

Trade Descriptions Ordinance (Cap.362)
Undertaking to an authorized officer of the Customs and Excise Department
given for the purposes of Section 30L of Trade Descriptions Ordinance (Cap.362)
by The Dairy Farm Company, Limited trading as "Mannings"
Company Registration No. 36
Business Registration No. 00006755-707-09-18-5

Company 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 The Dairy Farm Company, Limited trading as "Mannings" (Company Registration No. 36, Business Registration No. 00006755-707-09-18-5) ("**Mannings**") whose registered office is situated at 5th Floor, Devon House, Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong for the purposes of Section 30L of the Trade Descriptions Ordinance (Cap.362) (the "**Ordinance**").

Background

- (2) Mannings is a health and beauty chain store in Hong Kong supplying a wide variety of personal care and health products.
- (3) One product offered for sale at Mannings is □健樂 iWhite Tooth Polisher (the "**Polisher**"). On the packaging of the Polisher, a performance claim of "牙石頑漬 5 秒清除 (removal of dental calculus in 5 seconds)" was indicated (the "**Description**").
- (4) In or about May 2017, it was reported to the C&ED that the Description was false. The C&ED conducted an investigation into Mannings on whether the application of the Description on the packaging of the Polisher has contravened the Ordinance.
- (5) On 26 September 2017, an officer of the C&ED test-purchased 2 Polishers from the Gresson Street Branch of Mannings located at Shops C, E-G & J, G/F, Everwin Mansion, 18 Johnston Road, Wanchai, Hong Kong ("**Gresson Street Branch**") and each of which bore the Description on the packaging. After examination it was confirmed that the Description was false. Mannings did therefore supply goods, namely the 2 Polishers, in the course of trade to which a false trade description was applied.
- (6) C&ED Officers further found that:-
 - (a) 4 Polishers were displayed inside the Gresson Street Branch of Mannings for sale on 9 November 2017;
 - (b) 4 Polishers were displayed inside the Spring Garden Lane Branch of Mannings for sale on 9 November 2017;
 - (c) 373 Polishers were possessed by Mannings at its warehouse situated at 2/F, ATL Logistics Centre B, Berth 3, Kwai Chung Container Terminal, Kwai Chung, New Territories ("**Warehouse**") on 9 November 2017;
 - (d) 990 Polishers were possessed by Mannings at its Warehouse on 17 November 2017,

each of the Polishers bore the Description. Mannings did therefore supply in the course of trade or have in possession for sale goods to which a false description was applied.

- (7) Mannings admits that it has engaged in the conduct described at paragraphs (5) to (6) above.
- (8) Mannings has taken prompt action by removing the Polishers from the shelves at Mannings stores promptly upon discovery of the issue of the Description. It has co-operated with the C&ED in their investigation of the matter by providing all requisite documents and facilitating the seizure of the Polishers.
- (9) Mannings hereby confirms that the Polishers bearing the Description have all been removed from Mannings stores. Mannings agrees to give an undertaking under Section 30L of the Ordinance not to continue or engage or repeat the aforesaid conduct, any conduct of a substantially similar kind, or any activities in contravention of Section 7 of the Ordinance, with such undertaking being limited to the sale of electrical products, i.e. products powered by battery or electricity, at Mannings stores.

Commencement of Undertaking

- (10) This undertaking comes into effect when:
 - (a) the undertaking is executed by Mannings; and
 - (b) an authorized officer of the C&ED accepts the undertaking so executed.
- (11) Upon the commencement of this undertaking, Mannings undertakes to assume the obligations set out in paragraph 12 below.

Undertakings

- (12) Mannings undertakes for the purposes of Section 30L of the Ordinance:
 - (a) that for a period of 24 months,
 - (i) it will not continue or repeat the conduct mentioned in paragraphs (5) and (6) above;
 - (ii) it will not engage in conduct referred to in paragraphs (5) and (6) above, any conduct of a substantially similar kind, or any activities in contravention of Section 7 of the Ordinance, with such undertaking being limited to the sale of electrical products, i.e. products powered by battery or electricity, at Mannings stores;
 - (b) it will continue to provide training to its staff who are responsible for trade descriptions of products sold or supplied at Mannings so as to ensure that its staff understand the requirements and regulations under the Ordinance and comply with the same;
 - (c) it will review its procedures for examining the accuracy of the claims made on electrical products and take any necessary corrective or preventive actions; and

- (d) it will give any other assistance, information or cooperation to the C&ED for the purpose of performance of the compliance checks on Mannings during the period of this undertaking, for which purpose a Quality Assurance and Compliance Manager, Sales and Merchandise, who is conversant with the Ordinance and product descriptions which are applied to Mannings' advertising, marketing and all other information provided by Mannings', will be assigned to provide such assistance, information or cooperation to the C&ED.

Acknowledgment

(13) Mannings acknowledges that:

- (a) pursuant to Section 30L of the Ordinance, the C&ED may cause this undertaking to be published in any form and manner, and to any extent, including but not limited to 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, publish or make public reference to the undertaking including but not limited to doing so in news media statements and in C&ED publications;
- (c) this undertaking in no way derogates from or prejudices the rights, interests, claims 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.

Executed on the 31st day of October 2018

SEALED with the Common Seal of)
The Dairy Farm Company, Limited)
trading as "Mannings")
and SIGNED BY)
Li XXX Wa XXX,)
CEO, Mannings HK & Macau)
for an on behalf of the said)
The Dairy Farm Company, Limited)
trading as "Mannings")
in the presence of:

(signed)

XXX Lee
Legal Executive

**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)

Authorized Officer

CHIK Shun-kwan (Head of Trade Descriptions Investigation Bureau)

This 31st day of October 2018