

**TRADE DESCRIPTIONS (AMENDMENT)
BILL 2007**

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A BILL

To

Amend the Trade Descriptions Ordinance.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Trade Descriptions (Amendment) Ordinance 2007.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

PART 2

AMENDMENTS TO TRADE DESCRIPTIONS ORDINANCE

3. Long title amended

The long title to the Trade Descriptions Ordinance (Cap. 362) is amended—

- (a) by adding “misleading or incomplete information,” after “false trade descriptions,”;
- (b) by adding “or suppliers of such goods” after “in the course of trade”.

4. Interpretation

(1) Section 2(1) is amended by repealing the definition of “goods in transit” and substituting—

“ “goods in transit” (過境貨品) means goods which—

- (a) are brought into Hong Kong on a vessel or aircraft for the sole purpose of taking them out of Hong Kong; and
- (b) remain at all times while they are in Hong Kong on the vessel or aircraft;”.

(2) Section 2(1) is amended in the definition of “trade description” by adding—

- “(k) availability in a particular place of facilities for the inspection, repair or service of the goods;
- (l) warranty given in respect of the facilities referred to in paragraph (k);
- (m) the person by whom the facilities referred to in paragraph (k) are provided;
- (n) the scope of the facilities referred to in paragraph (k);
- (o) the period for which the facilities referred to in paragraph (k) are available;
- (p) the charge or cost at which the facilities referred to in paragraph (k) are available;”.

5. Special provisions applicable to goldware

Section 3(2)(a) is amended by repealing “the Schedule” and substituting “Schedule 1”.

6. Marking orders

(1) Section 4 is amended in the heading by adding “**and provision of information, etc.**” after “**Marking**”.

(2) Section 4 is amended by adding—

“(4) Without prejudice to subsection (2), an order under this section may provide that a contravention of any provision of the order is an offence punishable with a fine at level 6 and a term of imprisonment for 3 months.

(5) For the avoidance of doubt, information required by 2 or more orders made under subsection (1) to be contained in an invoice or receipt may, where the information is provided in respect of the same item of goods, be contained in one single invoice or receipt.”.

7. Part IIA added

The following is added—

“PART IIA**MISLEADING OR INCOMPLETE INFORMATION****13A. Signs indicating price per weight unit must give clear information**

(1) Any person who, without reasonable excuse, displays in the course of any trade or business a sign which—

(a) indicates a price set by reference to any weight unit for any goods that are exposed for sale; but

(b) fails, within the meaning of subsection (2)(b), to give clear information as to the actual price of the goods,

commits an offence.

(2) For the purposes of subsection (1)—

(a) “sign” (標誌) includes notice, placard, label and any other article that serves a similar purpose;

(b) a sign which indicates the price set by reference to any weight unit for any goods fails to give clear information as to the actual price of the goods if—

(i) any letter, word, numeral or character on the sign that indicates the price or the weight unit is partially or completely obscured while some other such letters, words, numerals or characters are visible;

(ii) any letter, word, numeral or character on the sign that indicates the price or the weight unit is, having regard to—

(A) the size and distinctiveness of the letter, word, numeral or character; and

(B) the colour of the letter, word, numeral or character as contrasted with the colour of the background on which it is marked,

substantially less conspicuous than other letters, words, numerals or characters on the sign that indicate the price; or

(iii) the letters, words or characters on the sign that indicate the weight unit are unreasonably far apart from the letters, words, numerals or characters on the sign that indicate the price.

13B. If price does not include basic accessories, purchaser to be informed before payment

- (1) Any person who—
 - (a) exposes any goods specified in Part 1 of Schedule 2 for sale in the course of any trade or business at a price which does not include any basic accessories of the goods that are reasonably expected to be included in the price; and
 - (b) fails to communicate, in the specified manner, to a person who offers to purchase the goods, the information that the price does not include the accessories before the person pays for the purchase,commits an offence.
- (2) In subsection (1)—
 - (a) “basic accessories” (基本配件), in relation to any goods specified in Part 1 of Schedule 2, means accessories that, though not being an integral part of the goods in structural terms, are nevertheless essential for the effective performance of the principal function of the goods;
 - (b) “specified manner” (指明方式) means the manner in which the price of the goods is communicated to the person who offers to purchase the goods.
- (3) For the purposes of subsection (1), in determining whether any basic accessories of any goods are reasonably expected to be included in the price of the goods as communicated to a person who offers to purchase the goods, regard shall be had to—
 - (a) the prevailing trade practice;
 - (b) the representation, if any, made to the person by the person who exposes the goods for sale (“seller”);
 - (c) whether the instructions for users provided by the manufacturer or distributor of the goods show that the goods and the accessories are treated as a single item for the purpose of sale;
 - (d) whether the packaging of the goods and the accessories is such that they are treated as a single item for the purpose of sale; and
 - (e) whether the price of the goods at which they were supplied to the seller included the accessories.
- (4) The Secretary for Commerce and Economic Development may by notice published in the Gazette amend Schedule 2.

**13C. False or misleading representation
as regards seller's connection
with another person**

(1) Any person who, in the course of any trade, business or profession, makes a false representation to any other person that a particular seller (whether or not the seller is the person who makes the representation) who sells any goods in the course of any trade or business is connected with or endorsed by any individual or body commits an offence.

(2) Any person who—

- (a) in the course of any trade, business or profession, makes a representation to any other person (“information recipient”) that a particular seller who sells any goods in the course of any trade or business is connected with or endorsed by any individual or body (“subject individual or body”);
- (b) ought reasonably to expect that the information recipient is likely to mistake the subject individual or body for another individual or body who or which is widely known to be of good standing and reputation (“reputable individual or body”) because the name of the subject individual or body is identical with, or very similar to, that of the reputable individual or body; and
- (c) fails, where the seller is not connected with or endorsed by the reputable individual or body, to take reasonable steps to prevent the information recipient from believing that the seller is connected with or endorsed by the reputable individual or body,

commits an offence.

(3) For the purposes of subsections (1) and (2)—

- (a) a representation that a seller is connected with an individual or body is made if it is suggested that—
 - (i) the individual or body has a proprietary interest (whether as the proprietor, a shareholder, a partner or otherwise) in the seller;
 - (ii) the individual or body is in any form of close business association with the seller; or
 - (iii) the seller is the agent or principal of the individual or body;
- (b) a representation that a seller is connected with a body is made if it is suggested that the seller and the body are owned by, or under the control of, the same person;

- (c) a representation that a seller is endorsed by an individual or body is made if it is suggested that—
- (i) the individual or body makes a positive evaluation specifically of the seller; or
 - (ii) the seller has the permission, authorization or consent of the individual or body without which the seller would not be able to sell the goods concerned lawfully.
- (4) It is a defence for a person charged under subsection (1) to prove that he had reasonable cause to believe that the representation was true.”.

8. Penalties

(1) Section 18(1) is amended by repealing “11 or 12” and substituting “11, 12, 13A, 13B or 13C”.

(2) Section 18(1)(b) is amended by repealing “a fine of \$100,000” and substituting “a fine at level 6”.

(3) Section 18(1A) is amended by repealing “a fine of \$5,000” and substituting “a fine at level 2”.

(4) Section 18(2) is amended by repealing “a fine of \$10,000” and substituting “a fine at level 3”.

9. Schedule amended

The Schedule is amended by repealing “SCHEDULE” and substituting “SCHEDULE 1”.

10. Schedule 2 added

The following is added—

“SCHEDULE 2

[s. 13B]

GOODS SPECIFIED FOR PURPOSES OF SECTION 13B

PART 1

1. Digital audio player
2. Digital camcorder
3. Digital camera
4. Mobile phone
5. Portable multimedia player

PART 2

1. Definitions of products

In this Schedule—

“digital audio player” (數碼音響播放器)—

- (a) means any portable device the principal function of which is to play digital audio files in one or more audio encoding formats from any storage medium;
- (b) includes the product commonly known as an MP3 player; and
- (c) does not include a portable optical disc player;

“digital camcorder” (數碼攝錄機) means any portable device the principal function of which is to make a recording in digital format on any medium from which a moving image may by any means be reproduced;

“digital camera” (數碼相機) means any portable device the principal function of which is to record and store an image in digital format on any medium from which a still image may by any means be reproduced;

“mobile phone” (手提電話) means any portable device the principal function of which is for mobile communication through a cellular radio network with—

- (a) standard voice function of a telephone;
- (b) interconnection to the public switched telephone network (PSTN);

“portable multimedia player” (便攜式數碼多媒體播放器)—

- (a) means any portable device the principal function of which is to play digital multimedia files in one or more media recording formats from any storage medium;
- (b) includes the product commonly known as an MP4 player; and
- (c) does not include a portable optical disc player.

2. Determination of principal function

In determining the principal function of a product for the purposes of this Schedule, regard shall be had to—

- (a) the description applied to the product on its package;
- (b) the description applied to the product in any document relating to the supply of the product; and
- (c) the description applied to the product in any promotional material and advertisement concerning the product.”.

Explanatory Memorandum

The purpose of this Bill is to amend the Trade Descriptions Ordinance (Cap. 362) (“the principal Ordinance”) to strengthen the protection of consumers by expanding the definition of “trade description” and adding new provisions to prohibit certain undesirable trade practices. The Bill also proposes technical amendments to sections 2 and 18 of the principal Ordinance.

Part 1 of the Bill

2. Clause 1 provides for the short title.
3. Clause 2 empowers the Secretary for Commerce and Economic Development to appoint the commencement date of the Bill when enacted.

Part 2 of the Bill

4. Clause 3 amends the long title to the principal Ordinance to extend its scope to misleading or incomplete information and suppliers of products.
5. Clause 4 expands the definition of “trade description” in the principal Ordinance to cover information concerning after-sale inspection and maintenance service. The effect is to extend the application of the provisions of the principal Ordinance concerning false trade descriptions to false representation relating to after-sale service. For example, section 7 of the principal Ordinance makes it an offence to apply a false trade description to any goods in the course of any trade or business. That section will, subject to the enactment of clause 4, prohibit misrepresentation concerning availability, etc. of after-sale service.
6. Section 4 of the principal Ordinance empowers the Chief Executive in Council to make order to require that any goods specified in the order be marked with or accompanied by any information or instruction relating to the goods. Clause 6 adds a subsection to that section to make it clear that if 2 or more such orders apply to the same item of goods and each order requires provision of information in an invoice or receipt, providing all such information in one single invoice or receipt is sufficient.
7. Clause 7 adds a new Part IIA to the principal Ordinance. Part IIA comprises 3 sections.
 - (a) The proposed section 13A makes provision for display, in the course of any trade or business, of signs which indicate the price of any goods exposed for sale set by reference to any weight unit. If the sign fails, by the criteria set out in subsection (2)(b), to give potential customers a clear idea about the actual price of the goods, the person who displays the sign will be subject to

criminal sanction. There have been complaints against a malpractice of using very small characters for weight unit (e.g. tael) on price signs to mislead customers into believing that the price was set by reference to a bigger weight unit (e.g. catty). The purpose of the proposed section 13A is to prohibit that malpractice and other similar malpractices.

- (b) The proposed section 13B requires sellers of 5 types of electronic products (digital audio players, digital camcorders, digital cameras, mobile phones and portable multimedia players) to, where the price does not include any basic accessories of the goods (defined in subsection (2)(a)) that are reasonably expected to be included in the price, inform potential customers accordingly. Subsection (3) sets out the criteria for determining whether it is reasonable to expect that the accessories are included in the price. The information is to be communicated to potential customers in exactly the same manner in which the price is communicated (see subsection (2)(b)). For example, if the price is communicated verbally, the fact that the relevant accessories are not included in the price must also be communicated verbally.
- (c) The proposed section 13C deals with another malpractice in trade. There have been complaints that potential customers were misled into believing that certain celebrities were closely connected with or endorsed a seller when that was not the case. The proposed section 13C(1) prohibits such misrepresentation. It is also possible that the name of a person (“former”) who is closely connected with or endorses a seller is identical with or very similar to the name of another person who is reputable (“latter”). Misunderstanding may occur. Subsection (2) requires the maker of a representation that the former is closely connected with or endorses a seller to take steps to prevent the person to whom the representation is made from misbelieving that the latter is closely connected with or endorses the seller.

8. Clause 8 amends section 18(1) of the principal Ordinance to provide for the penalties for the offences under the proposed sections 13A, 13B and 13C. A person who commits such an offence is liable on conviction on indictment to a fine of \$500,000 and to imprisonment for 5 years. If an offender is convicted in summary proceedings, he is liable to a fine of \$100,000 and to imprisonment for 2 years.

9. Clause 8 also replaces some monetary amounts of fine with fine levels to bring the provisions concerned in line with the current practice.