number: 24888111

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