

**TRADE DESCRIPTIONS (AMENDMENT)  
ORDINANCE 2008**

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**HONG KONG SPECIAL ADMINISTRATIVE REGION**

ORDINANCE NO. 19 OF 2008



Donald TSANG  
Chief Executive  
26 June 2008

An Ordinance 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 2008.

**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 “false, 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—

- (i) a service for the inspection, repair or maintenance of the goods; or
  - (ii) spare parts for the goods;
- (l) warranty given in respect of the service or spare parts referred to in paragraph (k);
- (m) the person by whom the service or spare parts referred to in paragraph (k) are provided;
- (n) the scope of the service referred to in paragraph (k)(i);
- (o) the period for which the service or spare parts referred to in paragraph (k) are available;
- (p) the charge or cost at which the service or spare parts 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

FALSE, MISLEADING OR INCOMPLETE INFORMATION

**13A. Price per unit of quantity on signs  
must be readily comprehensible**

(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 unit of quantity for any goods that are exposed for sale; but
- (b) fails, within the meaning given by subsection (2)(c), to indicate the price per unit of quantity in a readily comprehensible manner,

commits an offence.

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

- (a) “quantity” (數量) includes length, width, height, area, volume, capacity, weight and number;
- (b) “sign” (標誌) includes notice, placard, label and any other article that serves a similar purpose;
- (c) a sign which indicates the price set by reference to any unit of quantity for any goods fails to indicate the price per unit of quantity in a readily comprehensible manner if—
  - (i) any letter, word, numeral or character on the sign that indicates the price or the unit of quantity is partially or completely obscured while some other such letters, words, numerals or characters are visible;
  - (ii) because of any discrepancy between the manner of presentation of any letter, word, numeral or character on the sign that indicates the price or the unit of quantity and that of any other letter, word, numeral or character on the sign that indicates the price or the unit of quantity in terms of—
    - (A) the size and distinctiveness of the letters, words, numerals or characters; or
    - (B) the colour of the letters, words, numerals or characters as contrasted with the colour of the background on which they are marked,

it is reasonably likely that a person not having a close look at the sign will be unable to get a clear idea of the accurate price per that unit of quantity; or

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

(3) If a person—

(a) displays in the course of any trade or business a sign which—

(i) indicates the price of any goods set by reference to a unit of quantity; but

(ii) does not indicate that unit of quantity; and

(b) displays another sign which indicates that unit of quantity by reference to which the actual price of such goods is to be calculated,

subsections (1) and (2) shall have effect in relation to the person as if such signs were a single sign.

**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 (as determined in accordance with section 2 of Part 2 of Schedule 2) 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;

(e) whether the price of the goods at which they were supplied to the seller included the accessories; and

(f) any other relevant considerations.

(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 connection with—

(i) the supply or possible supply of any goods in the course of any trade or business; or

(ii) the promotion of the supply of any goods in the course of any trade or business,

makes a representation to any other person (“information recipient”) that the seller who supplies the goods 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 did not know and had no reason to believe that the representation was false.

(5) It is a defence for a person charged under subsection (2) to prove that he believed, on reasonable grounds, that the information recipient did not mistake the subject individual or body for the reputable individual or body.”.

## 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 MP3 player; and
  - (c) does not include 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; and
  - (b) interconnection to the public switched telephone network (PSTN);
- “portable multimedia player” (便攜式多媒體播放器)—
- (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 MP4 player; and
  - (c) does not include 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;
- (c) the description applied to the product in any promotional material and advertisement concerning the product; and
- (d) any other relevant information.”.