

For discussion on
23 May 2016

**LEGISLATIVE COUNCIL
PANEL ON ECONOMIC DEVELOPMENT**

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

Purpose

This paper updates Members on 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 operation 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”^{*} are 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 have 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 30 April 2016, C&ED, the Office of the Communications Authority (“OFCA”) and CC respectively received 16,424, 2,182 and 9,877 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	10,083	1,101	4,446
Misleading Omissions	2,108	939	1,560
Aggressive Commercial Practices	551	51	1,314
Bait Advertising	185	13	199
Bait-and-switch	69	19	525
Wrongly Accepting Payment	3,247	449	1,833
Others (e.g. cases outside the scope of the Ordinance)	181	242	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 16,424 complaints received by C&ED, it has, upon preliminary examination of 5,947 complaints, found no contravention of the Ordinance and closed the cases. For another 982 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 8,787 complaints. The remaining complaints are under preliminary examination or have been referred to other relevant bodies for follow-up actions. The aforementioned 8,787 complaints, together with the cases proactively developed by C&ED, have been consolidated into 1,432 detailed investigation cases (more than one complaint may be involved in certain cases). 1,363 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 199 cases, urging them to comply with the statutory requirements. For another 7 cases, C&ED has applied to the court for forfeiture of the goods concerned without initiating

prosecution. Meanwhile, C&ED has initiated / is preparing to initiate prosecution of 220 cases. With the written consent of the Secretary for Justice, C&ED has accepted 11 written undertakings from traders of ceasing the trade conduct concerned in 10 cases.

10. Of the above-mentioned 2,182 complaints received by OFCA, it has, upon preliminary examination of 2,004 complaints, found no contravention of the Ordinance and closed the cases. For another 126 complaints, although evidence of breaching the Ordinance was not found, OFCA has issued advisory letters to remind the traders to comply with the statutory requirements. OFCA has initiated prosecution of one case. It is examining the remaining 51 complaints. OFCA has not yet accepted written undertakings from traders.

11. As for CC, of the above-mentioned 9,877 complaints received, 6,689 complaints were considered pursuable, among which 6,134 have been closed (4,212 were settled upon CC's conciliation and 604 were referred to C&ED, OFCA or other relevant organisations for follow-up actions). The remaining 555 complaints are still in the process of conciliation.

Imposition of a mandatory cooling-off period

12. The issue of imposing a mandatory cooling-off period was widely discussed in the community during our public consultation on the legislative proposals to combat unfair trade practices in 2010 to 2011, and we had communicated with different stakeholders on the topic.

13. The Government appreciates that consumers may have aspirations for a cooling-off period, but certain fundamental issues that should be considered in relation to implementing a mandatory cooling-off period are not simple and are controversial, such as whether a mandatory cooling-off period should generally apply to all goods and services, how small-value transactions should be handled, whether consumers can enjoy the goods and services concerned during the cooling-off period, and whether consumers having enjoyed part of the goods and services concerned during the cooling-off period should be required to pay for the enjoyed part if they request to cancel the transaction, and how the payment should be computed etc. Some practical issues also cannot be disregarded, including how consumers should exercise the contract

cancellation right and how refund should be made etc. Some traders consider that a mandatory cooling-off period would only increase the costs for honest traders but would have little deterrent effect on unscrupulous traders. Following discussion with stakeholders and careful consideration, the Government considers that imposing a mandatory cooling-off period will change the course of transactions and have significant implications on both traders and consumers. It is necessary to consider the matter carefully.

14. Generally speaking, the calls for imposition of mandatory cooling-off periods primarily target unfair trade practices deployed by certain traders in the context of accepting pre-payment. Since the Amendment Ordinance came into effect, C&ED has prosecuted unscrupulous traders who engaged in aggressive commercial practices and wrongly accepting payment in the course of accepting pre-payment. Successful cases have been established. In doing so, C&ED has been combating unfair trade practices at source.

15. With the enforcement agencies' continued efforts in combating unfair trade practices according to the Ordinance, the establishment of successful enforcement cases, as well as measures in publicity and public education, we believe that a deterrent effect will be achieved against unscrupulous traders and consumer awareness of self-protection will be heightened.

Way Forward

16. The enforcement agencies will continue to enforce the Ordinance vigorously and combat common unfair trade practices at source to protect consumers. We will continue to keep a close watch on the community's views on the Ordinance in combating unfair trade practices and on the idea of imposing a mandatory cooling-off period.

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