

## **Be a smart consumer**

Hong Kong is hailed as “Shopping Paradise”, with a total retail sale of around 38.9 billion in July 2018. However, some traders deploy unfair trade practices against consumers, which greatly affect the reputation of Hong Kong’s tourism and retail industry. The Customs and Excise Department (“C&ED”) being the principal enforcement agency of the Trade Descriptions Ordinance (“Ordinance”), aims to tackle the crimes committed by traders who deploy unfair trade practices, and remind consumers to shop smartly, stay alert and avoid falling into consumer traps set by traders.

### **Smart Tips**

#### **Before purchasing:**

Consumers should understand their needs and be mindful of their own financial abilities to make buying decision on appropriate goods/services. Prior to finalizing the buying decision, consumers should keep their credit cards and passwords secured. Never give your credit cards to salespersons recklessly in order to protect your rights.

If a salesperson tries to persuade you into purchasing goods/services you knows little or are not familiar with, you should first take note of the product details, then conduct research on the product or ask your family members or friends who have knowledge of the goods/services. You are advised to apply due diligence before making buying decisions.

Get to know the price range of the goods/services. Stay alert if the traders offer unreasonable price for the goods/services to avoid losses.

#### **When purchasing:**

Check the goods carefully to ensure the goods comply with the descriptions provided by the traders and printed on the packaging. If in doubt, you should refuse the goods and payment firmly.

Pay attention to the units used in prices calculation such as catty, tael and

mace. Confirm the price with the sellers before making any buying decisions.

Regarding verbal commitment by the salesperson, customers may request for the commitment to be put down in writing in relevant documents and signature of this salesperson as confirmation to protect your rights.

If you have to sign any bills or contracts for the goods/services purchased, you should pay more attention to the important information such as contents, terms of use and condition, refund arrangement and total amount.

### **After purchasing:**

You should be mindful of the name and address of the shops, price of the goods, purchase date, brand name and model number (if any), and details of after-sales service on the invoices/receipts.

Keep all invoices and records properly as evidence for possible disputes raised in the future.

### **Burden of Proof under Trade Descriptions Ordinance:**

C&ED attaches great importance to the protection of consumer interests. All reports received will be studied in detail and appropriate follow-up will be taken, if needed. However, due to the limitation of the Ordinance and procedural requirements in criminal prosecution, there are individual cases that cannot be pursued further by C&ED. Some of which are shared below:

- 1) Goods/Services involved in complaints are excluded products under the Ordinance - According to Schedule 4 of the Ordinance, the goods/services covered by the Insurance Ordinance, the Banking Ordinance, the Mandatory Provident Fund Schemes Ordinance or the Securities and Futures Ordinance are excluded. For example, a member of the public alleged that the exchange rate displayed by a bank at its money exchange device was inaccurate. As bank services were subject to regulation by other relevant statutory authorities, they were excluded

from the ambit of the Ordinance by virtue of Schedule 4 of the Ordinance.

- 2) Persons involved in complaints are exempt persons - According to Schedule 3 of the Ordinance, commercial practices engaged by a person acting in the capacity of his own professionalism listed in this Schedule are not regulated by the Ordinance. For example, a patient reported that a Chinese medicine practitioner had provided prescription with false information for patients, or habitually omitting or inaccurately stating some items of medical herbs. As a registered Chinese medicine practitioner is an exempt person under Schedule 3 of the Ordinance, the fair trading sections do not apply to them when they act in the capacity of a person described in the Schedule (except for sections 4 and 5 on the requirements relating to the provision of information on goods and section 7 on trade descriptions applied on goods in the course of any trade or business). The commercial practices of these exempt persons are regulated by the professional bodies established under the respective ordinances.
- 3) Complaint matters to be dealt with under other legislations. For example, a member of the public reported that a financial intermediary used deceptive tactics by claiming low interest rate for loan from banks or financial companies as well as “Not Successful, No Fee” for the services rendered to induce him to apply for loan. Subsequently, the member of the public was charged with a very high handling fee for refusal of acceptance of the loan services with overly high interest rate. This is a suspected deception case and may also involve the Money Lenders Ordinance (Cap. 163). Therefore, the case was referred by C&ED to the Police for investigation.
- 4) The complaint content is noticeably different from the crime of unfair trade practices stipulated in the Ordinance. For example, the complainant bought a handbag and found out the edge of the handbag was ripped after using it for a week. Therefore, the complainant lodged a complaint to C&ED. In this situation the issue is about quality which is irrelevant with the crime of unfair trade practices, therefore it does not require further follow up by C&ED.

- 5) Complaint raised by disagreement of a contract between consumers and traders, in which the disagreement does not commit an offence stipulated in the Ordinance. For example, the consumer did not agree with the fee marked on the contract (such as early termination charge) or the fee was deemed to be too high, etc.
- 6) The complaint content is about personal and subjective perception. For example, the informer bought a skincare product which claimed to be non-oily. However, the informer claimed that the product was oily when used. Or the content of the complaint relates to dissatisfaction towards a salesperson's service attitude or slow progress of follow-up action, which was merely personal point of view and with no objective supporting standard.
- 7) The complainant could not provide sufficient information (such as bills, contracts and subject products or could not report the details of the case). As such, C&ED could not follow up as there was insufficient evidence.
- 8) The complainant is not willing to take a statement or refuses to be a witness in court.
- 9) The complainant only intends to recover damages – C&ED will not recover damages for any complainant.
- 10) The complaint reported is beyond the time limit for prosecutions stipulated in the Ordinance. The time limit for prosecution is 3 years from the date of commission of the offence till the date of report received by C&ED; or expires in 1 year from the date of discovery of the offence by the enforcement agency, whichever is the earlier.

The follow-up investigation of a reported case and apprehension of the traders who offended the Ordinance rely on the co-operation of the complainants and multifaceted factors. According to the usual prosecution policy, the prosecutions have to fulfil all of the requirements of the public prosecutions and must prove guilt beyond reasonable doubt, which is a high threshold. Therefore, C&ED prescribed a demanding standard in evidence collection.

For more information about the Ordinance, please visit the website of C&ED.

If there is suspected behavior violating the Ordinance, please call our 24-hour hotline 2545 6182 or report via the dedicated crime reporting email (crimereport@customs.gov.hk).

In addition, concurrent jurisdiction is conferred on the Communications Authority (CA) with the Office of the Communications Authority (OFCA) as its executive arm, to enforce the fair trading sections in the Ordinance in relation to the commercial practices of licensees under the Telecommunications Ordinance (Cap. 106) and the Broadcasting Ordinance (Cap. 562) that are directly connected with the provision of a telecommunications or broadcasting service under the relevant ordinances. Members of the public may report any suspected violations of the Ordinance on telecommunications and broadcasting services to the OFCA hotline at 2961 6333 (from 8:30am to 5:45pm, Monday to Friday except public holidays) or via the email (utp@ofca.gov.hk). For details, please visit [https://www.coms-auth.hk/en/policies\\_regulations/unfair\\_trade\\_practices/index.html](https://www.coms-auth.hk/en/policies_regulations/unfair_trade_practices/index.html).