

L. G. M. Limited

Supreme Administrative Court (2015)

Case: The Supreme Administrative Court overruled the appeal filed by L. G. M. Limited regarding its violation of the Fair Trade Law

Keyword(s): Overseas resort, tour membership, cash feedback

Reference: Supreme Administrative Court Judgment (2015) Pan Tzu No. 737

Industry: Travel Agency, Tour Operator, Reservation Service and Related Activities (7900)

Relevant Law(s): Article 24 of the Fair Trade Law in effect at the time of the conduct (Article 25 of the current version)

Summary:

1. The appellant (L. G. M. Limited) lured consumers to purchase its overseas resort CVC membership cards by claiming that there would be cash feedback and that the company would provide resale service to attract consumers to purchase VIP Asia memberships. It was deceptive and obviously unfair conduct that was able to affect trading order in violation of Article 24 of the Fair Trade Law in effect at the time of the conduct. The appellee (the FTC) sanctioned the company who found the sanction unacceptable and appealed. Reassess according to the discretion of 2013 Su Tzu Decision No. 707, the appellee concluded the case and cited the first section of Article 41 of the Fair Trade Law and issued Disposition Kung Ch'u Tzu No. 103061 on May 16, 2014 to impose NT\$2.5 million on the company for its inappropriate claim of giving cash feedback to lure consumers to purchase overseas resort CVC membership cards and NT\$1.5 million for its inappropriate claim of providing resale service to attract consumers to purchase VIP Asia memberships. The fines totaled NT\$4 million. The appellant found the fines unacceptable and petitioned. But the petition was later rejected. The appellant then filed administrative litigation but it was rejected by the court of original jurisdiction via 2015 Su Tzu Decision No. 22. The appellant still found the decision unacceptable and file its appeal in this case.
2. The appellant abused its information advantage and concealed the facts significant to the transaction decision in conducting its business transactions with consumers. As a result, consumers' interests were jeopardized. Despite that the evidences showed that only five consumers suffered from the losses but if the conduct of the appellant was not stopped, it would affect other potential trading counterparts and cause greater harms to others in the future. The appellant's concealment of important trading information had already affected trading order. The results of the questionnaire survey, records of statements provided by consumers over the phone, petition contents, written complaints filed, reasons of judicial discretion and legal opinions, and why the argument of the appellant was not acceptable were all clearly described in the original decision delivered by Taipei High Administrative Court.
3. The representative of the appellant, Philip Neaves, adopted unlawful marketing practices to sell the membership cards and requested consumers to pay a deposit before viewing the purchase contract. He also claimed that the company would

provide resale service to entice consumers to make purchase decisions and was convicted criminal offense for 86 counts of fraud according to Taiwan High Court 2009 Shang Chong Su Tzu Decision No. 50. The large number of victims indicated trading order had obviously been affected. In other words, the court supported the appellee's conclusion that the appellant had violated Article 24 of the Fair Trade Law in effect at the time of the conduct. Moreover, the appellant lured consumers to make transactions and gave little time for them to review the contract. The difference between the information in the written documents and the oral presentations provided by its sale representatives was difficult to distinguish without close scrutiny. This was confirmed in the original court decision as a practice intended to mislead consumers into doing transactions and concealment of important trading information to cause consumers to make wrong decisions. Undoubtedly it was deceptive conduct.

4. The Supreme Administrative Court maintained the decision of the original court and the original sanction and rejected the appellant's appeal over the ruling in the first instance on the grounds that the appeal was merely a reiteration of reasons that the original court did not accept. The argument that the original ruling was in violation of related laws and regulations and therefore had to be discarded was groundless and the appeal was therefore rejected.

Appendix:

L.G.M. Limited's Uniform Invoice Number: 16447251

Summarized by Wang, Cheng-Chieh ; Supervised by Ren, Han-Ying