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The 2013 amendments to the Trade Description Ordinance bring significant changes to both the focus and practical operation of the Ordinance. What was previously seen as a narrow ordinance, imposing criminal sanctions for false trade description offences dealing with physical goods only, has now been replaced with an ordinance which now resembles a piece of more general consumer protection legislation. The addition of false trade description offences in relation to services is a welcome and long overdue remedy, filling a significant gap in the previous legislation. However, the new unfair trade practices sections, which proscribe certain unfair trading acts and “sharp practices”, may have the most long lasting and significant effect on business practices and consumer protection in Hong Kong. To date, the Consumer Council has received over a hundred complaints as well as over three hundred enquiries since the amended Ordinance took effect this past 19 July 2013. Most of these enquiries concerned false representation of products and aggressive sales tactics. The industries that received the most complaints included those in the medical, food, entertainment services and education sectors. (These statistics were reported in the 31 July 2013 edition of the South China Morning Post.)

PART 1 - INTRODUCTION

1. Introduction

- 1.1. The *Trade Descriptions Ordinance* (“TDO”) was originally enacted in 1980 and came into effect in April 1981. It was modelled in part on the old Hong Kong *Merchandise Marks Ordinance* (Cap 41) and to some extent on the UK *Trade Descriptions Act* of 1968. Whilst described as a consumer protection ordinance, it was in fact a rather narrow piece of legislation which focussed on false trade descriptions applied to physical goods only and the regulation of various miscellaneous matters such as trade descriptions in relation to gold, diamonds, etc.
- 1.2. The TDO was primarily a criminal-focussed Ordinance which was enforced by the Customs and Excise Department. Breach of the various provisions of the Ordinance exposed the wrongdoer to both fines and imprisonment. In relation to false trade descriptions which included a third party’s registered trade mark, the TDO represented the criminal counterpart of breach of the *Trade Marks Ordinance* and gave the Customs department significant powers to investigate and punish improper use of trade marks. The exercise of these powers have significantly reduced the incidence of goods bearing infringing trade marks being imported into and sold in the Territory.
- 1.3. Since its original enactment, there had been various piecemeal amendments added to the Ordinance and its regulations. Such amendments were generally a response to a specific perceived threat or were targeted at a particular industry. Thus, additions relating to matters such as gold, platinum and diamonds were made, and there have been a great many Orders and regulations promulgated dealing with a dispirit range