

香港添馬
添美道二號
政府總部西翼二十二樓



22/F, West Wing,
Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong

電話號碼 Tel. No.: 2810 3525
傳真號碼 Fax No.: 2801 4458

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18 September 2015

Ms Debbie YAU
Clerk to Panel on Economic Development
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
(Fax number: 3151 7052)

Dear Ms YAU,

Panel on Economic Development

A complaint submission from a member of public on advertisements of package tours

I refer to your letter of 2 September to the Secretary for Commerce and Economic Development and provide a consolidated reply from the Tourism Commission (TC) and the Customs and Excise Department (C&ED) in the ensuing paragraphs.

The Travel Industry Council of Hong Kong (TIC) all along maintains directives to regulate the publication of advertisements of package tours by travel agents. Travel agents which are proved to have violated the relevant directives will be subject to penalties by the TIC. In TC's letter of 1 November 2013 to the Legislative Council Secretariat (LegCo Secretariat), we provided the link to the "Advertisement Control Regulation" on the TIC's website and informed the LegCo Secretariat of the discussion results of the Outbound Committee under the TIC on the suggestion that advertisements of package tours should state clearly the upper and lower limits of tour fares and other related matters.

The complainant mentioned the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 and the relevant Enforcement Guidelines. The Amendment Ordinance expanded the scope of the Trade Descriptions Ordinance (Cap. 362) (“the Ordinance”), prohibiting unfair trade practices such as false trade descriptions and misleading omissions. The Enforcement Guidelines were formulated in accordance with section 16BA of the Ordinance.

According to section 2 of the Ordinance, a “trade description” in relation to a service means an indication, direct or indirect, and by whatever means given, with respect to the service or any part of the service including the price and “false trade description” means, inter alia, a trade description which is false to a material degree. According to section 7A of the Ordinance, a trader who applies a false trade description to a service supplied or offered to be supplied to a consumer commits an offence.

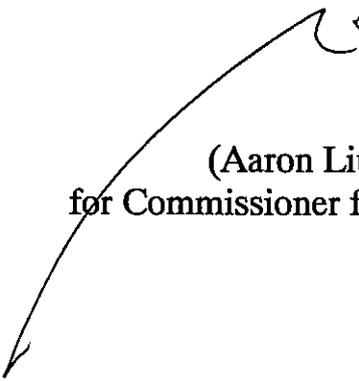
Moreover, according to section 13E of the Ordinance, a trader who engages in a commercial practice to a consumer that omits or hides material information, or provides material information in a manner that is unclear, and as a result it causes, or is likely to cause, the consumer to make a transactional decision that he would not have made otherwise, commits the offence of “misleading omissions”. The same section stipulates that all the features and circumstances of the commercial practice, the limitations of the medium used to communicate the commercial practice, and any measures taken by the trader to make the information available to consumers by other means, should be taken into account.

The Enforcement Guidelines are intended to provide guidance on the operation of the provisions under the Ordinance. The examples therein serve as general explanation and reference, illustrating the coverage and possible effect of the provisions, and how the enforcement authorities may enforce the provisions. The Enforcement Guidelines are not a substitute for or a definitive interpretation of the Ordinance. The enforcement agencies determine whether a trader has contravened an offence under the Ordinance on the basis of the facts and evidence of each case.

The situation mentioned by the complainant is relevant to Paragraph 2.20 in Part B of the Enforcement Guidelines, which states that the price advertised should tally with the actual selling price at the point of sale or checkout. Paragraph 3.4 explains that if it is impracticable for traders to provide all the necessary information to consumers due to limitations of the communication medium available, other means of communication medium should be used by the traders to make the information available to consumers to

enable them to make informed transactional decisions. In this regard, the letter dated 1 November 2013 from the TC to the LegCo Secretariat quoted the discussions of TIC, mentioning that “the price of package tours are generally determined by actual market conditions, such as the dates of departure, the availability of seats on flights, the class of air tickets and the prevailing ticket fares. Given the limited space in an advertisement, it is impossible for a package tour advertisement to list out all prices. Travel agencies typically use the minimum tour fares in their promotions, clearly marked with the word ‘from’, with details explained in the remarks or terms and conditions in their itineraries or tour enrolment forms.” The C&ED, as an enforcement agency of the Ordinance, does not find the response by the TC or the TIC to be acting against the Enforcement Guidelines of the Ordinance.

Yours sincerely,



(Aaron Liu)
for Commissioner for Tourism