

Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012

**Committee Stage**

Amendments to be moved by the Secretary for Commerce and Economic  
Development

<u>Clause</u>	<u>Amendment Proposed</u>
1	By deleting subclause (2) and substituting— “(2) This Ordinance comes into operation on a day to be appointed by the Secretary by notice published in the Gazette. (3) In subsection (2)— <b>Secretary</b> (局長) has the meaning given by section 2(1) of the Trade Descriptions Ordinance (Cap. 362).”.
3	By adding— “(5A) Section 2(1), definition of <i>trade description</i> — <b>Repeal paragraph (e).</b> ”.
3(6)	By deleting “after paragraph (e)” and substituting “before paragraph (f)”.
3(9)	In the proposed definition of <i>consumer</i> , by deleting “outside” and substituting “unrelated to”.
3(9)	In the proposed definition of <i>trade description</i> , by deleting paragraph (c).
3(9)	By deleting the proposed definition of <i>Secretary</i> .
3(10)	By adding— “(6) A note located in the text of this Ordinance is provided

for information only and has no legislative effect.”.

8 By renumbering the proposed section 7A as section 7A(1).

8 In the proposed section 7A(1), by deleting the note.

8 In the proposed section 7A, by adding—

“(2) In this section—

*service* (服務) does not include any service covered by  
Schedule 4.”.

9 By deleting subclause (2) and substituting—

“(2) Section 8—

**Repeal subsection (2)**

**Substitute**

“(2) The trade description is to be taken as referring to all goods or services of the class, whether or not in existence at the time the advertisement is published—

(a) for the purpose of determining whether an offence has been committed under section 7(1)(a)(i) or 7A(1)(a); and

(b) where goods or services of the class are supplied or offered to be supplied by a person publishing or displaying the advertisement, also for the purpose of determining whether an offence has been committed under section 7(1)(a)(ii) or 7A(1)(b).”.

9 By deleting subclauses (3), (4) and (5).

- 13 In the proposed section 13D(3)(a), by deleting “and” and substituting “or”.
- 13 In the proposed section 13D(3)(b)(ii), by deleting “materially distort the economic behaviour only of that group” and substituting “cause the average member of that group only to make a transactional decision that the member would not have made otherwise”.
- 13 By deleting the proposed section 13D(5).
- 13 In the proposed section 13E(2)(b), in the Chinese text, by deleting “瞞” and substituting “藏”.
- 13 In the proposed section 13E(4)(f)(ii), in the English text, by adding “of goods” after “delivery”.
- 13 In the proposed section 13E(4)(f)(iii), by deleting “performance” and substituting “supply of service”.
- 15 In the proposed section 20(2)(a), by adding “company” before “secretary”.
- 15 In the proposed section 20(3), in the definition of *principal officer*, by adding “or engaged” after “employed” (wherever appearing).
- 15 In the proposed section 20(3), by adding—  
“*company secretary* (公司秘書) includes any person occupying the position of company secretary, by whatever name called;”.
- 18(1) By deleting “7A(b)” and substituting “7A(1)(b)”.

- 23 In the proposed Schedule 4, by deleting “[ss. 2 & 37]” and substituting “[ss. 2, 7A & 37]”.
- 23 In the proposed Schedule 4, in the Chinese text, by deleting “及《證” and substituting “或《證”.
- 24 By deleting the proposed definitions of *Broadcasting Authority* and *Telecommunications Authority*.
- 24 By adding—  
“*Communications Authority* (通訊事務管理局) means the Communications Authority established by section 3 of the Communications Authority Ordinance (Cap. 616);”.
- 27 In the proposed section 16E(1), by deleting “Telecommunications Authority and the Broadcasting Authority may each” and substituting “Communications Authority may”.
- 27 In the proposed section 16E(2), by deleting everything after “specify” and substituting “powers covered by subsection (1) that are not exercisable by the Communications Authority.”.
- 27 In the proposed section 16E(3), by deleting “Telecommunications Authority” and substituting “Communications Authority”.
- 27 In the proposed section 16E(3), by deleting everything after “practices of” and substituting—  
“licensees under the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) that are directly connected with the provision of a

telecommunications service or broadcasting service under the relevant Ordinance.”.

- 27 By deleting the proposed section 16E(4), (5) and (6).
- 27 In the proposed section 16E(8), by deleting everything after “commercial practice by the” and before “does not” and substituting “Communications Authority or any public officer authorized in writing by that Authority”.
- 27 In the proposed section 16E(9), by deleting everything after “this Ordinance the” and before “does not” and substituting “Communications Authority or any public officer authorized in writing by that Authority”.
- 27 In the proposed section 16F(1), by deleting everything after “Commissioner” and before “bodies” and substituting—  
“or the Communications Authority is performing a function under this Ordinance in relation to a matter over which the other has concurrent jurisdiction, the 2”.
- 27 In the proposed section 16F(2), by deleting everything after “Commissioner” and before “has concurrent” and substituting—  
“or the Communications Authority is performing or has performed a function under this Ordinance in relation to a matter over which the other”.
- 27 In the proposed section 16G(1), by deleting “Telecommunications Authority, and the Commissioner and the Broadcasting Authority,” and substituting “Communications Authority”.

27 In the proposed section 16G(5), by deleting “Each set of parties referred to in subsection (1)” and substituting “The Commissioner and the Communications Authority”.

27 In the proposed section 16H(1), by deleting “Telecommunications” (wherever appearing) and substituting “Communications”.

27 By deleting the proposed section 16H(2).

27 In the proposed section 16H(3), by deleting everything after “For this” and substituting—

“purpose—

(a) the reference in subsection (2)(a) of that section to authorized officers is to be taken to be a reference to the Communications Authority or any public officer authorized in writing by that Authority to exercise any of the powers that by virtue of section 16E are exercisable by that Authority; and

(b) any reference in subsection (3), (5) or (6) of that section to the Commissioner is to be taken to be a reference to the Communications Authority, or the Communications Authority jointly with the Commissioner, as the case requires.”.

27 By deleting the proposed section 16H(4) and substituting—

“(4) The Communications Authority or, in the case of jointly issued guidelines, both the Communications Authority and the Commissioner must make copies of all guidelines and amendments of guidelines available to the public for inspection at their office during ordinary business hours.”.

- 29 By deleting the proposed section 30L(3) and substituting—
- “(3) Subject to subsection (3A), a person who has given an undertaking may, with the consent of an authorized officer, withdraw or vary it, or give a new undertaking in substitution for it, at any time.
- (3A) An authorized officer may only consent under subsection (3) to the withdrawal of, or a variation of or substitution for, an undertaking if the officer has obtained the consent in writing of the Secretary for Justice to doing so.”.
- 29 In the proposed section 30N(2), in the Chinese text, by deleting everything after “獲授權人員” and before “，方” and substituting “須獲律政司司長書面同意該人員根據本條發出通知”.
- 29 In the proposed section 30N(3)(b), by adding “or continue” after “bring”.
- 29 In the proposed section 30S, in the English text, in the heading, by deleting “**CFI**” and substituting “**Court of First Instance**”.
- 31 In the proposed section 36, in the Chinese text, by deleting “提出” (wherever appearing) and substituting “提起”.
- 31 In the proposed section 36, by adding—
- “(3) A term of a contract that purports to exclude or restrict the right of a claimant to bring an action under subsection (1) against any person is of no effect.”.

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In the English text, by deleting “等” (wherever appearing).