

**Bills Committee on
Trade Descriptions (Amendment) Bill 2007**

Supplementary information on Overseas Legislation

Misleading Price Indication

There are three legislative approaches generally adopted overseas to deal with misleading price representation. They are set out below.

Approach (a) – General non-specific provisions

2. Approach (a) provides a broad and embracing provision against malpractice which exploits false and misleading representations of price. It allows flexibility in dealing with different malpractices in the marketplace. However, it lacks certainty as to whether a particular act contravenes the law. Examples include:

Australia: The Trade Practices Act provides that “*A corporation shall not in connection with the supply of goods or services make a false or misleading representation with respect to the price of goods or services.....*”

New Zealand: The Fair Trading Act stipulates that “*No person shall, in trade, in connection with supply of goods or services make a false or misleading representation with respect to the price of any goods or services*”

Approach (b) – General, non-specific provisions, supplemented by definitions or narrower specific provisions

3. This is similar to Approach (a), except that there are additional provisions in relation to the meaning of misleading price or the acts that constitute an offence. While there is greater certainty as to the behaviour that constitutes an offence, such provisions lack flexibility. Examples include:

U.K.: The Consumer Protection Act stipulates that “*a person shall be guilty of an offence if, in the course of any business..... gives an indication which is misleading as to the price at which goods are available*”

Section 21 states that “.....an indication is misleading as a price ifprice is less than in fact it is.....orapplicability of the price does not depend on facts or circumstances on which its applicability does in fact depend.....”

The Price Marking Order further states that “ An indication of selling price, unit price.....shall be unambiguous, easily identifiable and clearly legible.....given in proximity to.....the product..... or a visual or written description of the product; and so placed as to be available to consumers without the need for them to seek assistance from the trader”

Malaysia: The Consumer Protection Act stipulates that “a person commits an offence if he gives to a consumer an indication which is misleading as to the price or if an indication givenas to the price becomes misleading and he fails to take reasonable steps to prevent the consumer from relying on the indication.” It further sets out that “an indication is misleading as to a price or a method of determining a price if what is conveyed by the indication includesprice or method is not what in fact it is orapplicability of the price or method does not depend on facts or circumstances on which it does in fact depend.....”

Singapore: The Consumer Protection (Fair Trading) Act stipulates that “It is an unfair practice for a supplier, in relation to a consumer transaction do anything specified in the Second Schedule.”

The acts set out in the Second Schedule include:

“Representing that a price benefit or advantage exists respecting goods or services where the price benefit or advantage does not exist”

“Charging a price for goods or services that is substantially higher than an estimate provided.....” and

“Representing in relation to a voucher that another supplier will provide goods or services at a discounted or reduced price if the supplier..... knows or ought to know that the other supplier will not do so”

Approach (c) – Very specific provisions that specifically set out how price of goods should be displayed

4. Approach (c) provides very specific requirements in which price should be represented. This approach gives certainty on how a price should be displayed to guard against misleading behaviour. It gives retailers clear guidance for compliance. Nevertheless, such specificity would be rather rigid and may create difficulties for the retail sector.

US (New York): The State Weights and Measures Regulations stipulates that:

“All consumer commodities required to be unit-priced shall have the unit price and total selling price disclosed to the consumer.....” and that the unit price “ shall be clear and conspicuous.” It further sets out that *“If the unit pricing information is displayed.....the stamp, tag, label shall contain*:

- *the total selling price in type no smaller than 3/8 of an inch in height;*
- *the unit price in type no smaller than 3/16 of an inch in height;*
- *the words “Unit Price” above or below the numerical price per measure;*
- *the unit of measure*”

Connection With or Endorsement By Any Individual or Body

5. The following are examples of provisions on misleading representation regarding the seller’s connection with or endorsement by others:

New Zealand: The Fair Trading Act sets out that *“No person shall make a false or misleading representation that a person has any sponsorship, approval, endorsement, or affiliation*”

Australia: The Trade Practices Act prohibits representation “ that the corporation has a sponsorship, approval or affiliation it does not have

US: The Trademark Act stipulates that it is an offence to make “false or misleading representation of fact, which is likely to cause

confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods by another person”

Malaysia: The Consumer Protection Act prohibits “ *false or misleading representation that the person has any sponsorship, approval, endorsement or affiliation*”

Misleading Representation on After-Sale Services

6. The following are provisions to regulate misrepresentation of after-sale services, including the availability of facilities for repair and existence of warranty:

Australia: The Trade Practices Act makes it an offence to “ *make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods or existence, exclusion or effect of any condition, warranty, guarantee, right or remedy*”

New Zealand: The Fair Trading Act makes it an offence to “ *make a false or misleading representation concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy*”

Malaysia: The Consumer Protection Act prohibits “ *false or misleading representation that concerns the existence, exclusion or effect of any condition, guarantee, right or remedy*”

Singapore: The Consumer Protection (Fair Trading) Act states that “..... *representing the availability of facilities for repair of goods or of spare parts for goods if that is not the case*” constitutes an unfair practice.

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