

TRADE DESCRIPTIONS ORDINANCE (Cap. 362)

17 May 2019





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

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



Ingredients :

Wheat Flour, Palm Oil, Shortening (Palm Oil), Sugar, Salt, Malt Extract, Maltose, Yeast, Raising Agent ((E500ii), Flavour(Lemon), Colour (E100ii).

成分：小麥粉，棕櫚油，起酥油(棕櫚油)，白砂糖，鹽，麥芽精，麥芽糖，酵母，膨脹劑(E500ii)，調味料(檸檬味)，色素(E100ii)。

This product contains cereals containing gluten and their products.

此產品含有麩質的穀類及其製品。

Currency		Bank Buys Notes	Bank Sells Notes
	US Dollar USA	34.60	36.02
	Singapore Dollar Singapore	24.76	25.85
	日本円 (: 100) Japan	28.18	30.70
	人民币 China	5.08	5.92
	港元 Hong Kong	4.44	4.75
	Malaysian Ringgit Malaysia	7.47	8.75





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

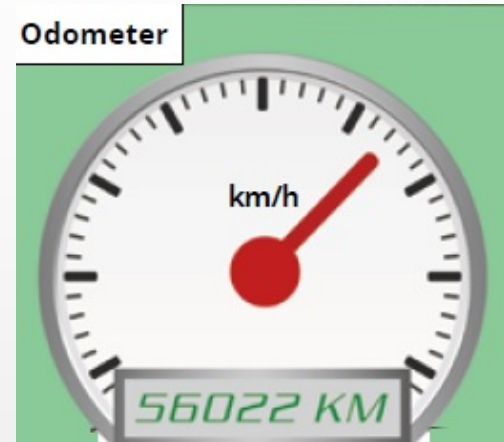
- Any person who , in the course of trade or business :
 - (a) applies a false trade description to any goods supplied or offered to be supplied to a consumer; or
 - (b) supplies or offers to supply to a consumer any goods to which a false trade description is applied,
 - (c) Any person, in his possession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





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

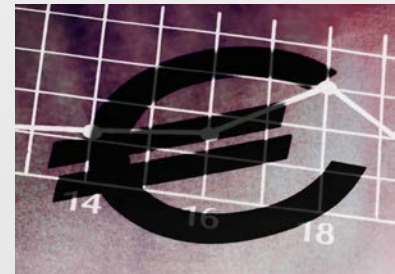


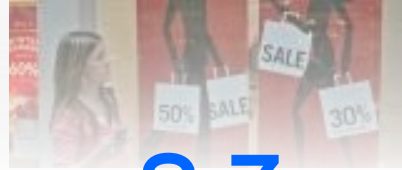


Example – False Trade Description



- 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***



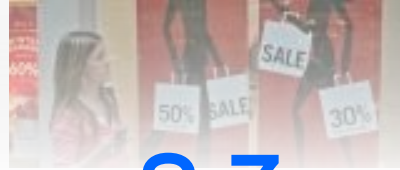


Convicted Case S.7

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

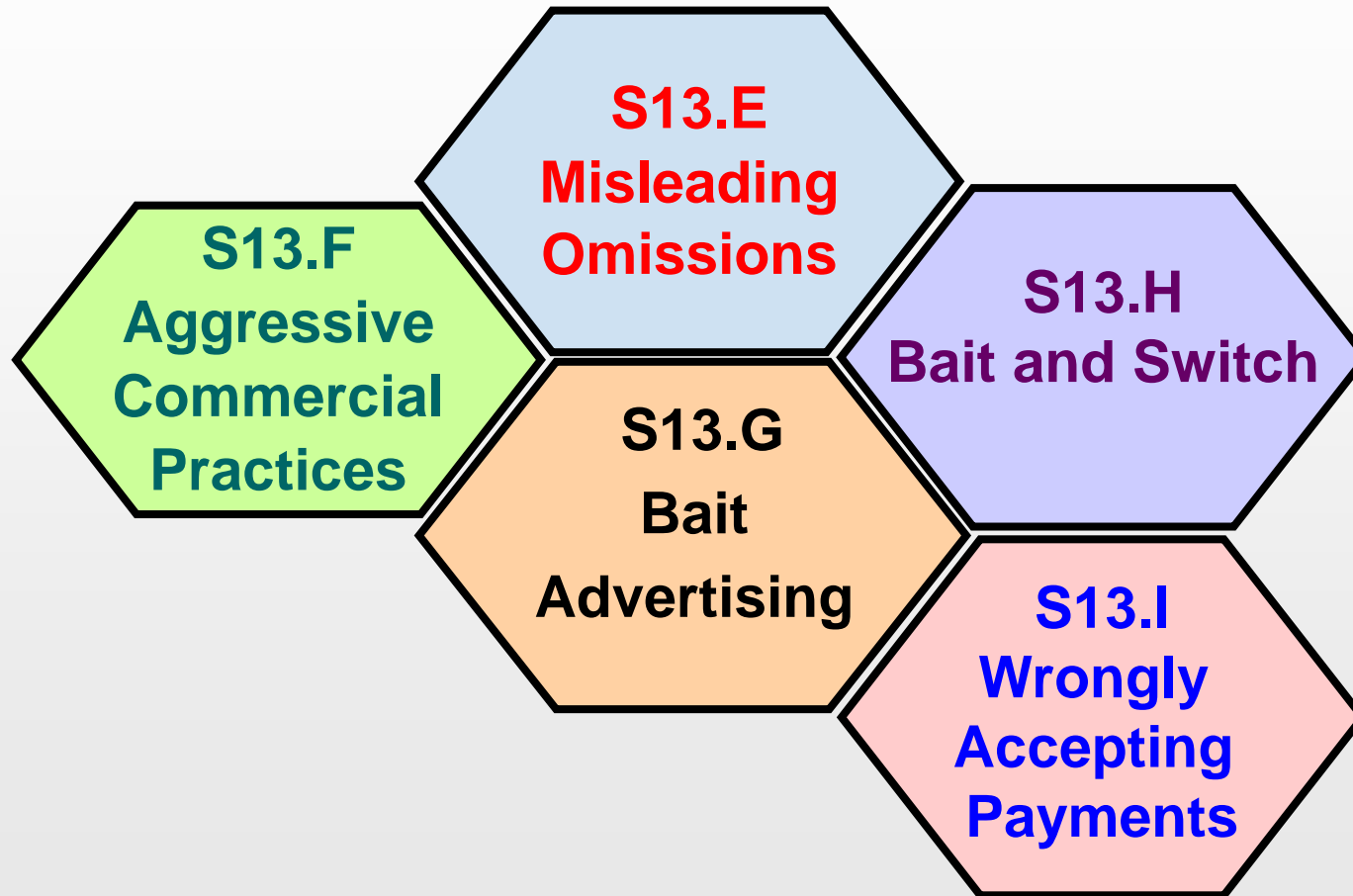
False Trade Description of Services

- 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

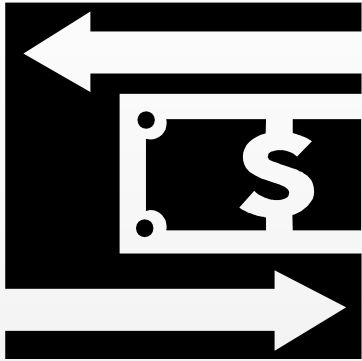


Misleading omissions

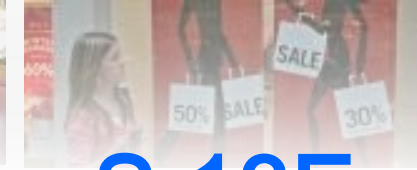
- A commercial practice is a misleading omission if it:
 - omits or hides material information;
 - provides material information in a manner that is unclear, unintelligible,
 - ambiguous or untimely; or
 - fails to identify its commercial intent unless this is already apparent from the context



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**.*

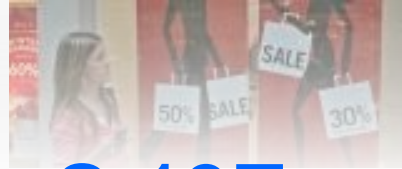


Convicted Case S.13E

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

- 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.

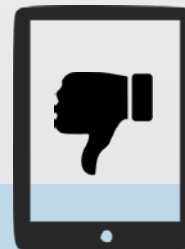




Convicted Case S.13G

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



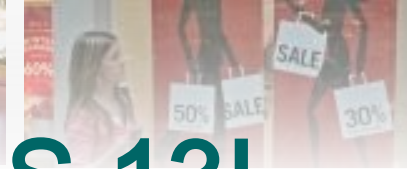


Convicted Case S.13H

Bait and switch

- A beauty parlour had sold online a beauty treatment service at a specified price.
- Later when a consumer approached the beauty parlour with the voucher purchased online to redeem the beauty treatment. A female staff member promoted other beauty treatments to the consumer and refused to provide the beauty treatment service specified on the voucher.
- The female staff member of a beauty parlour was sentenced to 120 hours of community service for engaging in a bait and switch commercial practice





Provision S.13I

Wrongly accepting payment

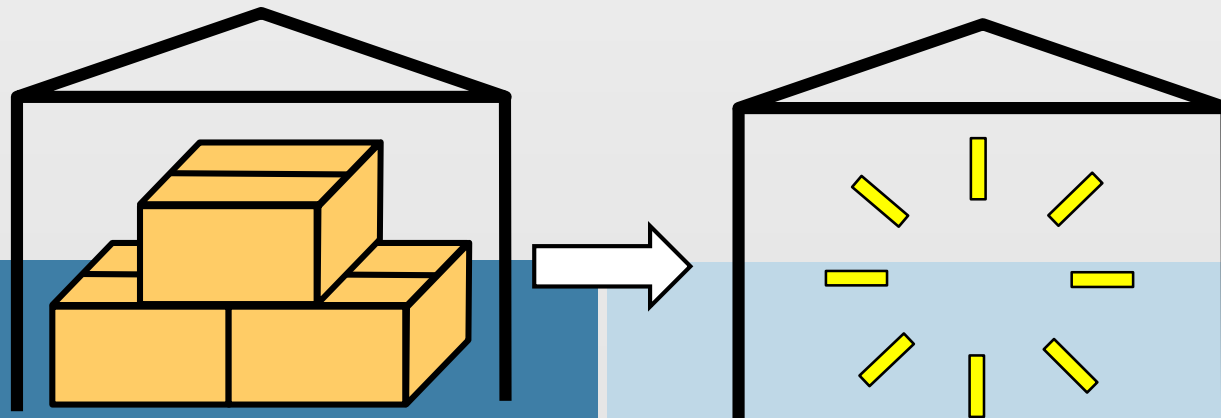
- A trader wrongly accepts payment if he, at the time of acceptance:
 - **intends** not to supply the product;
 - **intends** to supply a product that is materially different
 - there are **no reasonable grounds for believing** that the trader will be able to supply the product -
 - ◆ within the period 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.13I

Wrongly accepting payment

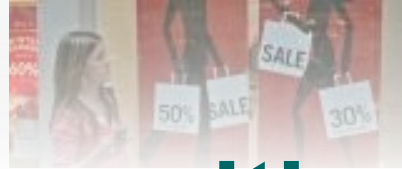
- A storage service provider accepted payment from customers for storage service, while owing rental payment to the landlord . Later the storage was taken over by liquidators and customers' goods were removed.
- The operator was convicted for wrongly accepting payment. He was sentenced to six months'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



Maximum Penalties

Fine of \$500,000 and

Imprisonment for 5 years





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.





Compliance-based Mechanism



Civil compliance-based mechanism

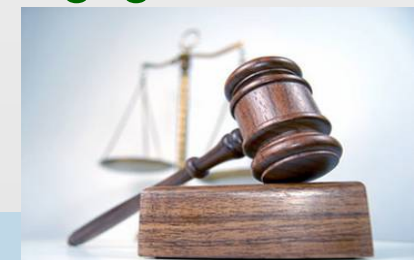
An alternative to initiating prosecution:-

○ 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





Excluded Products





Customs and Excise Department

Office of the Communications Authority





For Enquiry

Hotline : 2815 7711

Email : customsenquiry@customs.gov.hk

For Complaints

Hotline : 2545 6182

Fax : 2543 4942

Email : crimereport@customs.gov.hk

Thank You!

