

良好營商手法有利增長 Sterling trade practices essential to growth

會員雖偶有違反《商品說明條例》者，但大都遵守其中規定。

Members largely observe the requirements of the Trade Descriptions Ordinance despite occasional commission of offences.

本刊記者 Staff reporter

不良營商手法

早 在二零一二年七月，《商品說明條例》就已修訂，監管範疇由貨品擴大至服務，並且增加了關於不良營商手法的條文。

上述修訂於二零一三年七月生效前，議會已邀請香港海關為《議會季刊》撰文(見二零一三年第二期〈主題故事〉)，以免會員觸犯法例；多年來更經常為會員舉辦簡介會，並且邀請海關代表主講，單是今年就已舉辦了兩次，第二次簡介會更闡述與業界相關的真實法庭案件；當時會員的提問與香港海關代表的回答經整理後上載至議會網站，以便會員參考(www.tichk.org → 「最新消息」 → 日期：2019-10-30)。

六種做不得的行為

會員日常經營時，需要注意以下六種做不得的行為，否則就可能觸犯《商品說明條例》，被海關刑事檢控；一經定罪，最高可罰款港幣五十萬元及監禁五年。

虛假商品說明：「商品說明」指以任何方式及任何途徑就任何產品(即貨品或服務)而作的展示，包括價格、價格優惠或折扣等，而「虛假商品說明」則指虛假達關鍵程度或雖非虛假

Unfair trade practices

The Trade Descriptions Ordinance was amended as early as July 2012 to expand its ambit from goods to services and include sections on unfair trade practices.

Even before the above amendments came into force in July 2013, the TIC had invited the Customs and Excise Department to write an article for *The Voice* (see “Cover Story”, No. 2 / 2013 to help members avoid breaking the law, and had over the years organised many briefings for members, at which Customs officers were invited as guest speakers. Two briefings were held this year, the second one particularly focusing on actual court cases relating to the industry, with the questions raised by the members present and the answers given by Customs officers uploaded to the TIC website for members’ reference (www.tichk.org → “Latest News” → Date: 2019-10-30).

Six things members must not do

In their daily operation, members had better not do the following six things, or else they may be criminally prosecuted by the Customs and are liable to a fine of HK\$500,000 and imprisonment for five years on conviction.

False trade descriptions: “Trade description” means an indication, including the price, price advantage or discount, by whatever means and in whatever form with respect to any products (namely goods or services); and “false trade description” means a trade description which is false to a material degree, or which, though not false, is misleading. Put simply, members should not give any false or misleading product information to customers when providing them with products.

Misleading omissions: If members omit or hide material infor-

卻屬誤導的商品說明。簡單來說，會員向顧客提供產品時，不得提供任何虛假或誤導的產品資料。

誤導性遺漏：會員如遺漏或隱藏重要資料，或以不明確、難以理解、含糊等方式提供重要資料，而導致或相當可能導致本來不會作出某交易決定的一般消費者作出該交易決定，則該營業行為屬於誤導性遺漏。

具威嚇性的營業行為：會員如以騷擾、威迫手段或施加不當影響，在相當程度上損害一般消費者就有關產品在選擇或行為方面的自由，而導致或相當可能導致本來不會作出某交易決定的一般消費者作出該交易決定，則該營業行為屬於具威嚇性的營業行為。

餌誘式廣告宣傳：會員如在廣告宣傳表示可按某指明價格供應某產品，卻沒有合理理由相信該會員能要約按該價格供應合理數量的該產品，則該廣告宣傳即屬餌誘式廣告宣傳。

先誘後轉銷售行為：會員如以指明價格而就某產品作出購買邀請，其後卻出於促銷另一產品的意圖而拒絕向顧客展示或示範使用有關產品，或拒絕接受有關產品的訂單等，則該購買邀請即屬先誘後轉銷售行為。

不當地接受付款：會員如就某產品接受付款或其他代價，卻意圖不供應有關產品，或意圖供應有重大分別的其他產品，則該會員即屬就有關產品不當地接受付款。

會員大都守法

《商品說明條例》的修訂自生效以來已過了約六年半，旅客大都對有關規定相當瞭解，因此對會員的產品如有不滿，除了向議會投訴外，還往往向海關投訴。由於海關可能就投訴個案作刑事調查，即使最終沒有檢控會員，但會員已須耗費大量資源應對。

不過，話得說回來，雖然每年向海關投訴旅行社的個案頗多，但經法庭判決入罪的案件卻寥寥可數，由此可以證明會員大都以守法的態度經營業務。日後旅遊業監管局成立後，會員務必繼續守法經營，以免被懲處。✎

mation, or provide material information in an unclear, unintelligible or ambiguous manner, which causes or is likely to cause the average consumer to make a transactional decision that he or she would not have made otherwise, then such a commercial practice is a misleading omission.

Aggressive commercial practices: If members use harassment, coercion or undue influence to significantly impair the average consumer's freedom of choice or conduct in relation to the products concerned, which causes or is likely to cause the average consumer to make a transactional decision that he or she would not have made otherwise, then that commercial practice is an aggressive commercial practice.

Bait advertising: Advertising by members of products for supply at a specified price is bait advertising if there are no reasonable grounds for believing that the members will be able to offer for supply those products at that price and in quantities that are reasonable.

Bait and switch: If members make an invitation to purchase products at a specified price and then refuse to show or demonstrate the products to customers or refuse to take orders for the products with the intention of promoting a different product, then such an invitation to purchase constitutes a bait-and-switch commercial practice.

Wrongly accepting payment: If members accept payment or other consideration for goods but intend not to supply the products or intend to supply products that are materially different, then the members wrongly accept payment for the products.

Members largely abide by law

The amendments made to the Trade Descriptions Ordinance having been effective for about six years and a half, the travellers are generally quite familiar with the requirements, with the result that they may file a complaint not only with the TIC, but with the Customs once they are dissatisfied with any products offered by members. As the Customs may conduct criminal investigations into complaint cases, members may have to spend plenty of resources to handle the investigations even if they are not prosecuted at last.

Whereas the number of complaints filed with the Customs each year is considerable, the number of cases actually convicted by a court of law is few and far between, which proves that members largely abide by the law when doing business. When the Travel Industry Authority is to be established in the future, members are strongly advised to continue their law-abiding practices in order not to be penalised. ✎