

Trade Descriptions Ordinance (Cap. 362)
Undertaking to an authorized officer of the Customs and Excise Department
given for the
purposes of Section 30L
by
Toppot Bakery Limited
Business Registration No. 61211272-000

Company/Person giving this undertaking

- (1) This undertaking is given to an authorized officer of the Customs and Excise Department (“**C&ED**”), the Government of the Hong Kong Special Administrative Region by Toppot Bakery Limited (“**Toppot**”), a company incorporated in Hong Kong, (BR No. 61211272-000) whose registered office is at Flat A, 9th Floor, Capital Trade Centre, 62 Tsun Yip Street, Kwun Tong, Kowloon, Hong Kong for the purposes of Section 30L of the Trade Descriptions Ordinance (the “**Ordinance**”).

Background

- (2) Toppot carries on the business of a bakery shop on G/F, Newish Mansion, Nos.763, 765 & 767 Nathan Road, Kowloon, Hong Kong. Toppot has claimed that the bread products it sold are naturally made with no additive added in its advertising materials, representation and/or internet promotion.
- (3) In or about late August 2013, it was reported that the bread products sold by Toppot were not free from artificial additives as it claimed in the advertisements or promotional materials. Hence, the C&ED has conducted an investigation on Toppot regarding the product descriptions applied by it on its business and on whether the application of such product descriptions by Toppot has contravened the Trade Descriptions Ordinance.
- (4) The C&ED investigation revealed that certain bread products had been removed from shelves of the shop by Toppot on 23 August 2013. A notice of apology was also put up at the shop stating to the effect that while no artificial additives or improvers had been added to its bread products, artificial spices or essence had been added to certain of its products. C&ED’s specific findings of the incident were as follows:-
 - (i) Toppot had mentioned the Chinese terms of 「天然」 (naturally made) and 「無添加」 (No additive added) and/or similar words in describing its bread products in its advertising materials, representation and/or internet promotion without any elaboration or further explanation of what those terms would mean, particularly as to whether such would mean the bread products would be free from artificial flavours, essences and/or ingredients used in the food industry;

- (ii) some of the bread products of Toppot however contained artificial flavours and/or essences and/or other ingredients commonly used in the food industry including bakery; and
 - (iii) by adopting such descriptions to its bread products in the circumstances would give rise to making a representation that the bread products concerned were naturally made with no additive added and free from any artificial flavours, essences and/or other ingredients which may be used in the food industry.
- (5) Toppot admitted that Toppot had engaged in the conduct described at paragraph 4 above.
- (6) Toppot further acknowledges C&ED's belief that Toppot, by adopting the product descriptions as mentioned above whilst applying artificial favours and/or essence in its products, had engaged in conduct that constitutes an offence under Part II and/or IIB of the Ordinance, particularly sections 7 and/or 13E.
- (7) Toppot hereby confirms that the aforesaid descriptions of products have already been removed from all its trade descriptions. Toppot agrees to give an undertaking under section 30L of the Ordinance not to continue or repeat the aforesaid conduct, nor to engage in conduct of that kind, or any conduct of a substantially similar kind, in the course of its trade or business.

Commencement of Undertaking

- (8) This undertaking comes into effect when:
 - (i) the undertaking is executed by Toppot; and
 - (ii) an authorized officer of the C&ED accepts the undertaking so executed.
- (9) Upon the commencement of this undertaking, Toppot undertakes to assume the obligations set out in paragraphs 10 below.

Undertakings

- (10) Toppot undertakes, for the purposes of Section 30L of the Ordinance that:
 - (a) for a period of 24 months Toppot will not continue or repeat the conduct mentioned in paragraph 4 above in which it had engaged, and will ensure that it will not in the course of trade or business engaged in conduct of that kind, any conduct of a substantially similar kind, or any activities which will be in contravention of Part II or IIB of the Ordinance.
 - (b) it will:
 - (i) organize in-house seminars given by Toppot's professional advisors every six months for its staff who are responsible for the company's trade descriptions to enable its staff to be familiar themselves with the requirements under the Ordinance and to take measures to comply with the said requirements;

- (ii) assign a shop manager who is conversant with the Ordinance to be responsible for conducting checks on any new products descriptions before they are being applied to the Company's advertising, marketing and all other information provided by the Company;
 - (iii) conduct internal reviews on the trade and/or products descriptions employed by the Company from time to time; and
 - (iv) seek legal advice on the compliance requirements with the Company's legal advisors if necessary.
- (c) it will put in place a compliance programme (enclosed) for its staff for the purpose of implementing the undertaking at (a) and/or (b) above where appropriate.
 - (d) it will give any such required assistance, information or cooperation to the C&ED for the purpose of performance of the compliance checks on Toppot during the period of the Undertaking.

Acknowledgment

(11) Toppot acknowledges that:

- (a) the C&ED may cause this undertaking to be published in any form and manner, and to any extent, including by publishing it on the C&ED's public register of Section 30L Undertakings on its website;
- (b) the C&ED may, from time to time, make public reference to the undertaking including any such reference made in news media statements and in C&ED's publications;
- (c) this undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct of concern; and
- (d) according to Section 30N(3) of the Ordinance, when the acceptance of this undertaking is withdrawn, a statement of any fact contained in the undertaking may be admitted in evidence in any proceedings in a court relating to the matter to which the undertaking relates, and on its admission, is conclusive evidence in those proceedings of the fact stated in the undertaking.

SEALED with the Common Seal of)
Toppot Bakery Limited)
AND SIGNED by:)
Wong xxx xxx Ho, Manager) (Signed and Sealed)
for and on behalf of Toppot Bakery Limited)
in the presence of)

(Signed)

.....
FUNG xxx LEUNG xxx
SOLICITOR, HONG KONG SAR,
TUNG, NG, TSE & HEUNG

This 3rd day of December 2013

**ACCEPTED BY AN AUTHORIZED OFFICER OF THE CUSTOMS AND
EXCISE DEPARTMENT PURSUANT TO SECTION 30L OF THE TRADE
DESCRIPTIONS ORDINANCE WITH THE WRITTEN CONSENT OF THE
SECRETARY FOR JUSTICE**

(Signed)

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LIU Hing Yuen, Bobbie (AUTHORIZED OFFICER)

This 8th day of January 2014

Compliance Programme

Training

- organizing in-house seminars given by Toppot's professional advisors for its staff who are responsible for the company's trade descriptions to enable its staff to be familiar themselves with the requirements under the Trade Descriptions Ordinance (the "Ordinance") and to take measures to comply with the said requirements.

Appointment of a Compliance Officer

- assigning a staff/representative who is conversant with the Ordinance to be responsible for:
 - conducting checks on any new products descriptions before they are being applied to the Company's advertising, marketing and all other information provided by the Company.
 - to seek legal advice on the compliance requirements with the Company's legal advisors if necessary.
 - to conduct internal reviews on the trade and/or products descriptions employed by the Company from time to time.