

For discussion on
22 June 2015

**LEGISLATIVE COUNCIL
PANEL ON ECONOMIC DEVELOPMENT**

**Implementation of the Trade Descriptions
(Unfair Trade Practices) (Amendment) Ordinance 2012**

Purpose

This paper updates Members on the progress of the implementation of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (the Amendment Ordinance).

The Amendment Ordinance

2. The Amendment Ordinance came into full implementation on 19 July 2013. The amended Trade Descriptions Ordinance (Cap. 362) (the Ordinance) covers goods and services. Unfair trade practices that are prohibited include false trade descriptions, misleading omissions, aggressive commercial practices, bait-and-switch, bait advertising and wrongly accepting payment. Traders convicted under the “fair trading sections”^{*} may be liable to a maximum penalty of imprisonment for five years and a fine of \$500,000.

3. The Ordinance has introduced a civil compliance-based mechanism, under which the enforcement agencies may, with the written consent of the Secretary for Justice, accept a written undertaking from a trader (whom the enforcement agencies believe has engaged in a prohibited unfair trade practice) to stop and not to repeat the practice concerned, instead of initiating prosecution. The purpose is to encourage compliance by traders and to stop identified unfair trade practices expeditiously.

4. The Customs and Excise Department (C&ED) is the principal agency responsible for enforcing the Ordinance. The Communications Authority (CA) has concurrent jurisdiction to enforce the “fair trading

* Including sections 4, 5, 7, 7A, 13E, 13F, 13G, 13H and 13I of the Ordinance.

sections” in relation to the commercial practices of licensees under the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106) that are directly connected with the provision of a broadcasting service or telecommunications service under the respective Ordinances.

5. To facilitate compliance and enhance transparency, C&ED and CA published the Enforcement Guidelines on 15 July 2013, which provide guidance on the operation of the “fair trading sections” of the Ordinance and state the manner in which the enforcement agencies exercise their powers.

Enforcement Strategy

6. The enforcement agencies has been adopting a three-pronged approach in enforcing the “fair trading sections” of the Ordinance –

- (a) compliance promotion – by conducting briefings for and proactive visits to different business sectors, the enforcement agencies provide traders with advice and guidance on the legal requirements under the Ordinance as well as measures that should be taken for complying with the Ordinance;
- (b) enforcement – the enforcement agencies take necessary and timely enforcement actions to combat non-compliant conducts and thereby instill public confidence; and
- (c) public education and publicity – the enforcement agencies in coordination with the Consumer Council (CC) have launched extensive publicity and education programmes, raising consumers’ awareness of the unfair trade practices, promoting the concept of “smart consumption”, and also promoting good practices amongst traders.

7. The enforcement agencies have been actively handling relevant enquiries and complaints. As the Ordinance covers a wide range of goods and services, in order to facilitate traders’ compliance and optimise the use of enforcement resources, the enforcement agencies have adopted a risk-based approach under which priority is accorded to handling cases that may have significant implications on consumers, the trade or the community at large.

Implementation Progress

8. From 19 July 2013 to 31 May 2015, C&ED, the Office of the Communications Authority (OFCA) and CC respectively received 10,379, 1,607 and 7,187 complaints involving possible breach of the Ordinance. A breakdown of the complaints according to the offences involved is set out below.

Offence	C&ED	OFCA	CC
False Trade Descriptions	6,104	687	3,077
Misleading Omissions	1,542	656	1,037
Aggressive Commercial Practices	313	23	786
Bait Advertising	164	9	147
Bait-and-switch	41	13	420
Wrongly Accepting Payment	2,094	432	1,720
Others (e.g. cases outside the scope of the Ordinance)	121	186	Not applicable.

Note: As some complaints received involve more than one accusation of suspected breach of the Ordinance, the total number of cases according to the offences involved may be greater than the total number of complaints received.

9. Of the above-mentioned 10,379 complaints received, C&ED has, upon preliminary examination of 4,363 complaints, found no contravention of the Ordinance and closed the cases. For another 855 complaints, although evidence of breaching the Ordinance was not found, C&ED has reminded the traders of the need to comply with the relevant provisions of the Ordinance. Besides, C&ED has launched detailed investigation into 4,781 complaints. The remaining complaints are under preliminary examination or have been referred to other relevant bodies for follow-up actions. The aforementioned 4,781 complaints, together with the cases proactively developed by C&ED, have been consolidated into 1,284 detailed investigation cases (more than one complaint may be involved in certain cases). 1,216 of these investigation cases have been completed. Among them, C&ED has issued warning or advisory letters to the owners and sales staff concerned in 182 cases, urging them to comply with the statutory requirements. For another 6 cases, C&ED has applied to the court for forfeiture of the goods concerned without initiating prosecution. Meanwhile, C&ED has instituted prosecution of 141 cases. With the written consent of the Secretary for Justice, C&ED has accepted 10 written undertakings from traders of ceasing the trade conduct concerned in 9 cases.

10. Of the above-mentioned 1,607 complaints received, OFCA has, upon preliminary examination of 1,230 complaints, found no contravention of the Ordinance and closed the cases. For another 109 complaints, although evidence of breaching the Ordinance was not found, OFCA has reminded the traders to comply with the statutory requirements. OFCA is examining the remaining 268 complaints. OFCA has not initiated prosecution or accepted written undertakings from traders yet.

11. As for CC, of the above-mentioned 7,187 complaints received, 4,704 complaints have been considered pursuable, among which 4,040 have been closed (2,769 have been settled upon CC's conciliation, another 369 have been referred to C&ED, OFCA or other relevant organisations for follow-up actions.). The remaining 664 complaints are still in the process of conciliation.

Way Forward

12. The enforcement agencies will continue to enforce the Ordinance vigorously and combat common unfair trade practices at source to protect consumers.

**Customs and Excise Department
Office of the Communications Authority
Commerce, Industry and Tourism Branch,
Commerce and Economic Development Bureau
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