Criminal Litigation

Changes to the Trade Descriptions Ordinance

Introduction

As of 19 July 2013, the amendment to the Trade Description Ordinance (“Ordinance”) came into effect in Hong Kong. A major change brought about by the amendment includes expanding the definition of “trade descriptions” to prohibit false trade descriptions to services (previously only confined to goods). The Ordinance has also introduced new offences of unfair trade practices.

Extending the Scope

Previously, the Ordinance prohibited false trade description only to goods. However, through the amendment, the new Ordinance prohibits false trade descriptions (and other new unfair trade practice offences) to “products” – which includes goods and services. A “trade description” means an indication, direct or indirect, and by whatever means given, with respect to the goods or services or any part of them. This includes anything that tells of the goods or services or any part of them, in whatever form (e.g. statements, advertisements, etc.) and communicated through whatever means (e.g. media, verbal and even by conduct).

False Trade Descriptions and Misleading Omissions

Under section 7 and 7A of the new Ordinance, traders have to provide accurate descriptions to the products and services without any false or misleading information. The new Ordinance further introduced the offence of “misleading omissions” that prohibits (1) omitting or hiding material information, (2) producing material information that is unclear, unintelligible, ambiguous or untimely, or (3) failing to identify the commercial intent; which are likely to cause an average consumer to make a transaction that the consumer would not have made otherwise.

Aggressive commercial practices

“Aggressive commercial practices” means a practice that significantly impairs or is likely significantly to impair the average consumer’s freedom of choice or conduct through the use of harassment, coercion or undue influence which are likely to cause an average consumer to make a transaction that the consumer would not have made otherwise. Such practices include using physical force or exploiting a position of power to apply pressure on the consumer.
Bait advertising

“Bait advertising” refers to advertising of products for supply at a specified price to which the trader has no reasonable grounds to believe that he will be able to offer those products at that price, or the trader fails to offer those products at that price, in reasonable quantities and for a reasonable duration having regard to the nature of the market and the advertisement.

Bait & switch

The making of an invitation to purchase a product at a specified price is “bait & switch” if, with the intention of promoting a different product, the trader (1) refuses to show or demonstrate the product to consumers, (2) refuses to take order for the product or deliver it within a reasonable time, or (3) shows or demonstrates a defective sample of the product.

Wrongly accepting payment

A trader wrongly accepts payment for a product if, at the time he accepts, he (1) intends not to supply the product, (2) intends to supply a materially different product, or (3) has no reasonable grounds to believe that the product can be supplied within a specified or reasonable time frame.

Affected persons

“Traders” are given a broad meaning to include any person who carries on a commercial practice in Hong Kong, notwithstanding the practice is directed to overseas consumers. Directors and other officers of a body corporate may also be liable if the body corporate commits an offence under the Ordinance. The maximum penalty is HK$500,000 and imprisonment for 5 years.

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Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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