

TRADE DESCRIPTIONS ORDINANCE (Cap. 362)

Money Service Operators

27 September 2022





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
人民幣	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
- 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 -

(a) in the course of **trade or business**:

(i) **applies** a false trade description to any goods; or

(ii) **supplies or offers to supply** any goods to which a false trade description is applied, or

(b) has **in his possession** for sale or for any purpose of trade or manufacture any goods to which a false trade description is applied,

Commits an offence.





Convicted Case S.7

False Trade Description of Goods

- Two cameras sold by a retail shop bore a marking of “WVGA@240fps (640x480)”
- Testing on the specification revealed that those cameras were unable to produce video recording with specification “240fps”
- The marking of “WVGA@240fps (640x480)” was a false trade description



Convicted Case S.7 False Trade Description of Goods

- 33 cameras were seized in two shops under the same owner which bore the same marking
- Supplying goods, in the course of trade or business, to which a false trade description was applied
- Having in possession for sale to which a false trade description was applied

The owner was convicted and fined \$30,000



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.



Convicted Case S.7A

False Trade Description of Services

- The sole proprietor of a renovation service company claimed his company was "Registered Electrical Contractor" (REC) (政府註冊電業承辦商) and "Registered Minor Works Contractor" (RMWC) (政府註冊小型工程承辦商).

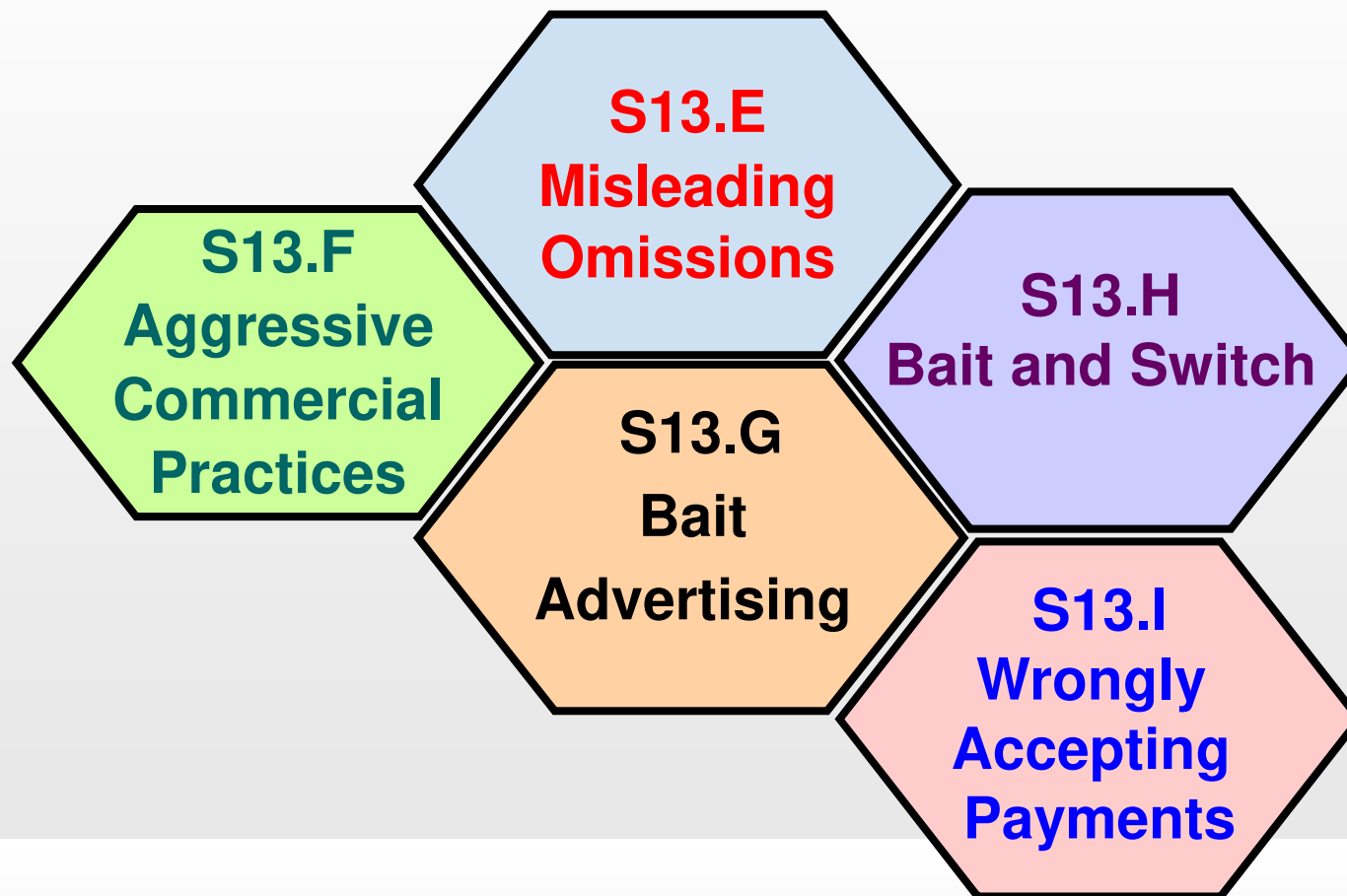


Convicted Case S.7A False Trade Description of Services

- Investigation revealed that the sole proprietor and his company were **NOT** a valid "Registered Electrical Contractor" and "Registered Minor Works Contractor".
- The sole proprietor was convicted for **applying a false trade description to a service** offered to be supplied and was **fined \$8,000**.



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



Convicted Case S.13E Misleading Omissions

- A director cum salesperson of the beauty parlour, in the course of selling a beauty service, intentionally hid a piece of material information, namely that the **location where the relevant services were to be supplied** would be moved to other locations on the next day after the deal.
- It caused a customer to make a transactional decision as a result.



Convicted Case S.13E Misleading Omissions

- The director was sentenced to imprisonment for **three months** suspended for one year and **fined \$2,000** after her conviction for engaging in unfair trade practices involving a misleading omission in the sale of beauty services.
- She was also ordered to pay the remaining treatment balance, namely **\$1,950**, to the victim as **compensation**





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

- Six staff members of two fitness centres lured eight victims on the street to go to the fitness centres.
- The staff then pressured the victims and coerced them to provide their bank account information and balances to make instant payments for the contracts.
- The highest contract price counted for a single case has exceeded \$240,000.



Convicted Case S.13F Aggressive Commercial Practices

- The six staff members were convicted for engaging in aggressive commercial practices. They were sentenced to **imprisonment of 9 to 20 months**. They were also ordered to pay **compensation of about \$270,000** in total to the victims.



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 skin care products company posted an advertisement on website and leaflets to offer to supply a skincare product set at an attractive price on a certain date.
- In fact, only 1 pack of skincare product set was offered for sale on that date.
- 31 packs of skincare product set were already sold well before the promotion.
- The trader was fined \$40,000 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 consumer purchased a coupon for Botox treatment from a group-buy website.
- Upon arrival of the alleged beauty parlor, the victim was persuaded by the staff to purchase another kinds of beauty service. However, the victim refused to purchase any product.
- The redemption of the product specified on the coupon was then declined by the staff.



Convicted Case S.13H

Bait and Switch

- The product specified on the beauty service coupon **could not be delivered** to the victim **within a reasonable time**.
- The alleged staff had already engaged in a commercial practice that constitutes a bait and switch.
- The staff of the beauty parlor was sentenced to **120 hours of community service**.



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; or
 - ◆ if no period is specified, within a reasonable period.



Convicted Case S.13I Wrongly accepting payment

- A money changer had failed to remit the money received from 18 customers to their designated Mainland bank accounts. The total amount involved was about \$3.2 million.
- The sole proprietor was convicted for wrongly accepting payment. He was sentenced to 14 months' imprisonment.



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





Civil compliance-based mechanism

An alternative to 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 an undertaking from the 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 by the Secretary for Justice
- If undertaking is accepted, the enforcement agency may not continue the investigation or the proceedings in court
- Enforcement agency may 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





Disclosure of Information

- In pursuance to section 17(2) of the Trade Descriptions Ordinance, this department is forbidden from disclosing any information obtained in the investigation, including the factors concerned in drawing of conclusion.



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