

**Business Facilitation Advisory Committee
Wholesale and Retail Task Force**

***Enforcement of the Newly Amended
Trade Descriptions Ordinance***

The Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (“Amendment Ordinance”) came into effect on 19.7.2013. The scope of the Trade Descriptions Ordinance (Cap. 362) (“TDO”) as amended by the Amendment Ordinance prohibits the following commonly seen unfair trade practices:

- (a) false trade descriptions;
- (b) misleading omissions;
- (c) aggressive commercial practices;
- (d) bait advertising;
- (e) bait-and-switch; and
- (f) wrongly accepting payment.

2. The Customs and Excise Department (“C&ED”) is the principal agency responsible for enforcing TDO and adopts a three-pronged implementation plan on three distinctive but complimentary elements, i.e. public education, compliance promotion and enforcement:

- (a) public education and publicity – these are the most effective means to prevent consumers from being victimized by rogue traders; and to empower them with knowledge of and sensitivity to unfair trade practices;

- (b) compliance promotion – traders should be imparted with advice and guidance on their statutory responsibilities and what constitutes non-compliant conducts; and
- (c) enforcement – vigorous and timely enforcement actions are essential to combat non-compliant conducts and instill public confidence.

Compliance Promotion

3. C&ED in collaboration with the Consumer Council has embarked on extensive publicity and education work through various channels (see Appendix), aiming to enhance the knowledge of traders and consumers about their rights and obligations under TDO as well as the awareness of the concept of “Smart Shopping”. Many traders have adjusted their trade practices for compliance with the requirements of TDO. Consumers have an increased understanding of their rights and obligations.

4. Publicity and education activities on TDO have been strengthened for traders. Briefings have been organised for different sectors, and proactive visits have been conducted for different traders, in a bid to help them understand and comply with the requirements of TDO. Since the passage of the Amendment Ordinance by the Legislative Council, C&ED has held about 80 seminars and 400 outreach briefings.

5. Apart from publicity and education activities on the amended TDO, C&ED and the Office of the Communication Authority (“OFCA”) (as the enforcement agencies) have jointly published a set of Enforcement

Guidelines concerning TDO. The Enforcement Guidelines comprises the “Compliance and Enforcement Policy Statement - Implementing the Fair Trading Sections of the Trade Descriptions Ordinance” (“Policy Statement”) and the “General Guidelines on the Fair Trading Sections of the TDO” (“General Guidelines”).

6. The Policy Statement sets out the objectives of taking enforcement actions, the basic principles which guide the enforcement agencies in the application of enforcement tools available under the amended TDO and the factors that the enforcement agencies take into account in prioritizing the enforcement resources. By publishing the Policy Statement, the enforcement agencies hope to enhance transparency in enforcement and promote compliance of the fair trading sections of the amended TDO.

7. The aim of the General Guidelines is to set out the manner in which the enforcement agencies may exercise their powers in respect of the fair trading sections of the amended TDO and to provide guidance as to the operation of those sections. The General Guidelines may also serve as guidance for traders in complying with the fair trading sections and for consumers in understanding how they are protected.

8. The amended TDO has introduced a civil compliance-based mechanism to encourage compliance by traders and to stop identified unfair trade practices expeditiously. In gist, as an alternative to prosecution, C&ED is empowered to accept a written undertaking from a trader whom C&ED believes has engaged, is engaging or is likely to engage, in a conduct that constitutes an offence under the fair trading

sections, not to continue or repeat an offending conduct, or conduct of a substantially similar kind. Where necessary, C&ED may also seek injunctions from the court for the same purpose.

Enforcement

9. From 19 July to 31 December 2013, C&ED received 2,051 complaints. A breakdown of the complaints according to the offences involved is set out below:

| <u>Offence Involved</u> | <u>No. of Complaints</u> |
|--|---------------------------------|
| False Trade Descriptions | 1,303 |
| Misleading Omissions | 346 |
| Aggressive Commercial Practices | 63 |
| Bait Advertising | 85 |
| Bait-and-switch | 15 |
| Wrongly Accepting Payment | 199 |
| Others (e.g. cases outside the scope of TDO) | 40 |

10. The amended TDO covers a wide range of goods and services. To maximize the effectiveness of enforcement actions in order to protect the interests of consumers and honest traders, prioritization of resources is essential. C&ED adopts a risk-based approach under which C&ED will direct the necessary resources to investigate matters where the greatest overall benefit to consumers, the trade and the community at large can be achieved. C&ED may not pursue cases involving the following circumstances:

- ❖ insufficient information furnished by an anonymous complainant;
- ❖ no contravention of TDO has been identified;
- ❖ the issues raised in the complaint are merely consumer disputes;
- ❖ limited credibility and competence of the witnesses and/or information;
- ❖ complaint forwarded for information only and C&ED already knows that the trader, entity or practice does not involve any contravention of TDO, e.g. chain letters;
- ❖ complainants clearly indicate that they are not prepared to appear as witnesses at any court proceedings AND such appearance is crucial to securing a successful prosecution;
- ❖ complaint withdrawn; or
- ❖ trader, complainant or key witnesses cannot be located in Hong Kong, or are residing overseas but do not wish to come to Hong Kong to provide information.

Way forward

11. C&ED is committed to enforcing TDO to protect consumers' legitimate rights and provide a fair trading environment for traders. C&ED will continue to implement the three-pronged approach as mentioned in paragraph 2 above.

12. Members are requested to note the content of this paper and offer views/comments, if any.

Customs and Excise Department

February 2014

Publicity and Education by C&ED

- ❖ TV Announcements in the Public Interest (“APIs”) from May 2013 until January 2014 (ATV, TVB, Cable TV and Now Business News);
- ❖ Radio APIs launched from June 2013 until end January 2014 (Commercial Radio, Metro Broadcast, RTHK and Phoenix Radio);
- ❖ Posters / pamphlets for display and distribution;
- ❖ Seven articles published between March and June 2013 in Headline Daily and am730;
- ❖ Dedicated webpage (making available the Enforcement Guidelines, video gallery, poster, pamphlet etc.); and
- ❖ Souvenirs for distribution to general public (plastic folders and card holders)

Publicity and Education by the Consumer Council

- ❖ Roving exhibitions held at 10 shopping centres throughout the territories (including 1 on HK Island, 3 in Kowloon and 6 in N.T.);
- ❖ Showing video clips and comics on the six key offences for 4 days at each shopping centre from August to November 2013;
- ❖ Dedicated webpage featuring videos clips and comics on the six key offences;
- ❖ Seminars for teachers, students, community based groups, Vocational Training Council/university students;
- ❖ 13 radio episodes broadcast on Radio Television Hong Kong Radio, with one episode broadcast on every Saturday morning from 24

August to 16 November 2013. Each episode included a short drama followed by interviews with the representatives from the Consumer Council, C&ED and OFCA. Representatives from C&ED attended 6 episodes; and

- ❖ Video clips broadcast on Roadshow (Kowloon Motor Bus) from August to September 2013.