

# TRADE DESCRIPTIONS ORDINANCE (Cap. 362)





# Agenda

- **Background of the amendment**
- **Major amendments**
- **Fair Trade Sections of the Ordinance**
- **Civil compliance-based mechanism**





# Background

- To enhance consumer protection and prohibit unfair trade practices.
- The Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 comes into effect on **19 July 2013**.





# Major Amendments

- **Broadened the definition** of the trade descriptions in respect of **goods**
- **Included** the trade descriptions of **services** provided by traders
- **Added five** new provisions against **unfair trade practices**





# Major Amendments

- Introduced civil "compliance-based" mechanism
  - ◆ Undertakings
  - ◆ Injunctions





# Fair Trade Sections of the Ordinance



# What is Trade Description?

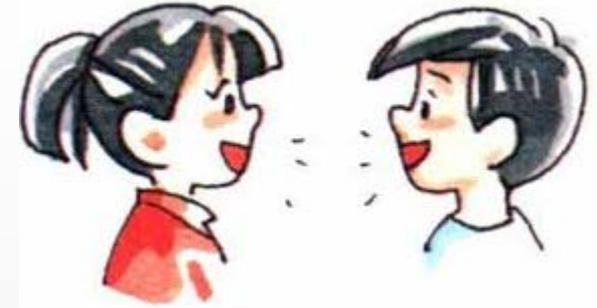
- As defined in S.2 -
  - means an **indication, direct or indirect**, and by whatever means given, with respect to the **goods / service** or any part of the **goods / service**
- trade description in relation to both goods and services could be by **whatever forms** and in **whatever means**



# What is Trade Description?

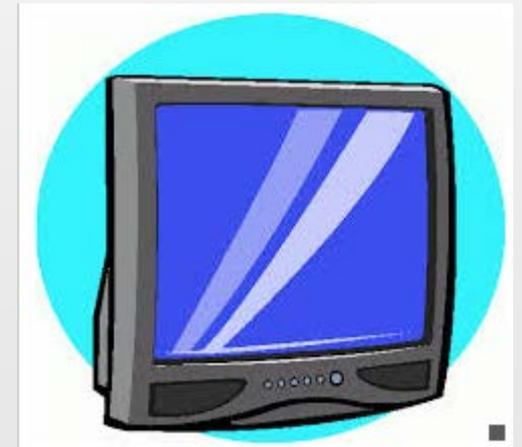
- **Forms:**

e.g. statements, advertisements  
or display notices



- **Means:**

e.g. any media, paper, visual, verbal, electronic  
and even by conduct



# Example of Trade Description



**WARRANTY CARD**

Vehicle Make: \_\_\_\_\_ Model: \_\_\_\_\_ Year: \_\_\_\_\_ VIN: \_\_\_\_\_  
 Install Date: \_\_\_\_\_ Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

Type \_\_\_\_\_ Roll ID \_\_\_\_\_  
 Front Windshield \_\_\_\_\_ Rear Window \_\_\_\_\_  
 Driver side Window(front) \_\_\_\_\_ Driver side Window(front) \_\_\_\_\_  
 Other \_\_\_\_\_

Dealership/Entity Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City/State \_\_\_\_\_ Zip Code \_\_\_\_\_  
 Phone Number \_\_\_\_\_ Installer Name \_\_\_\_\_

Customer Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City/State \_\_\_\_\_ Zip Code \_\_\_\_\_





# False Trade Description

- a trade description which is false to a **material degree**
- a trade description which, though not false, is **misleading**, that is to say, likely to be taken for a trade description of a kind that would be false to a material degree





# Example – Material Degree

- In an advertisement a trader claims that a smartphone has a **5.55** inch display whereas in fact the display measures only **5.54** inch. The difference of **0.01** inch would **unlikely** be taken as **false to a material degree**





# Provision S.7



## Offences in respect of trade descriptions of goods

- Any person who , in the course of trade or business :
    - (a) applies a false trade description to any goods supplied or offered to be supplied to a consumer; or
    - (b) supplies or offers to supply to a consumer any goods to which a false trade description is applied,
    - (c) Any person, in his possession for sale—  
any goods to which a false trade description is applied,
- Commits an offence.



# Offences in respect of trade descriptions of goods

- Goods applied false trade descriptions





## Case of False Trade Descriptions in respect of goods

- A company was alleged for supplying a second-hand car with odometer reading of **56,000 km**.
- Investigation revealed that the actual mileage of the car had exceeded **140,000 km**. The second-hand company was subsequently prosecuted.



The second-hand company was **convicted** and **fined \$40,000**.





# Provision S.7A



## Offences in respect of trade description of **services**

○ A trader who

(a) **applies** a false trade description to a service supplied or offered to be supplied to a consumer; or

(b) **supplies or offers to supply** to a consumer a service to which a false trade description is applied,

commits an offence

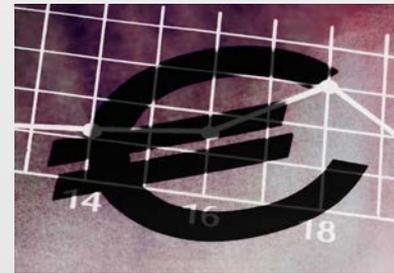




# Example – False Trade Description



- The exchange rate confirmed by the trader before the transaction was ***RMB\$100 : HK\$130***
- After transaction, it was revealed that the actual exchange rate became ***RMB\$100 : HK\$110***





## Convicted Case S.7

# False Trade Description of Services

- A foreign domestic helper agency, in the course of providing intermediary service to a customer, declared that a housemaid **did not have any working experience** in Hong Kong.
- However, investigation revealed that the maid **had worked in Hong Kong for 4 days**.





## Convicted Case S.7

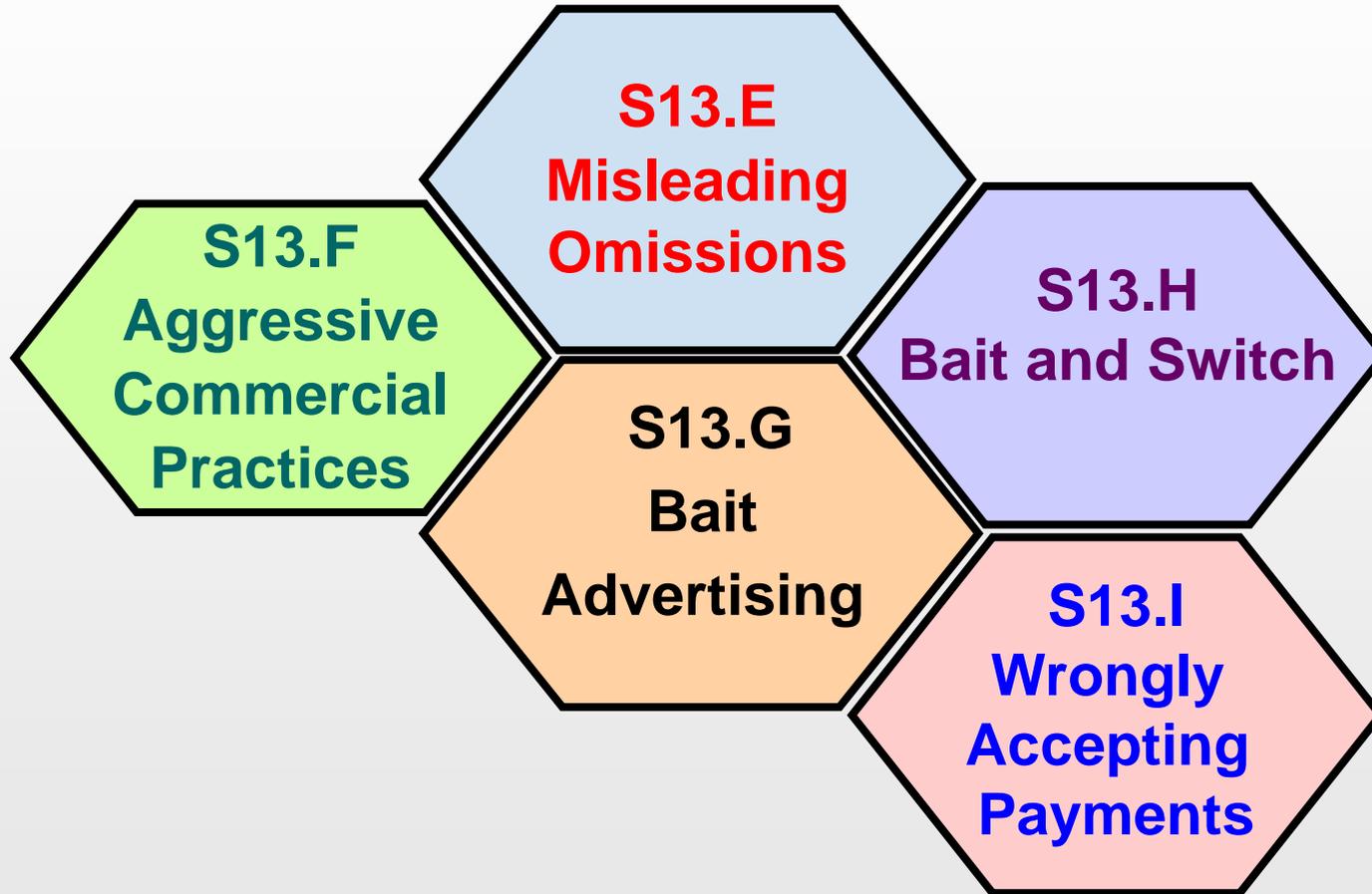
# False Trade Description of Services

- The agency and its manageress were convicted for **applying a false trade description** to a service supplied. They were fined **\$8,000** and **\$4,000** respectively and
- had to pay the victim a total of **\$10,969** as compensation.





# Unfair Trade Practices





# Provision S.13E



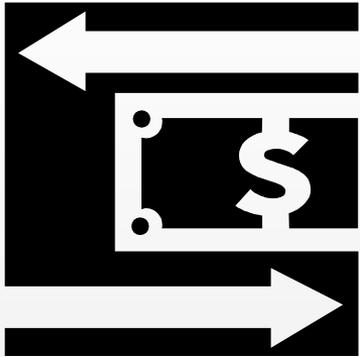
## Misleading omissions

- A commercial practice is a misleading omission if it:
  - omits or hides material information;
  - provides material information in a manner that is unclear, unintelligible,
  - ambiguous or untimely; or
  - fails to identify its commercial intent unless this is already apparent from the context





# Example – Misleading Omissions



- *a special rate for a certain currency on offer*
- *List of Exchange rates does **not specify** the rate which is only applied to transaction of **over HK\$10,000***
- ***Material information** for making transactional decision is **hidden**.*



# Convicted Case S.13E Misleading Omissions

- A beauty parlour solicited consumers to purchase prepaid service plans **without telling** them that all its existing **clients** and **equipment** would soon be **taken over by another operator**.
- Such **material information** was **essential** for an **average consumer** to make **informed transactional decisions**.
- A **director** of the beauty parlour was convicted for engaging in a commercial practice that was a **misleading omission** by **hiding material information** from customers and **fined \$4,000**.





## Convicted Case S.13E Misleading Omissions

- A Japanese restaurant was alleged to charge customers 10% surcharge during the dinner session without notice before making order.
- Investigation revealed that the restaurant did not mark it on the menu or inform customers of this surcharge which was a **material information** for a **consumer** to make **a transactional decisions**.
- Customer just realized this surcharge until they saw the bills.
- The restaurant was convicted and fined \$4,000 for engaging in commercial practice that was a misleading omission.





# Provision S.13F

## Aggressive commercial practices

- A **commercial practice** is aggressive if:
  - it significantly impairs the average consumer's freedom of choice or conduct through the use of harassment, **coercion** or **undue influence**; and
  - causes the consumer to make a transactional decision that he would not have made otherwise.





## Convicted Case S.13F

### Aggressive Commercial Practices

- Three beauticians told a consumer, on the pretext of examining her chest, that there were **lumps** which could **mutate into cancer** and suggested that she purchase a **body treatment package valued at \$140,000**.
- Despite the fact that the consumer had expressed her reluctance toward purchasing any treatment package, the three beauticians continued such sales practice for **over one and a half hours**, trying to convince her repeatedly.





## Convicted Case S.13F

# Aggressive Commercial Practices

- (continued) The consumer found their continuous persuasion **annoying** but was **scared** and **worried** that she might have cancer, and finally **unwillingly** purchased the body treatment package.
- All three beauticians were convicted for **engaging in a commercial practice that was aggressive**. One of the beauticians was given an order of 200 hours of community service. The other two were each sentenced to **three months' imprisonment**.





# Convicted Case S.13F

## Aggressive Commercial Practices

- A client manager promoted a \$100,000 worth of precious metals investment service to a **mentally incapacitated person** at a fast food shop.
- In the course of trade, the manager **induced** the victim to complete a transaction by **holding her hand to sign a sales contract and authorization** .
- The manager was convicted and sentenced to **1 month's imprisonment** for engaging in a commercial practice that was aggressive.





# Provision S.13G

## Bait advertising

- Having regard to the nature of the market in which the trader carries on business and the nature of the advertisement, it is considered a bait advertising if :
  - ◆ there are no reasonable grounds for believing that the trader will be able to offer for supply those products at a specified price that has been advertised, or
  - ◆ the trader fails to offer for supply at that price, for a period that is, and in quantities that are, reasonable





# Provision S.13G

## ○ Bait advertising (continued)

### ➤ It is **NOT** bait advertising if -

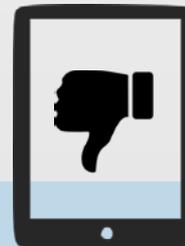
- ◆ the advertisement states clearly the period/quantities that are offered for supply at that price; and
- ◆ the trader offers for supply at that price for that period or in those quantities.





# Convicted Case S.13G Bait Advertising

- A chain electronic products supplier published an **advertisement** in a newspaper to **offer to supply** a tablet model at an **attractive price**. Upon enquiry, a salesperson said that the price and functions of the tablet were **wrongly printed in the advertisement** and hence could not be supplied at the attractive price.
- The trader was **fined \$10,000** after being convicted of bait advertising.





# Provision S.13H

## Bait and switch

- **Trader makes an invitation to purchase a product at a specified price with the intention of promoting a different product if he:**
  - **refuses to show or demonstrate the product to consumers;**
  - **refuses to take orders for the product or deliver it within a reasonable time; or**
  - **shows or demonstrates a defective sample of the product**





# Provision S.13I

## Wrongly accepting payment

- A trader wrongly accepts payment if he, at the time of acceptance:
  - **intends** not to supply the product;
  - **intends** to supply a product that is materially different
  - there are **no reasonable grounds for believing** that the trader will be able to supply the product -
    - ◆ within the period specified by the trader at or before the time at which the payment or other consideration is accepted; or
    - ◆ if no period is specified at or before that time, within a reasonable period.

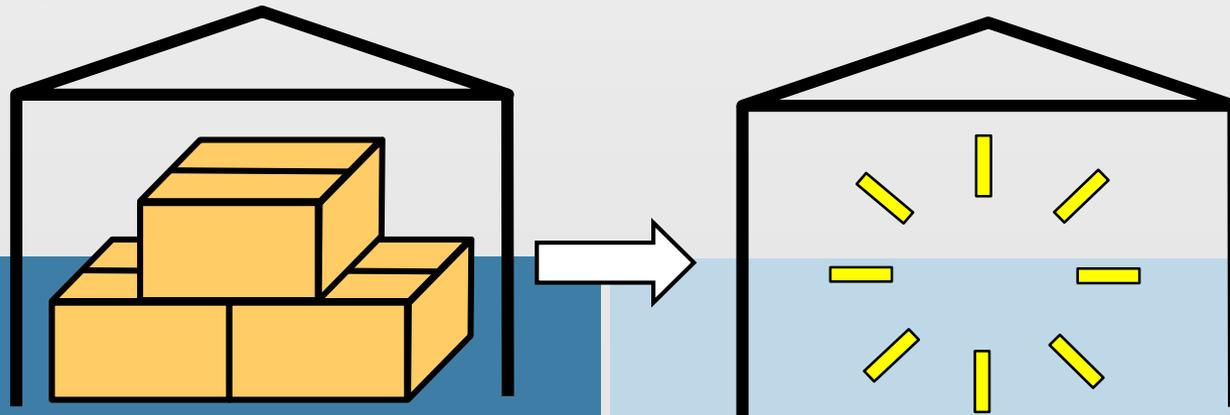




# Convicted Case S.131

## Wrongly accepting payment

- A storage service provider accepted payment from customers for storage service, while owing rental payment to the landlord . Later the storage was taken over by liquidators and customers' goods were removed.
- The operator was convicted for wrongly accepting payment. He was sentenced to six months' imprisonment and required to compensate \$10,000 to the customer.





# Unfair Trade Practices

In conclusion, an unfair trade practice is using improper method which causes the average consumer to make a transactional decision that he would not have made otherwise.



# S.26 Defences: mistake, accident, etc.

The person charged is entitled to be acquitted if

**Sufficient evidence** is adduced to raise an issue that the commission of the offence was due to

- a mistake
- reliance on information supplied by another person
- the act or default of another person
- an accident; or
- some other cause beyond the control of the person charged; and





# S.26 Defences: mistake, accident, etc.

The person charged is entitled to be acquitted if

The person charged took **all reasonable precautions** and exercised **all due diligence** to avoid the commission of the offence by

- the person charged; or
  - any person under the control of the person charged;
- and

**The contrary is not proved by the prosecution beyond reasonable doubt.**





# Maximum Penalties

**Fine of \$500,000 and  
Imprisonment for 5 years**





# Compliance-based Mechanism



# Civil compliance-based mechanism

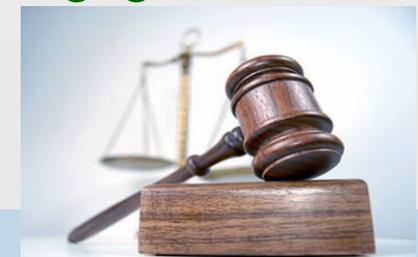
## An alternative to initiating prosecution:-

### ○ Undertaking [S.30L]

- to encourage compliance by a trader and to resolve the matter more expeditiously
- **Commitment** by trader **not to continue** or **repeat** the conduct or commercial practice of concern

### ○ Injunctions [S.30P]

- to **order** a trader **not to continue** or **repeat** or engage in the contravening conduct





# Undertakings

- Instead of criminal proceedings, C&ED may resolve cases in respect of conduct that constitutes an offence under specified sections by accepting a written undertaking from alleged trader
- Trader undertakes not to continue/repeat/ engage in conduct or commercial practice of the kind or of a substantially similar kind of concern
- Acceptance / withdrawal of undertaking is subject to consent in writing by the Secretary for Justice
- If an undertaking is accepted, the enforcement agency may not commence/continue the investigation or bring/continue proceedings in court
- enforcement agency may also publish the accepted undertaking





## Injunction

- The Enforcement Agency may apply to the court for an injunction to order a trader not to continue or repeat or engage in the contravening conduct





# Exempt Persons





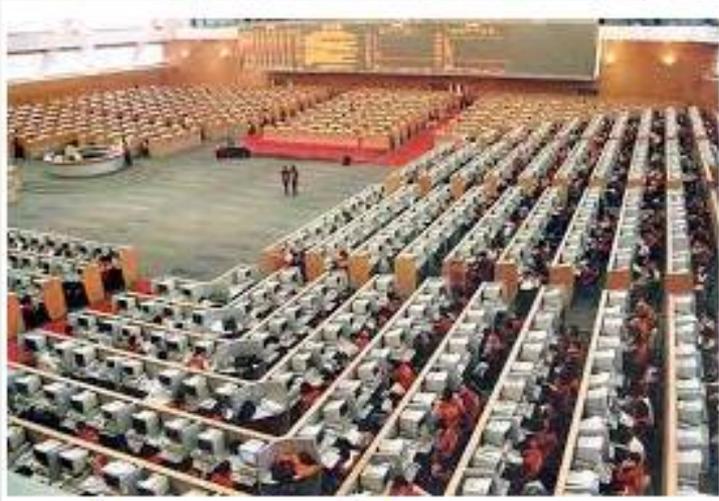
# Exempt Persons





# Excluded Products

強積金  
MPF





# Customs and Excise Department

# Office of the Communications Authority







## *For Enquiry*

Hotline : 2815 7711

Email : [customsenquiry@customs.gov.hk](mailto:customsenquiry@customs.gov.hk)

## *For Complaints*

Hotline : 2545 6182

Fax : 2543 4942

Email : [crimereport@customs.gov.hk](mailto:crimereport@customs.gov.hk)

**Thank You!**

