

CHINA

BEITEN BURKHARDT

百达律师事务所

Strengthening consumer protection legislation in Hong Kong

By Ada Lee



The Trade Description Ordinance (Cap 362, Laws of Hong Kong) (TDO) is Hong Kong's key consumer protection legislation. Amendments to the TDO that came into force on 2 March 2009 made the creation of false or misleading representations regarding the sale of goods a criminal offence. However, these changes did not address several deficiencies in the laws that apply to consumer transactions, and in order to tackle unfair trade practices and protect consumers more effectively, the Hong Kong Government decided in January 2010 to enhance the scope of existing legislation. Following this, on 24 May 2010, a Government panel (the Panel) formulated suggested legislative amendments.

First and most importantly, the Panel recommended extending the coverage of the TDO to cover false representations in respect of consumer service transactions. In other words, criminal sanctions would be imposed on sellers who provide a false trade description of their services. The Government is now working on the legal definition of "services", which would subsequently be included in the definition of "trade descriptions".

Further, the following unfair trade activities would be considered criminal offences:

- A misleading omission of material information which causes or is likely to cause a reasonable consumer to take a transactional decision they otherwise would not have taken. (This proposal is not confined to particular goods and services, and is capable of dealing with new goods or services that emerge in the market);
- Aggressive or high-pressure tactics such as retaining a consumer's belongings, subjecting a consumer to incessant sale pitches, and preventing him/her from leaving the premises. (Even if there is insufficient evidence to impose existing criminal charges, or an aggrieved consumer does not pursue a private

action, strict liability is imposed on a seller who uses coercion, harassment or undue influence in a consumer transaction);

- "Bait-and-switch" practices and "accepting payment without the intention or ability to supply".

(Reported cases are mostly related to pre-paid coupons, particularly in the sectors of beauty care, yoga, fitness and travel club memberships).

Under the Panel recommendations, the Hong Kong Customs and Excise Department would continue to be responsible for enforcement, which would involve requiring a seller to cease the offending act. Failure to comply may, in turn, result in a court injunction. This approach is expected to deter unfair trade practices, stop them quickly when they occur, and facilitate mediation between sellers and consumers. Mandatory cooling off arrange-

ments may also be included in the TDO, and consumers may cancel a contract within a specified period if it concerns the right to use accommodation facilities at different places or locations or if it was made during unsolicited visits to a consumer's home or place of work.

However, these legislative proposals would not apply to sectors in which a significant degree of professional and specialised knowledge is required for enforcement, or in which a similar level of protection has already been or will be provided by a relevant regulatory framework that is parallel

to and compatible with these proposals. Financial services and property transactions are two such exempted sectors.

To facilitate broad-based consultation, the Hong Kong Government is expected to issue a consultation document to the public as early as the third quarter of 2010. In the meantime, the Government will continue to collect members' views for consideration.

First and most importantly, the Panel recommended extending the coverage of the TDO to cover false representations in respect of consumer service transactions

BEITEN BURKHARDT

3rd Floor, 8 Queen's Road Central, Hong Kong

Tel: (852) 2524 6468 Fax: (852) 2524 7028

Email: Ada.Lee@bblaw.comwww.beitenburkhardt.com