



Enhanced Consumer Protection under Trade Descriptions Ordinance (Cap. 362)

Sell with integrity
Buy with confidence



Introduction

To strengthen the existing regulatory regime for the protection of consumers shopping in the retail business, amendments have been made to the Trade Descriptions Ordinance, Chapter 362, and new subsidiary legislation has been made thereunder. They come into effect on 2 March 2009.

The new legislation enhances consumer protection by way of:

- (1) expanding the scope of trade descriptions subject to regulatory control under the Ordinance;
- (2) defining certain terms or expressions, and regulating the use of such terms or expressions in relation to certain precious metals and stones; and
- (3) requiring mandatory disclosure of certain prescribed information for certain specified consumer goods.

Features of the new legislation

False representation regarding after-sale services and warranties for goods

The new legislation makes it an offence for anyone who makes false representations on matters regarding after-sale services and warranties for goods. Such matters include:

- (1) the place at which after-sale services and spare parts are available;
- (2) warranties given for after-sale services or spare parts;
- (3) the parties providing after-sale services or spare parts;
- (4) the scope of after-sale services; and
- (5) the period for which and the charge at which after-sale services or spare parts are available.

Misleading price indication

The new legislation also prohibits misleading price indication. When a seller displays in the course of trade a sign to indicate the price of goods set by reference to a unit of quantity (which includes length, width, height, area, volume, capacity, weight and number), he must indicate the price per unit of quantity in a readily comprehensible manner. The following are instances of misleading price indication:

- (1) partial or total obscuring of any letter, word, numeral or character that indicates the price of goods, or the quantity unit to which the price relates;
- (2) discrepant manners in the presentation of letters, words, numerals or characters indicating the price and the quantity unit, such that consumers will be unable to get a clear idea about the accurate price per unit; and
- (3) the letters, words or characters indicating respectively the unit of quantity and the price are set unreasonably far apart.

Exclusion of basic accessories of electronic products

The new legislation imposes new requirements in relation to the sale of the following five types of popular electronic products:

- (1) Digital audio player (including MP3 player);
- (2) Digital camcorder;
- (3) Digital camera;
- (4) Mobile phone; and
- (5) Portable multimedia player (including MP4 player).

If the prices at which these products are exposed for sale do not include any "basic accessories" that are reasonably expected to be included in the price, sellers must inform potential purchasers of the same before the latter pay for the products.

"Basic accessories" means accessories that are essential for the effective performance of the principal function of the products.

False or misleading representation regarding connection with and endorsement by another person

False or misleading representations regarding third-party endorsements of the seller are prohibited under the new legislation. It is an offence for a person to make a false or misleading representation regarding a seller's connection with or endorsement by an individual or body.

A person who, in connection with the supply or promotion of any goods, makes a representation on the seller's connection or endorsement by an individual or body whose name is similar to that of a reputable individual or body, must take reasonable steps to prevent those hearing the representation from mistaking the individual or body mentioned in the representation to be the reputable individual or body.

Definition of Fei Cui and Natural Fei Cui

The new Trade Descriptions (Definition of Fei Cui and Natural Fei Cui) Regulation defines "fei cui". An article can only be described as "fei cui" or "翡翠" if it is a granular to fibrous polycrystalline aggregate composed solely or principally of (a) jadeite; (b) omphacite and (c) kosmochlor, or a combination of any of the three substances.

The expression "natural" or "天然", when used in the course of trade to describe fei cui, means that the fei cui has not been subjected to any treatment or process which altered its crystalline structure or original color.

Provision of Information when Supplying Natural Fei Cui

The new Trade Descriptions (Provision of Information on Natural Fei Cui) Order imposes new disclosure requirements in relation to retail sale of natural fei cui. A retailer of any article of "natural fei cui" is required to:

- (I) issue to the buyer at the time of supply, an invoice or receipt, and retain it for not less than 3 years. The invoice or receipt shall contain:
 - (1) the full name and address of the retailer;
 - (2) the price of the article;
 - (3) the date of supply; and
 - (4) a description of the article as "natural fei cui plus other jade" or "natural fei cui" according to the definition in the Ordinance.

- (II) display a notice (of not less than 210mm x 297mm) at the point of supply, informing consumers of the definitions of "fei cui", "natural fei cui" and the statutory requirement on retailers to issue invoices or receipts for the natural fei cui articles supplied.

Definition of Diamond

The new Trade Descriptions (Definition of Diamond) Regulation defines "diamond". The expression of "diamond" or "鑽石" can only be used to describe an article which is a natural mineral consisting essentially of carbon crystallized in the isometric (cubic) crystal system and has the physical properties as specified in the Schedule to the said Regulation.

The new legislation does not prohibit the use of the expression "diamond" or "鑽石" together with the expression "artificial", "man-made", "synthetic", or any expression which clearly indicates that the article concerned is not natural diamond.

Provision of Information when Supplying Diamond

The new Trade Descriptions (Provision of Information on Diamond) Order imposes new disclosure requirements in relation to retail sale of diamond. A retailer of article of diamond is required to:

- (I) issue to the buyer at the time of supply, an invoice or receipt, and retain it for not less than 3 years. The invoice or receipt shall contain:
 - (1) the full name and address of the retailer;
 - (2) the price of the article;
 - (3) the date of supply;
 - (4) a description of the article as (i) being composed solely of diamond or, (ii) being inlaid with diamond, or (iii) as one on which diamond is mounted, as appropriate; and
 - (5) the total weight of the diamond in carats or where the weight is unknown to the retailer, a statement to that effect.

- (II) display a notice (of not less than 210mm x 297mm) at the point of supply, informing customers of the definition of "diamond" and his statutory duty to issue detailed invoices or receipts for each article of diamond supplied.

Provision of Information when Supplying Regulated Electronic Products

The new Trade Descriptions (Provision of Information on Regulated Electronic Products) Order imposes new disclosure requirements in relation to retail sale of five types of electronic products; namely digital audio player (including MP3), digital camcorder, digital camera, mobile phone and portable multimedia player (including MP4 player). A retailer who supplies any of the regulated electronic products must issue at the time of supply, an invoice or receipt to the buyer, and retain it for not less than 3 years. The invoice or receipt shall contain:

- (1) the full name and address of the retailer;
- (2) the price; date of supply; brand name and model number (if any);
- (3) details of after-sale service of the product whether it is free of charge or not available, place and period of availability and identity of provider;
- (4) the place of manufacture of the product, or, if such information is not known to the retailer, a statement to that effect; and
- (5) the features and specifications of the product as prescribed in the Schedule to the said Order.

New Requirements for Supply of Gold and Gold Alloy

In respect of the supply of gold and gold alloy, the new Trade Descriptions (Marking) (Gold and Gold Alloy) Order brought the following changes:

- (1) Limits the application of the statutory requirements regarding marking and supply of invoice or receipt to retail sale. The invoice or receipt shall contain (i) the price and date of supply; (ii) the description; (iii) the fineness (where the article consists of different parts of different fineness of gold, the marks on each part); and (iv) the weight of the article (if the whole article is 足金 (Chuk Kam)).
- (2) The Chinese equivalent of "white gold" is changed to "白色黄金" to avoid confusion with platinum ("白金" or "鉑金").
- (3) The standard of fineness for 足金 is raised from 990 to 999 parts by weight of gold in 1000 parts by weight of alloy.

New Requirements for Supply of Platinum

In respect of the supply of platinum, the new Trade Descriptions (Marking)(Platinum) Order limits the application of the statutory requirements regarding marking and supply of invoice or receipt to retail sale. The invoice or receipt shall contain (i) the price and date of supply; (ii) the description; (iii) the fineness (where the article consists of different parts of different fineness of platinum, the marks on each part); and (iv) the weight of the article (if the whole article is 足白金 (Chuk Pak Kam)).

Additional Chinese Expression of Platinum

Under the new Trade Descriptions (Definition of Platinum) Regulation, the Chinese equivalent of "platinum" is expanded such that "鉑金" may be used as alternative to "白金".

Enforcement

The Commissioner of Customs and Excise is responsible for enforcement of the Trade Descriptions Ordinance and the subsidiary legislation thereunder. Officers of the Customs and Excise Department will carry out surprise checks to ensure that the law is complied with and will investigate suspected violations of the law.

Penalties

Any person who commits an offence under the Trade Descriptions Ordinance in relation to the application of trade description to goods is liable:

- (1) on conviction on indictment to a fine of \$500,000 and imprisonment for 5 years; and
- (2) on summary conviction to a fine of \$100,000 and imprisonment for 2 years.

Enquires

For general enquiry on the policy of consumer protection under the Trade Descriptions Ordinance, please write to the Commerce and Economic Development Bureau at Level 29 One Pacific Place, 88 Queensway, Hong Kong.

For complaint on contravention of the Trade Descriptions Ordinance, please call 2545 6182, or write to the Trade Controls Branch of the Customs and Excise Department at 14/F., Trade and Industry Department Tower, 700 Nathan Road, Mongkok, Kowloon.

Note

This pamphlet is only intended to highlight the new requirements and changes brought about by the Trade Descriptions (Amendment) Ordinance 2008 and the new subsidiary legislation made under the Trade Descriptions Ordinance (Cap. 362). It does not have any legal effect. You should always refer to the Ordinance and subsidiary legislation thereunder for the exact wording of the law and seek your own legal advice if necessary.

Commerce and Economic Development Bureau
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