

# TRADE DESCRIPTIONS ORDINANCE (Cap. 362)

## Money Service Operators

22 May 2023





# 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).



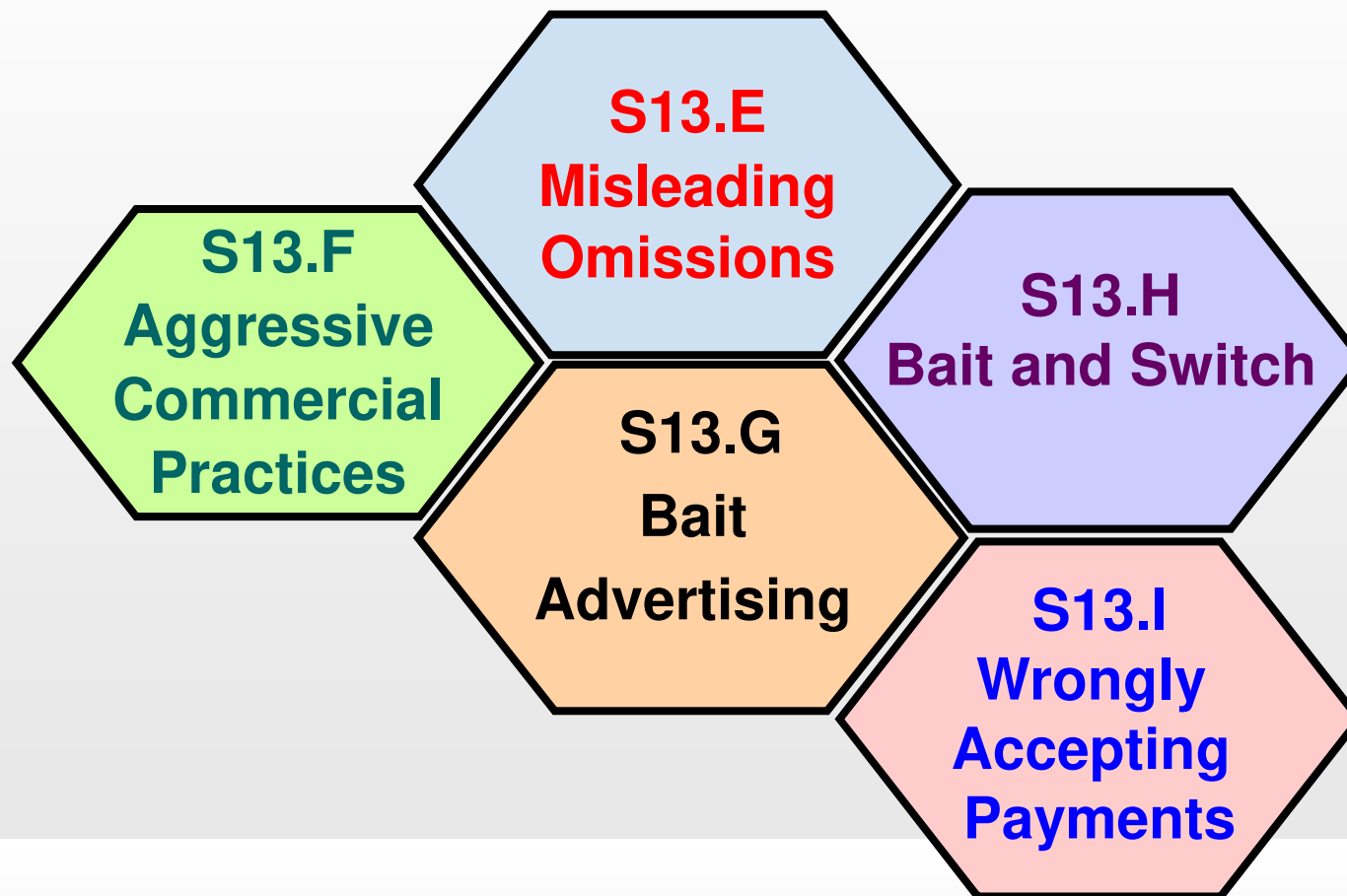
## Convicted Case S.7A False Trade Description of Services

- 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.



### *For Enquiry*

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### *For Complaints*

Hotline : 2545 6182

Fax : 2543 4942

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