

Chapter:	362	TRADE DESCRIPTIONS ORDINANCE	Gazette Number	Version Date
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		Long title	L.N. 264 of 2008	02/03/2009
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To prohibit false trade descriptions, false, misleading or incomplete information, false marks and misstatements in respect of goods provided in the course of trade or suppliers of such goods; to confer power to require information or instruction relating to goods to be marked on or to accompany the goods or to be included in advertisements; to restate the law relating to forgery of trade marks; and for purposes connected therewith.

(Amended 65 of 2000 s. 3; 19 of 2008 s. 3)

[1 April 1981] *L.N. 64 of 1981*

(Originally 69 of 1980)

Section:	1	Short title		30/06/1997
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## PART I

### PRELIMINARY

This Ordinance may be cited as the Trade Descriptions Ordinance.

Section:	2	Interpretation	L.N. 264 of 2008	02/03/2009
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- (1) In this Ordinance, unless the context otherwise requires-
- "advertisement" (宣傳品) includes a catalogue, a circular and a price list;
- "authorized officer" (獲授權人員) means a public officer appointed under section 14;
- "Commissioner" (關長) means the Commissioner of Customs and Excise and any Deputy or Assistant Commissioner of Customs and Excise; (Added L.N. 294 of 1982. Amended 65 of 2000 s. 3)
- "Convention country" (公約國家) means a Paris Convention country or WTO member as defined in section 2(1) of the Trade Marks Ordinance (Cap 559); (Replaced 35 of 2000 s. 98)
- "false trade description" (虛假商品說明) means-
- (a) a trade description which is false to a material degree;
  - (b) a trade description which, though not false, is misleading, that is to say, likely to be taken for such an indication of any of the matters specified in the definition of "trade description" as would be false to a material degree;
  - (c) anything which, though not a trade description, is likely to be taken for an indication of any of the matters specified in the definition of "trade description" and, as such an indication, would be false to a material degree;
  - (d) a false indication, or anything likely to be taken as an indication which would be false, that any goods comply with a standard specified or recognized by any person or implied by the approval of any person if there is no such person or no standard so specified, recognized or implied; or
  - (e) a false indication, or anything likely to be taken as an indication which would be false, that any goods of any class or type-
    - (i) being goods in respect of which duty is payable under the laws of Hong Kong, are supplied free of the duty so payable in respect of that class or type of goods; or (Amended L.N. 272 of 1990)
    - (ii) not being goods in respect of which duty is payable under the laws of Hong Kong, are supplied free of the duty so payable; [cf. 1968 c. 29 s. 3 U.K.]
- "forged trade mark" (偽造商標) has the meaning assigned to it by section 9(3); (Added 35 of 2000 s. 98)
- "goods" (貨品) includes vessel and aircraft, things attached to land and growing crops;
- "goods in transit" (過境貨品) means goods which-
- (a) are brought into Hong Kong on a vessel or aircraft for the sole purpose of taking them out of Hong Kong; and
  - (b) remain at all times while they are in Hong Kong on the vessel or aircraft; (Replaced 19 of 2008 s. 4)

"import" (進口) means to bring, or cause to be brought, into Hong Kong;

"infringing goods" (侵犯權利貨品) means goods to which-

- (a) a forged trade mark is applied; or
- (b) a trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied; (Added 35 of 2000 s. 98)

"mark" (標記), when used as a noun, includes a sign capable of distinguishing the goods of one undertaking from those of other undertakings; (Added 35 of 2000 s. 98)

"premises" (處所) includes any place and any stall, vehicle, vessel or aircraft;

"trade description" (商品說明) means an indication, direct or indirect, and by whatever means given, of any of the following matters with respect to any goods or parts of goods, that is to say-

- (a) quantity (which includes length, width, height, area, volume, capacity, weight and number), size or gauge;
- (b) method of manufacture, production, processing or reconditioning;
- (c) composition;
- (d) fitness for purpose, strength, performance, behaviour or accuracy;
- (e) any physical characteristics not included in the preceding paragraphs;
- (f) testing by any person and results thereof;
- (g) approval by any person or conformity with a type approved by any person;
- (h) place or date of manufacture, production, processing or reconditioning;
- (i) person by whom manufactured, produced, processed or reconditioned;
- (j) other history, including previous ownership or use;
- (k) availability in a particular place of-
  - (i) a service for the inspection, repair or maintenance of the goods; or
  - (ii) spare parts for the goods; (Added 19 of 2008 s. 4)
- (l) warranty given in respect of the service or spare parts referred to in paragraph (k); (Added 19 of 2008 s. 4)
- (m) the person by whom the service or spare parts referred to in paragraph (k) are provided; (Added 19 of 2008 s. 4)
- (n) the scope of the service referred to in paragraph (k)(i); (Added 19 of 2008 s. 4)
- (o) the period for which the service or spare parts referred to in paragraph (k) are available; (Added 19 of 2008 s. 4)
- (p) the charge or cost at which the service or spare parts referred to in paragraph (k) are available; (Added 19 of 2008 s. 4)

[cf. 1968 c. 29 s. 2(1) U.K.]

"trade mark" (商標) means-

- (a) a trade mark relating to goods registered or deemed to be registered in Hong Kong under the Trade Marks Ordinance (Cap 559);
  - (b) a certification mark or collective mark relating to goods registered or deemed to be registered in Hong Kong under the Trade Marks Ordinance (Cap 559);
  - (c) a trade mark-
    - (i) registered in a Convention country; and
    - (ii) capable of registration in Hong Kong under the Trade Marks Ordinance (Cap 559) as a trade mark relating to goods;
  - (d) a trade mark-
    - (i) in respect of which an application for registration has been made in a Convention country; and
    - (ii) capable of registration in Hong Kong under the Trade Marks Ordinance (Cap 559) as a trade mark relating to goods; and
    - (iii) in respect of which a period of 6 months has not expired since the date of the application for the registration thereof in a Convention country. (Replaced 35 of 2000 s. 98)
- (2) (a) For the purposes of this Ordinance, goods shall be deemed to have been-
- (i) manufactured in the place in which they last underwent a treatment or process which changed permanently and substantially the shape, nature, form or utility of the basic materials used in their manufacture; or

- (ii) produced in the place in which they were wholly grown or mined.
- (b) The Commissioner may by order specify- (Amended L.N. 294 of 1982)
  - (i) in relation to any description of goods, what treatment or process is to be regarded for the purposes of this Ordinance as resulting or not resulting in a permanent and substantial change in shape, nature, form or utility of the basic materials used in their manufacture;
  - (ii) in relation to any description of goods different parts of which were manufactured or produced in different places, or of goods assembled in a place different from that in which their parts were manufactured or produced, in which of those places the goods are to be regarded for the purposes of this Ordinance as having been manufactured or produced. [cf. 1968 c. 29 s. 36 U.K.]
- (c) This subsection shall not apply to goods which are the subject of a notice published under subsection (2A). (Added 96 of 1991 s. 2. Amended 9 of 2005 s. 2)

(2A) The Director-General of Trade and Industry may by notice in the Gazette specify in relation to any description of goods (being goods that are subject to a scheme of import or export control specified in the notice) the place in which the goods are to be regarded for the purposes of this Ordinance as having been manufactured or produced, and any such goods shall, for the purposes of this Ordinance, be deemed to have been manufactured or produced in such place. (Added 96 of 1991 s. 2. Amended L.N. 173 of 2000)

(3) For the purposes of this Ordinance, a trade description or statement published in any newspaper, book or periodical or in any film or sound or television broadcast shall not be deemed to be a trade description applied or statement made in the course of a trade or business unless it is or forms part of an advertisement. [cf. 1968 c. 29 s. 39(2) U.K.]

Section:	3	Special provisions applicable to goldware	L.N. 264 of 2008	02/03/2009
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(1) Notwithstanding the definition of "false trade description" in section 2, a trade description which indicates the fineness (whether in parts per thousand or in carats) of gold shall be a false trade description if that indication is false to any extent or degree, except by understating the fineness. [cf. 1973 c. 43 s. 1(4) U.K.]

- (2) For the purpose of construing descriptions relating to the fineness of gold-
  - (a) a description indicating that an article, or the metal in an article, is so many carats shall be presumed to be an indication that the article or metal is of gold, and that its fineness is that specified in the table in Schedule 1 for that number of carats; (Amended 19 of 2008 s. 5)
  - (b) paragraph (a) shall not apply if (as in a case where the article is a precious stone) the word "carat" is used as a measure of weight for precious stones, and not as a measure of fineness. [cf. 1973 c. 43 Sch. 1 U.K.]
- (3) Notwithstanding the definition of "false trade description" in section 2-
  - (a) a trade description which indicates that any article (other than an article of pure gold) is of gold shall be a false trade description unless the article consists solely of gold alloy and-
    - (i) contains not less than 8 carats of gold; or
    - (ii) bears a mark clearly indicating in carats, by number or by number and the letters "k", "c" or "ct", the fineness of the gold content; or
    - (iii) bears a mark clearly indicating in parts per thousand the fineness of the gold content; and
  - (b) a mark calculated to be taken as an indication of the fineness of gold of an article-
    - (i) which is plated with or enclosed in gold alloy or gilded; or (Amended L.N. 272 of 1990)
    - (ii) to which gold alloy is soldered or otherwise affixed,
 shall be a false trade description unless it is manifest from the appearance of the article that the mark refers solely to the part of the article which consists of gold alloy.

(4) Any number of 1 or 2 digits on an article which indicates or purports to indicate, or is likely to be taken as an indication of, the fineness in carats of its gold content shall be a false trade description unless the article contains at least the same proportion of pure gold as the number bears to 24.

(5) Any number of 3 digits on an article which indicates or purports to indicate, or is likely to be taken as an indication of, the fineness in number of parts per thousand of its gold content shall be a false trade description unless the article contains gold of such a standard of fineness.

(6) For the purposes of this section "fineness" (純度) means the proportion of pure gold in accordance with subsection (4) or the number of parts by weight of gold in accordance with subsection (5) as the case may require.

Section:	4	Marking and provision of information, etc. orders*	L.N. 264 of 2008	02/03/2009
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(1) The Chief Executive in Council may by order require that any goods specified in the order shall be marked with or accompanied by any information (whether or not amounting to or including a trade description) or instruction relating to the goods and, subject to the provisions of this Ordinance, impose requirements for securing that the goods are so marked or accompanied, and regulate or prohibit the supply of goods with respect to which the requirements are not complied with; and the requirements may extend to the form and manner in which the information or instruction is to be given. (Amended 65 of 2000 s. 3)

(2) Where an order under this section is in force with respect to goods of any description, any person who, in the course of any trade or business, supplies or offers to supply goods of that description in contravention of the order commits an offence. (Amended L.N. 272 of 1990)

(3) An order under this section may make different provision for different circumstances and may, in the case of goods supplied in circumstances where the information or instruction required by the order would not be conveyed until after delivery, require the whole or part thereof to be also displayed near the goods.

(4) Without prejudice to subsection (2), an order under this section may provide that a contravention of any provision of the order is an offence punishable with a fine at level 6 and a term of imprisonment for 3 months. (Added 19 of 2008 s. 6)

(5) For the avoidance of doubt, information required by 2 or more orders made under subsection (1) to be contained in an invoice or receipt may, where the information is provided in respect of the same item of goods, be contained in one single invoice or receipt. (Added 19 of 2008 s. 6)

[cf. 1968 c. 29 s. 8 U.K.]

**Note:**

\* (Amended 19 of 2008 s. 6)

Section:	5	Information to be given in advertisements	65 of 2000	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 65 of 2000 s. 3

(1) The Chief Executive in Council may by order require that any description of advertisements of any goods specified in the order shall contain or refer to information (whether or not amounting to or including a trade description) relating to such goods and subject to the provisions of this Ordinance impose requirements as to the inclusion of that information or of an indication of the means by which it may be obtained. (Amended 65 of 2000 s. 3)

(2) An order under this section may specify the form and manner in which any such information or indication is to be included in advertisements of any description and may make different provision for different circumstances.

(3) Where an advertisement of any goods to be supplied in the course of any trade or business fails to comply with any requirement imposed under this section, any person who publishes the advertisement commits an offence.

[cf. 1968 c. 29 s. 9 U.K.]

Section:	6	Applying a trade description, trade mark or mark to goods		30/06/1997
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PART II

FALSE TRADE DESCRIPTIONS OR REPRESENTATIONS  
AND FORGED TRADE MARKS

- (1) A person applies a trade description or trade mark or mark to goods if he-
  - (a) affixes or annexes it to or in any manner marks it on or incorporates it with-
    - (i) the goods themselves; or
    - (ii) anything in, on or with which the goods are supplied;
  - (b) places the goods in, on or with anything which the trade description or trade mark or mark has been affixed or annexed to, marked on or incorporated with, or places any such thing with the goods;
  - (c) uses the trade description or trade mark or mark in any manner likely to be taken as referring to the

goods; or

(d) makes in any affidavit, declaration or writing any statement to the effect that a trade description or trade mark or mark is applicable to the goods.

(2) An oral statement may amount to the use of a trade description or trade mark or mark.

(3) Where goods are supplied in pursuance of a request in which a trade description or trade mark or mark is used and the circumstances are such as to make it reasonable to infer that the goods are supplied as goods corresponding to that trade description or trade mark or mark, the person supplying the goods shall be deemed to have applied that trade description or trade mark or mark to the goods.

[cf. 1968 c. 29 s. 4 U.K.]

Section:	7	Offences in respect of trade descriptions		30/06/1997
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(1) Subject to the provisions of this Ordinance, any person who-

(a) in the course of any trade or business-

(i) applies a false trade description to any goods; or

(ii) supplies or offers to supply any goods to which a false trade description is applied; or

(b) has in his possession for sale or for any purpose of trade or manufacture any goods to which a false trade description is applied,

commits an offence.

(2) A person exposing goods for supply or having goods in his possession for supply shall be deemed to offer to supply them.

(3) Subject to the provisions of this Ordinance any person who disposes of or has in his possession any die, block, machine, or other instrument for the purpose of making, or applying to goods a false trade description commits an offence unless he proves that he acted without intent to defraud. (Amended L.N. 272 of 1990)

[cf. 1968 c. 29 s. 1 U.K.]

Section:	8	Trade descriptions used in advertisements		30/06/1997
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(1) The following provisions of this section shall have effect where in an advertisement a trade description is used in relation to any class of goods.

(2) The trade description shall be taken as referring to all goods of the class, whether or not in existence at the time the advertisement is published-

(a) for the purpose of determining whether an offence has been committed under section 7(1)(a)(i); and

(b) where goods of the class are supplied or offered to be supplied by a person publishing or displaying the advertisement, also for the purpose of determining whether an offence has been committed under section 7(1)(a)(ii).

(3) In determining for the purposes of this section whether any goods are of a class to which a trade description used in an advertisement relates, regard shall be had not only to the form and content of the advertisement but also to the time, place, manner and frequency of its publication and all other matters making it likely or unlikely that a person to whom the goods are supplied would think of the goods as belonging to the class in relation to which the trade description is used in the advertisement.

[cf. 1968 c. 29 s. 5 U.K.]

Section:	9	Offences in respect of trade marks	L.N. 31 of 2003	04/04/2003
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(1) Subject to the provisions of this Ordinance, any person who-

(a) forges any trade mark;

(b) falsely applies to any goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive;

(c) makes any die, block, machine or other instrument for the purpose of forging, or of being used for forging, a trade mark;

(d) disposes of or has in his possession any die, block, machine or other instrument for the purpose of forging a trade mark; or

(e) causes to be done anything referred to in paragraph (a), (b), (c) or (d),

commits an offence unless he proves that he acted without intent to defraud.

(2) Subject to the provisions of this Ordinance, any person who sells or exposes or has in his possession for sale or for any purpose of trade or manufacture, any goods to which any forged trade mark is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, commits an offence.

(3) For the purposes of this section but subject to subsection (3A), a person shall be deemed-

(a) to forge a trade mark who either-

- (i) without the consent of the owner of the trade mark, makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or
- (ii) falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise;

(b) falsely to apply to goods a trade mark who without the consent of the owner of that trade mark applies that trade mark to goods,

and "forged trade mark" (偽造商標) shall be construed accordingly. (Replaced 35 of 2000 s. 98)

(3A) A person shall not be deemed under subsection (3) to forge a trade mark, or falsely to apply to goods a trade mark, if the person proves-

- (a) that he acted without infringing any right of the owner of the trade mark conferred by the Trade Marks Ordinance (Cap 559);
- (b) that the trade mark or mark was not used by him in the course of any trade or business as a trade mark in relation to goods;
- (c) that the use made by him of the trade mark or mark is not a use in relation to goods for which the trade mark is registered and is not a use in relation to goods similar to those for which it is registered; or
- (d) that the use made by him of the trade mark or mark is a use to which the rights of the owner of the trade mark do not extend by reason of a disclaimer, limitation or condition to which the trade mark is subject. (Added 35 of 2000 s. 98)

(4) In any prosecution for an offence under subsection (1)(a) or (b) the burden of proving the consent of the owner shall lie on the defendant. (Amended 35 of 2000 s. 98)

Section:	10	(Repealed 65 of 2000 s. 3)	65 of 2000	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 65 of 2000 s. 3

Section:	11	False representations as to supply of goods		30/06/1997
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Subject to the provisions of this Ordinance, any person who, in the course of any trade or business, gives, by whatever means, any false indication, direct or indirect, that any goods supplied by him are of a kind supplied to any person, commits an offence.

[cf. 1968 c. 29 s. 13 U.K.]

Section:	12	Prohibited import and export of certain goods	L.N. 31 of 2003	04/04/2003
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(1) Subject to section 13, no person shall import or export any goods to which a false trade description or forged trade mark is applied. (Amended 35 of 2000 s. 98)

(2) Any person who imports or exports any goods contrary to subsection (1) commits an offence unless he proves that-

- (a) he did not know, had no reason to suspect and could not with reasonable diligence have found out that the goods are goods to which a false trade description or forged trade mark is applied; or
- (b) the goods are not intended for trade or business.

(3) This section shall not apply to any goods in transit.

Section:	13	Power to exempt goods sold for export	65 of 2000	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 65 of 2000 s. 3

In relation to goods which are intended for despatch to a destination outside Hong Kong, section 7 shall apply as

if there were omitted from the matters included in the definition of "trade description" in section 2 those specified in paragraph (a) thereof, and, if the Chief Executive by order specifies any other of those matters for the purposes of this section with respect to any description of goods, section 7 shall apply, in relation to goods of that description which are intended for despatch to a destination outside Hong Kong, as if the matters so specified were also omitted from those included in the definition of "trade description" in section 2.

(Amended 65 of 2000 s. 3)  
[cf. 1968 c. 29 s. 32 U.K.]

Section:	13A	Price per unit of quantity on signs must be readily comprehensible	L.N. 264 of 2008	02/03/2009
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## PART IIA

### FALSE, MISLEADING OR INCOMPLETE INFORMATION

(1) Any person who, without reasonable excuse, displays in the course of any trade or business a sign which—

- (a) indicates a price set by reference to any unit of quantity for any goods that are exposed for sale; but
- (b) fails, within the meaning given by subsection (2)(c), to indicate the price per unit of quantity in a readily comprehensible manner,

commits an offence.

(2) For the purposes of subsection (1)—

- (a) "quantity" (數量) includes length, width, height, area, volume, capacity, weight and number;
- (b) "sign" (標誌) includes notice, placard, label and any other article that serves a similar purpose;
- (c) a sign which indicates the price set by reference to any unit of quantity for any goods fails to indicate the price per unit of quantity in a readily comprehensible manner if—
  - (i) any letter, word, numeral or character on the sign that indicates the price or the unit of quantity is partially or completely obscured while some other such letters, words, numerals or characters are visible;
  - (ii) because of any discrepancy between the manner of presentation of any letter, word, numeral or character on the sign that indicates the price or the unit of quantity and that of any other letter, word, numeral or character on the sign that indicates the price or the unit of quantity in terms of — !
    - (A) the size and distinctiveness of the letters, words, numerals or characters; or
    - (B) the colour of the letters, words, numerals or characters as contrasted with the colour of the background on which they are marked,
 it is reasonably likely that a person not having a close look at the sign will be unable to get a clear idea of the accurate price per that unit of quantity; or
  - (iii) the letters, words or characters on the sign that indicate the unit of quantity are unreasonably far apart from the letters, words, numerals or characters on the sign that indicate the price.

(3) If a person—

- (a) displays in the course of any trade or business a sign which—
  - (i) indicates the price of any goods set by reference to a unit of quantity; but
  - (ii) does not indicate that unit of quantity; and
- (b) displays another sign which indicates that unit of quantity by reference to which the actual price of such goods is to be calculated,

subsections (1) and (2) shall have effect in relation to the person as if such signs were a single sign.

(Part IIA added 19 of 2008 s. 7)

Section:	13B	If price does not include basic accessories, purchaser to be informed before payment	L.N. 264 of 2008	02/03/2009
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(1) Any person who—

- (a) exposes any goods specified in Part 1 of Schedule 2 for sale in the course of any trade or business at a

price which does not include any basic accessories of the goods that are reasonably expected to be included in the price; and

- (b) fails to communicate, in the specified manner, to a person who offers to purchase the goods, the information that the price does not include the accessories before the person pays for the purchase,

commits an offence.

(2) In subsection (1)—

- (a) “basic accessories” (基本配件), in relation to any goods specified in Part 1 of Schedule 2, means accessories that, though not being an integral part of the goods in structural terms, are nevertheless essential for the effective performance of the principal function (as determined in accordance with section 2 of Part 2 of Schedule 2) of the goods;
- (b) “specified manner” (指明方式) means the manner in which the price of the goods is communicated to the person who offers to purchase the goods.

(3) For the purposes of subsection (1), in determining whether any basic accessories of any goods are reasonably expected to be included in the price of the goods as communicated to a person who offers to purchase the goods, regard shall be had to—

- (a) the prevailing trade practice;
- (b) the representation, if any, made to the person by the person who exposes the goods for sale ( “seller” );
- (c) whether the instructions for users provided by the manufacturer or distributor of the goods show that the goods and the accessories are treated as a single item for the purpose of sale;
- (d) whether the packaging of the goods and the accessories is such that they are treated as a single item for the purpose of sale;
- (e) whether the price of the goods at which they were supplied to the seller included the accessories; and
- (f) any other relevant considerations.

(4) The Secretary for Commerce and Economic Development may by notice published in the Gazette amend Schedule 2.

(Part IIA added 19 of 2008 s. 7)

Section:	13C	False or misleading representation as regards seller’s connection with another person	L.N. 264 of 2008	02/03/2009
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(1) Any person who, in the course of any trade, business or profession, makes a false representation to any other person that a particular seller (whether or not the seller is the person who makes the representation) who sells any goods in the course of any trade or business is connected with or endorsed by any individual or body commits an offence.

(2) Any person who—

- (a) in connection with—
  - (i) the supply or possible supply of any goods in the course of any trade or business; or
  - (ii) the promotion of the supply of any goods in the course of any trade or business,
 makes a representation to any other person ( “information recipient” ) that the seller who supplies the goods is connected with or endorsed by any individual or body ( “subject individual or body” );
- (b) ought reasonably to expect that the information recipient is likely to mistake the subject individual or body for another individual or body who or which is widely known to be of good standing and reputation ( “reputable individual or body” ) because the name of the subject individual or body is identical with, or very similar to, that of the reputable individual or body; and
- (c) fails, where the seller is not connected with or endorsed by the reputable individual or body, to take reasonable steps to prevent the information recipient from believing that the seller is connected with or endorsed by the reputable individual or body,

commits an offence.

(3) For the purposes of subsections (1) and (2)—

- (a) a representation that a seller is connected with an individual or body is made if it is suggested that—
  - (i) the individual or body has a proprietary interest (whether as the proprietor, a shareholder, a partner or otherwise) in the seller;



- (ii) the individual or body is in any form of close business association with the seller; or
- (iii) the seller is the agent or principal of the individual or body;
- (b) a representation that a seller is connected with a body is made if it is suggested that the seller and the body are owned by, or under the control of, the same person;
- (c) a representation that a seller is endorsed by an individual or body is made if it is suggested that—
  - (i) the individual or body makes a positive evaluation specifically of the seller; or
  - (ii) the seller has the permission, authorization or consent of the individual or body without which the seller would not be able to sell the goods concerned lawfully.

(4) It is a defence for a person charged under subsection (1) to prove that he did not know and had no reason to believe that the representation was false.

(5) It is a defence for a person charged under subsection (2) to prove that he believed, on reasonable grounds, that the information recipient did not mistake the subject individual or body for the reputable individual or body.

(Part IIA added 19 of 2008 s. 7)

Section:	14	Appointment of authorized officers		30/06/1997
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### PART III

#### ENFORCEMENT

(1) The Commissioner may appoint any public officer to be an authorized officer for the purposes of this Ordinance.

(2) The Commissioner may exercise any of the powers conferred on an authorized officer under this Ordinance.  
(Amended L.N. 294 of 1982)

Section:	15	Power to enter premises and inspect and seize goods and documents		30/06/1997
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- (1) An authorized officer may, on production, if required, of evidence of his appointment-
  - (a) make such purchases of goods as may appear expedient for the purpose of determining whether or not the provisions of this Ordinance are being complied with;
  - (b) for the purpose of ascertaining whether any offence under this Ordinance has been or is being committed, inspect any goods and enter any premises other than domestic premises;
  - (c) if he has reasonable cause to suspect that an offence under this Ordinance has been committed, seize or detain any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;
  - (d) if he has reasonable cause to suspect that an offence under this Ordinance has been committed and for the purpose of ascertaining whether it has been committed, require any person carrying on a trade or business or employed in connection with a trade or business to produce any books or documents relating to the trade or business and may take copies of, or of any entry in, any such book or document;
  - (e) in the case of any premises, vehicle, vessel (other than a ship of war) or aircraft (other than a military aircraft) in which he has reasonable cause to suspect that there are goods in respect of which an offence under this Ordinance has been or is being committed-
    - (i) subject to section 16, enter and search such premises;
    - (ii) stop and search such vehicle; or
    - (iii) stop, board and search such vessel or aircraft;
  - (f) seize, remove or detain-
    - (i) any goods in respect of which he has reasonable cause to suspect an offence under this Ordinance has been or is being committed; and
    - (ii) anything which he has reason to believe may be required as evidence in proceedings for an offence under this Ordinance.
- (2) An authorized officer may-
  - (a) break open any container or open any vending machine for the purpose of exercising his powers under subsection (1)(f) to seize goods;
  - (b) break open any outer or inner door of any place which he is empowered or authorized by or under this

- Ordinance to enter and search;
- (c) forcibly board any vessel or aircraft which he is empowered by this Ordinance to stop, board or search;
  - (d) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Ordinance;
  - (e) detain any person found in any premises which he is empowered or authorized by or under this Ordinance to search until such place has been so searched;
  - (f) detain any vessel or aircraft which he is empowered by this Ordinance to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been so searched;
  - (g) detain any vehicle which he is empowered by or under this Ordinance to stop and search until it has been so searched.

[cf. 1968 c. 29 ss. 27 & 28 U.K.]

Section:	16	Restrictions on the entry and search of domestic premises		30/06/1997
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- (1) No domestic premises shall be entered and searched by an authorized officer unless-
  - (a) a magistrate has issued a warrant under subsection (2); or
  - (b) the Commissioner has given an authorization under subsection (3). (Amended L.N. 294 of 1982)
- (2) A magistrate may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any domestic premises any goods or thing which may be seized, removed or detained under section 15(1)(f), issue a warrant authorizing an authorized officer to enter and search the premises.
- (3) The Commissioner may, if he is satisfied that there is reasonable ground for suspecting- (Amended L.N. 294 of 1982)
  - (a) that there is in any domestic premises any goods or thing which may be seized, removed or detained under section 15(1)(f); and
  - (b) that unless the premises are entered and searched immediately such goods or thing are likely to be removed from the premises,
 authorize in writing an authorized officer to enter and search the premises.
- (4) An authorized officer authorized under subsection (2) or (3) to enter and search any domestic premises may take with him such other persons and such equipment as may appear to him to be necessary.

Section:	16A	Power to detain goods by locking or sealing premises or container		30/06/1997
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- (1) An authorized officer may, for the purpose of detaining, under section 15-
  - (a) any goods in respect of which he has reasonable cause to suspect that an offence under this Ordinance has been or is being committed; and
  - (b) anything which he has reason to believe may be required as evidence in proceedings for an offence under this Ordinance,
 place a lock or seal on any premises or container in which the goods or things are.
- (2) If a lock or seal is placed on any premises or container under subsection (1), the period for which the lock or seal is placed shall not exceed 7 days without the consent in writing of the owner of the premises or container, or his authorized agent.
- (3) If an authorized officer has placed a lock or seal on any premises or container under subsection (1), any person who breaks or interferes with such lock or seal commits an offence unless he does so-
  - (a) in the bona fide belief that it is necessary immediately to break or interfere with the lock or seal in order to prevent-
    - (i) injury being suffered by any person; or
    - (ii) damage being incurred to any such premises or container, as the case may be; or
  - (b) in the exercise of his duties as a public officer.

(Added 2 of 1987 s. 2)

Section:	16B	Powers of arrest of authorized officers		30/06/1997
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- (1) An authorized officer may, subject to subsection (2), arrest or detain for further enquiries without warrant any person whom he reasonably suspects of having committed any offence under this Ordinance.

(2) An authorized officer who arrests any person under subsection (1) shall forthwith take the person to a police station or, if further enquiries are necessary, first to an office of the Customs and Excise Department and then to a police station, there to be dealt with in accordance with the provisions of the Police Force Ordinance (Cap 232):

Provided that in no case shall any person be detained for more than 48 hours without being charged and brought before a magistrate.

(3) If any person forcibly resists or attempts to evade arrest under this section, the authorized officer may use such force as is reasonably necessary to effect the arrest.

(Added 2 of 1987 s. 2)

Section:	16C	Disclosure of information, etc.	L.N. 31 of 2003	04/04/2003
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(1) Where goods seized or detained under section 15 are, or are reasonably suspected by the Commissioner to be, goods to which a forged trade mark is applied, or to which a trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, the Commissioner shall, wherever reasonably practicable, notify the owner of the trade mark or his authorized agent of the seizure or detention, as the case may be. (Amended 35 of 2000 s. 98)

(2) In the circumstances specified in subsection (1), the Commissioner may disclose to the owner of the trade mark or to his authorized agent- (Amended 35 of 2000 s. 98)

- (a) the time, and the address of the place, of seizure or detention of the goods;
- (b) the name and address of the person from whom the goods have been seized or detained;
- (c) the nature and quantity of the goods seized or detained;
- (d) any statement made to the Commissioner by any person in connection with the seizure or detention, either with the prior consent in writing of that person or without such consent where that person is dead or cannot after reasonable enquiries by the Commissioner as to his whereabouts be found by the Commissioner;
- (e) any other information or document relating to the goods seized or detained which the Commissioner thinks fit to disclose.

(3) The owner of a trade mark or his authorized agent- (Amended 35 of 2000 s. 98)

- (a) where he seeks disclosure of any information or document that is not referred to in subsection (2); or
- (b) where information or a document that is referred to in subsection (2) is not disclosed by the Commissioner,

may apply to the Court of First Instance for an order requiring the Commissioner to disclose such information or document and the Court of First Instance may on such an application make such order for disclosure as it deems fit. (Amended 25 of 1998 s. 2)

(4) An application under subsection (3) may be begun by motion with previous notice to the Commissioner.

(Added 2 of 1987 s. 2)

Section:	16D	International co-operation		30/06/1997
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The Commissioner may, for the purpose of promoting international co-operation in the protection of intellectual property rights, disclose information obtained in pursuance of this Ordinance to the customs authorities of any Convention country.

(Added 11 of 1996 s. 14)

Section:	17	Offences of obstruction and disclosure of information	25 of 1998	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) Without prejudice to any other Ordinance, any person who-

- (a) wilfully obstructs an authorized officer in the exercise of his powers or the performance of his duties under this Ordinance;
- (b) wilfully fails to comply with any requirement properly made to him by any such authorized officer; or
- (c) without reasonable excuse fails to give such authorized officer any other assistance or information which the authorized officer may reasonably require of him for the purpose of the performance of the

officer's functions under this Ordinance, (Amended L.N. 65 of 1986)  
 commits an offence. (Amended L.N. 272 of 1990)

- (2) Subject to subsection (2A), any person who discloses to any other person- (Amended 2 of 1987 s. 3)
  - (a) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered by virtue of this Ordinance; or
  - (b) any information obtained by him in pursuance of this Ordinance,

commits an offence unless the disclosure was made-

- (i) in or for the purpose of the performance by him or any other person of functions under this Ordinance; or
- (ii) in the case of paragraph (b) under the direction or order of a court.

(2A) A person does not commit an offence under subsection (2) by-

- (a) disclosing information under section 16C(1) or (2) or under an order of the Court of First Instance made under section 16C(3);
- (b) disclosing information under section 16D; or
- (c) disclosing information under section 30F(1) or under an order of the Court of First Instance made under section 30F(2). (Replaced 11 of 1996 s. 15. Amended 25 of 1998 s. 2)

(3) Any person who, in giving any such information as is referred to in subsection (1)(c), makes any statement which he knows to be false commits an offence.

(4) Subject to subsection (5), nothing in this section shall be taken to-

- (a) require a person to answer any question or give any information if to do so might incriminate that person or the wife or husband of that person; or
- (b) compel the production by a solicitor of a document containing a privileged communication made by or to him in that capacity or authorize the seizure of any such document in his possession.

(5) A person shall not be excused, by reason that to do so may incriminate that person or the wife or husband of that person of an offence under this Ordinance-

- (a) from answering any question put to that person in any civil proceedings;
- (b) from complying with any order made in any such proceedings,

but no statement or admission made by a person in answering a question put or complying with an order made shall, in proceedings for an offence under this Ordinance, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the wife or husband of that person. (Amended L.N. 123 of 1982)

[cf. 1968 c. 29 s. 29 U.K.]

Section:	18	Penalties	L.N. 264 of 2008	02/03/2009
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(1) Any person who commits an offence under section 4, 5, 7, 9, 11, 12, 13A, 13B or 13C shall be liable- (Amended 65 of 2000 s. 3; 19 of 2008 s. 8)

- (a) on conviction on indictment, to a fine of \$500000 and to imprisonment for 5 years; and
- (b) on summary conviction, to a fine at level 6 and to imprisonment for 2 years.

(1A) Any person who commits an offence under section 16A(3) shall be liable to a fine at level 2 and to imprisonment for 3 months. (Added 2 of 1987 s. 4)

(2) Any person who commits an offence under section 17 shall be liable to a fine at level 3 and to imprisonment for 1 year.

(Amended 19 of 2008 s. 8)

Section:	19	Time limit for prosecutions		30/06/1997
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No prosecution for an offence under this Ordinance shall be brought after-

- (a) the expiration of 3 years from the date of commission of the offence; or
- (b) the expiration of 1 year from the date of discovery of the offence by the prosecutor,

whichever is the earlier.

Section:	20	Offences by corporations		30/06/1997
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Where a body corporate is convicted of an offence under this Ordinance, every person who, at the time of the

commission of the offence, was a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge, or that he exercised all due diligence to prevent the commission of the offence.

Section:	21	Offences due to fault of other person		30/06/1997
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Where the commission by any person of an offence under this Ordinance is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

[cf. 1968 c. 29 s. 23 U.K.]

Section:	22	Accessory to offences committed outside Hong Kong		30/06/1997
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Subject to the provisions of this Ordinance, any person who, in Hong Kong, procures, counsels, aids, abets or is accessory to the commission outside Hong Kong of an act which, if committed in Hong Kong, would be an offence under this Ordinance, commits that offence as a principal and shall be liable to be prosecuted in Hong Kong as if the offence had been committed within Hong Kong.

Section:	23	Samples	65 of 2000	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 65 of 2000 s. 3

(1) Where any act or omission constitutes both an offence under this Ordinance and an offence under the Public Health and Municipal Services Ordinance (Cap 132), evidence on behalf of the prosecution concerning any sample procured for analysis shall be admissible in proceedings in respect of the offence under this Ordinance if, but only if, the provisions of section 63 of the Public Health and Municipal Services Ordinance (Cap 132) have been complied with. (Amended 10 of 1986 s. 32)

(2) The Chief Executive in Council may by regulations provide that in any proceedings for an offence under this Ordinance in relation to such goods as may be specified in the regulations (other than proceedings for an offence referred to in subsection (1)) evidence on behalf of the prosecution concerning any sample procured for analysis shall not be admissible unless the sample has been dealt with in such manner as may be specified in the regulations. (Amended 65 of 2000 s. 3)

Section:	24	Evidence by certificate	65 of 2000	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 65 of 2000 s. 3

(1) The Chief Executive in Council may by regulations provide that certificates issued by such persons as may be specified by the regulations in relation to such matters as may be so specified shall, subject to this section, be received in evidence of those matters in any proceedings under this Ordinance. (Amended 65 of 2000 s. 3)

(2) Such a certificate shall not be received in evidence-

- (a) unless the party against whom it is to be given in evidence has been served with a copy thereof not less than 7 days before the hearing; or
- (b) if that party has, not less than 3 days before the hearing served on the other party a notice requiring the attendance of the person issuing the certificate.

(3) For the purposes of this section any document purporting to be such a certificate as is referred to in this section shall be deemed to be such a certificate unless the contrary is shown.

[cf. 1968 c. 29 s. 31 U.K.]

Section:	24A	Rule of evidence regarding imported goods	9 of 2005	17/06/2005
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(1) In any prosecution for an offence under this Ordinance in respect of the import of goods to which a false

trade description of the place of manufacture, production, processing or reconditioning is applied, evidence that the goods were imported from a place shall be prima facie evidence that the goods were manufactured, produced, processed or reconditioned, as the case may be, in such place. (Amended 9 of 2005 s. 3)

(2) Notwithstanding subsection (1), in any prosecution for an offence referred to in that subsection, a trade description which indicates that the goods were manufactured, produced, processed or reconditioned in a place shall not be regarded as false only because of the evidence that the goods were imported from another place, if—

- (a) that other place is located within the first-mentioned place; or
- (b) the first-mentioned place is located within that other place. (Added 9 of 2005 s. 3)

(Added 2 of 1987 s. 5)

Section:	25	Description of trade mark in pleading	30/06/1997
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In any information, indictment, pleading, proceeding or document in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

Section:	26	Defence mistake, accident, etc.	30/06/1997
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(1) In any proceedings for an offence under this Ordinance it shall, subject to subsection (2), be a defence for the person charged to prove-

- (a) that the commission of the offence was due to a mistake or to reliance on information supplied to him or to the act or default of another person, an accident or some other cause beyond his control; and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(2) If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(3) In any proceedings for an offence under section 7(1)(a)(ii) or (b) it shall be a defence for the person charged to prove that he did not know, had no reason to suspect and could not with reasonable diligence have ascertained, that the goods did not conform to the description or that the description had been applied to the goods.

(4) In any proceedings for an offence under section 9(2) it shall be a defence for the person charged to prove that he did not know, had no reason to suspect and could not with reasonable diligence have ascertained, that a forged trade mark had been applied to the goods or that a trade mark or mark so nearly resembling a trade mark as to be calculated to deceive had falsely been applied to the goods.

[cf. 1968 c. 29 s. 24 U.K.]

Section:	27	Innocent publication of advertisements	30/06/1997
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In proceedings for an offence under this Ordinance committed by the publication of an advertisement, it shall be a defence for the person charged to prove that he is a person whose business it is to publish or arrange for the publication of advertisements and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under this Ordinance.

[cf. 1968 c. 29 s. 25 U.K.]

Section:	28	Costs in proceedings	30/06/1997
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In any proceedings under this Ordinance, the magistrate or court hearing the proceedings may, notwithstanding any provision of any other Ordinance, make such order as to costs as he or it may think fit.

Section:	29	Power to make orders with respect to property in possession of the Government	65 of 2000	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 65 of 2000 s. 3

Where any property has come into the possession of the Government or any authorized officer acting under this Ordinance, section 102 of the Criminal Procedure Ordinance (Cap 221) shall, subject to this Ordinance, apply to such property in all respects as though such property had come into the possession of the police in connection with a criminal offence and such section shall be construed as though references to the Government or such authorized officer, as the case may be, were substituted therein for references to the police.

(Amended 65 of 2000 s. 3)

Section:	30	Forfeiture and disposal of certain goods	65 of 2000	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 65 of 2000 s. 3

(1) Any goods in respect of which an offence under this Ordinance has been committed shall be liable to forfeiture, whether or not any person has been convicted of any such offence.

(2) Where goods are seized or detained by an authorized officer under section 15, the Commissioner may at any time release such goods to the person who appears to him to be the owner thereof or his authorized agent subject to any such condition as the Commissioner may specify in writing.

(3) Where goods have not been released under subsection (2), the Commissioner may, whether in the same proceedings where an offence is prosecuted or in other proceedings under this Ordinance, apply to a court or magistrate for the forfeiture of the goods.

(4) If, on the hearing of an application under subsection (3), the court or magistrate is satisfied that the goods are liable to forfeiture, the court or magistrate may order that-

- (a) the goods be forfeited to the Government; (Amended 65 of 2000 s. 3)
- (b) the goods be destroyed;
- (c) any false trade description applied to the goods be obliterated and thereafter the goods be-
  - (i) disposed of in such manner and subject to any such condition as the court or magistrate may specify in the order; or
  - (ii) released to the owner thereof or his authorized agent subject to any condition which the court or magistrate may specify in the order; or (Replaced 11 of 1996 s. 16)
- (d) in exceptional cases, any forged trade mark applied to the goods be obliterated and thereafter the goods be-
  - (i) disposed of in such manner and subject to any such condition as the court or magistrate may specify in the order; or
  - (ii) released to the owner thereof or his authorized agent subject to any condition which the court or magistrate may specify in the order. (Replaced 11 of 1996 s. 16)

(5) Where under subsection (3) an application is made to a court or magistrate for the forfeiture of goods otherwise than in proceedings where an offence is prosecuted, the Commissioner shall forthwith notify in writing the owner of the goods or his authorized agent, unless the owner or his authorized agent has indicated in writing to the Commissioner that such notification is not required:

Provided that, if there is more than one owner of the goods, it shall be sufficient for the purposes of this subsection to give notice to one such owner or his authorized agent, unless one such owner or his authorized agent has indicated that such notification is not required.

(Replaced 2 of 1987 s. 6)

Section:	31	(Repealed)		30/06/1997
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(Repealed 2 of 1987 s. 6)

Section:	30A	Interpretation	L.N. 31 of 2003	04/04/2003
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### PART IIIA

#### PROCEEDINGS RELATING TO IMPORTATION OF INFRINGING GOODS

In this Part, "detention order" (扣留令) means an order made under section 30C(1).

(Replaced 35 of 2000 s. 98)

Section:	30B	Application for detention order	L.N. 31 of 2003	04/04/2003
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(1) The owner of a trade mark may apply to the Court of First Instance for an order under section 30C(1) where he has reasonable ground for suspecting that the importation of goods that constitute infringing goods may take place. (Amended 25 of 1998 s. 2; 35 of 2000 s. 98)

(2) An application under subsection (1) may be made ex parte but with previous notice to the Commissioner.

(3) An application under subsection (1) shall be in such form as is prescribed by rules of court and shall be supported by an affidavit of the owner which- (Amended 35 of 2000 s. 98)

- (a) states that the deponent is the owner of the trade mark in question; (Amended 35 of 2000 s. 98)
- (b) states that a copy of the trade mark exhibited to the affidavit is a true copy of the trade mark;
- (c) states the grounds for the application, including the facts relied upon by the deponent as showing that the goods in question are prima facie infringing goods;
- (d) sets out a sufficiently detailed description of the goods in question to make them readily recognizable by the Commissioner;
- (e) sets out particulars regarding the expected mode of transportation and the expected date of importation and, if available, particulars identifying the importer; and
- (f) sets out such other information and exhibits such other documents as may be prescribed by rules of court.

(4) Where the trade mark in question is registered, the affidavit of the owner shall exhibit a certified copy of each entry in the register that relates to the trade mark or, where it is not practicable for the deponent to obtain such a certified copy, shall state the reasons why it is not practicable to do so. (Amended 35 of 2000 s. 98)

(5) No application may be made under subsection (1) with respect to goods in transit.

(6) No application may be made under subsection (1) with respect to the importation by a person of goods for his private and domestic use.

(Added 11 of 1996 s. 17)

Section:	30C	Issuance of detention order	L.N. 31 of 2003	04/04/2003
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(1) Where, on the hearing of an application made under section 30B, the owner presents adequate evidence to satisfy the Court of First Instance that the goods in question are prima facie infringing goods, the Court of First Instance may make an order directing the Commissioner or an authorized officer to take reasonable measures to seize or detain the goods on or after their importation. (Amended 35 of 2000 s. 98)

(2) The Court of First Instance may require the owner of the trade mark to provide security or an equivalent assurance in an amount sufficient to protect the importer and any other person having an interest in the goods to be detained, including the consignor and consignee, from any loss or damage that may be incurred in the event that the detention is wrongful or the goods are released to the importer under section 30D(6). (Amended 35 of 2000 s. 98)

(3) A detention order may contain such terms and conditions as the Court of First Instance considers appropriate.

(4) The Court of First Instance shall not make a detention order with respect to any goods that have been seized or detained by, and that are in the custody of, the Commissioner or an authorized officer pursuant to any law.

(5) Where the Commissioner or an authorized officer seizes or detains any goods pursuant to any law, other than this Part, any detention order made with respect to those goods shall cease to have effect.

(6) Where the Court of First Instance makes a detention order, the owner of the trade mark shall forthwith serve a copy of the order on the Commissioner. (Amended 35 of 2000 s. 98)

(7) A detention order has effect from the date on which it is made or such later date as may be specified by the



Court of First Instance and shall cease to have effect 60 days from that date unless the Commissioner or an authorized officer has, pursuant to the order and within that period, seized or detained any goods to which the order applies.

(Added 11 of 1996 s. 17. Amended 25 of 1998 s. 2)

Section:	30D	Enforcement of detention order	L.N. 31 of 2003	04/04/2003
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(1) Where a detention order is served on the Commissioner, the Commissioner or an authorized officer may, subject to the terms and conditions of the order, seize or detain any goods to which the order applies.

(2) The owner of the trade mark shall- (Amended 35 of 2000 s. 98)

(a) supply to the Commissioner or an authorized officer sufficient information on the goods and the particular importation to render the goods recognizable and the shipment or particular importation identifiable and any other information the Commissioner or an authorized officer may reasonably require for the purpose of carrying out the detention order;

(b) deposit with the Commissioner an amount that is, in the opinion of the Commissioner, sufficient to reimburse the Government for the costs likely to be incurred in connection with the carrying out of the detention order; and

(c) upon notification in writing by the Commissioner or an authorized officer of the seizure or detention of the goods, provide such storage space and other facilities as he may require.

(3) The Commissioner or an authorized officer may refuse to carry out the detention order if the owner of the trade mark fails to comply with subsection (2).

(4) The Commissioner may, after giving written notice to the owner of the trade mark, apply to the Court of First Instance for directions in carrying out the detention order, and the Court of First Instance may, after giving the owner an opportunity to be heard, give such directions as it deems fit. (Amended 25 of 1998 s. 2)

(5) The Commissioner or an authorized officer shall forthwith after goods are seized or detained pursuant to a detention order, give written notice of the seizure or detention to-

(a) the owner of the trade mark;

(b) the importer; and

(c) any other person to whom notice is required to be given by the terms of the order.

(6) Subject to subsection (7) and to any law authorizing the Commissioner or an authorized officer to seize or detain goods, the Commissioner or an authorized officer shall release any goods that have been seized or detained pursuant to a detention order to the importer if the owner of the trade mark has not, within a period of 10 days after notice of the seizure or detention is given to the owner, notified the Commissioner in writing that an action for infringement in respect of the goods has been brought under the Trade Marks Ordinance (Cap 559).

(7) The Court of First Instance may, on application by the owner of the trade mark, after giving the Commissioner and each person to whom notice is required to be given under subsection (5) an opportunity to be heard, extend the period referred to in subsection (6) by a period not exceeding an additional 10 days if it is satisfied that the request for the extension is reasonable. (Amended 25 of 1998 s. 2)

(8) In proceedings under subsection (7), the Court of First Instance may require the owner of the trade mark to provide security or an equivalent assurance in addition to that provided in accordance with section 30C(2). (Amended 25 of 1998 s. 2)

(9) Where the owner of the trade mark has, within the period referred to in subsection (6), as may be extended under subsection (7), notified the Commissioner in writing that an action for infringement in respect of the goods has been brought under the Trade Marks Ordinance (Cap 559), the Commissioner or an authorized officer shall retain custody of the goods subject to the direction of the Court of First Instance in the infringement proceedings. (Amended 25 of 1998 s. 2)

(10) No public holiday, gale warning day or black rainstorm warning day shall be reckoned in the computation of the period referred to in subsection (6), as may be extended under subsection (7).

(11) In this section-

"black rainstorm warning day" (黑色暴雨警告日) means any day throughout or for part of which a black rainstorm warning is in force, and "black rainstorm warning" (黑色暴雨警告) means a warning issued by the Director of the Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as Black; (Amended L.N. 362 of 1997)

"gale warning day" (烈風警告日) means any day throughout or for part of which a gale warning is in force, and "gale warning" (烈風警告) has the meaning assigned to it by section 2 of the Judicial Proceedings

(Adjournment During Gale Warnings) Ordinance (Cap 62).

(Added 11 of 1996 s. 17. Amended 35 of 2000 s. 98)

Section:	30E	Variation or setting aside of detention order	L.N. 31 of 2003	04/04/2003
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(1) The Commissioner or the owner of the trade mark may at any time apply to the Court of First Instance to vary the detention order. (Amended 35 of 2000 s. 98)

(2) The importer or any other person affected by the detention order may at any time apply to the Court of First Instance to vary or set aside the order.

(3) A person who makes an application under subsection (1) or (2) shall give to the other parties such notice of the day fixed for the hearing of the application as a judge of the Court of First Instance may order.

(4) On the hearing of an application under subsection (1) or (2) to vary a detention order, the Court of First Instance may vary the order in such manner as it thinks just.

(5) On the hearing of an application under subsection (2) to set aside a detention order, the Court of First Instance may set aside the order on such terms and conditions as it thinks just.

(6) For the purposes of subsection (3)-

(a) the parties to an application under subsection (1) are the Commissioner, the owner of the trade mark and, if the goods in question have been seized or detained pursuant to the detention order, the importer and any other person to whom notice is required to be given under section 30D(5); and

(b) the parties to an application under subsection (2) are the Commissioner, the owner of the trade mark, the applicant and the importer, if the importer is not the applicant. (Amended 35 of 2000 s. 98)

(Added 11 of 1996 s. 17. Amended 25 of 1998 s. 2)

Section:	30F	Disclosure of information	L.N. 31 of 2003	04/04/2003
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(1) Where goods are seized or detained pursuant to a detention order, the Commissioner may disclose to the owner of the trade mark- (Amended 35 of 2000 s. 98)

(a) the names and addresses of the importer, the consignor and the consignee;

(b) the nature and quantity of goods seized or detained pursuant to the order;

(c) any statement made to the Commissioner or an authorized officer by any person in connection with the seizure or detention, either with the prior consent in writing of that person or without such consent where the person is dead or cannot after reasonable enquiries by the Commissioner as to his whereabouts be found by the Commissioner; and

(d) any other information or document relating to any goods seized or detained pursuant to the order which the Commissioner thinks fit to disclose.

(2) Where the owner of the trade mark seeks disclosure of- (Amended 35 of 2000 s. 98)

(a) any information or document that is not referred to in subsection (1); or

(b) any information or document that is referred to in subsection (1) but which the Commissioner has not disclosed,

he may apply to the Court of First Instance for an order requiring the Commissioner to disclose such information or document and the Court of First Instance may on such an application make such order for disclosure as it deems fit. (Amended 25 of 1998 s. 2)

(3) An application under subsection (2) may be begun by motion with previous notice to the Commissioner.

(Added 11 of 1996 s. 17)

Section:	30G	Inspection of goods, release of samples, etc.	L.N. 31 of 2003	04/04/2003
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(1) Where goods are seized or detained pursuant to a detention order, the Commissioner or an authorized officer shall-

(a) give the owner of the trade mark sufficient opportunity to inspect the goods for the purpose of substantiating his claim; and

(b) give the importer an equivalent opportunity to inspect the goods for the purpose of refuting the owner's claim.

(2) The Commissioner or an authorized officer may permit the owner of the trade mark or the importer to remove samples of the seized or detained goods if the owner or the importer, as the case may be, gives the

Commissioner or authorized officer the requisite undertakings.

(3) For the purposes of subsection (2), the requisite undertakings are undertakings in writing that the person giving the undertaking will-

- (a) return the samples to the Commissioner or authorized officer at a specified time that is satisfactory to the Commissioner or authorized officer; and
- (b) take reasonable care to prevent damage to the samples.

(4) If the Commissioner or an authorized officer permits the inspection of the seized or detained goods, or the removal of a sample, by the owner of a trade mark in accordance with this section, the Government is not liable to the importer for any loss or damage suffered by the importer arising out of- (Amended 35 of 2000 s. 98)

- (a) damage to any of the goods incurred during the inspection; or
- (b) anything done by the owner or any other person to, or in relation to, a sample removed by the owner or any use made by the owner of such sample.

(Added 11 of 1996 s. 17. Amended 35 of 2000 s. 98)

Section:	30H	Costs payable	L.N. 31 of 2003	04/04/2003
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(1) The Commissioner may assess the costs incurred by the Government in connection with the carrying out of a detention order and may deduct those costs from the amount paid as a deposit by the owner of the trade mark under section 30D(2).

(2) Any costs assessed under subsection (1) shall be payable by the owner of the trade mark to the Government and recoverable as a civil debt.

(Added 11 of 1996 s. 17. Amended 35 of 2000 s. 98)

Section:	30I	Protection of Commissioner and authorized officers		30/06/1997
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(1) The Commissioner and authorized officers are not liable for any loss or damage suffered by any person as a result of any action taken or omitted to be taken in good faith in connection with the carrying out of a detention order.

(2) The protection conferred by subsection (1) on the Commissioner and authorized officers in respect of any action taken or omitted to be taken in good faith in connection with the carrying out of a detention order shall not affect in any manner any liability of the Government for that action taken or omitted to be taken.

(Added 11 of 1996 s. 17)

Section:	30J	Compensation payable to importer, etc.	L.N. 31 of 2003	04/04/2003
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(1) Where goods are seized or detained pursuant to a detention order and the goods are released pursuant to section 30D(6), the importer, the consignee or the owner of the goods may, within 6 months after the date on which the order is made, apply to the Court of First Instance for compensation for any loss or damage suffered by him by reason of the seizure or detention.

(2) Where-

- (a) goods are seized or detained pursuant to a detention order;
- (b) an action for infringement is brought under the Trade Marks Ordinance (Cap 559) in respect of the goods within the period referred to in section 30D(6), as may be extended under section 30D(7); and (Amended 35 of 2000 s. 98)
- (c) the action is discontinued, the claim of infringement is withdrawn or the Court of First Instance in the infringement proceedings determines that the infringement is not proved,

the importer, the consignee or the owner of the goods may, within 6 months after the date on which the action is discontinued, the claim is withdrawn or the Court of First Instance renders its determination, as the case may be, apply to the Court of First Instance for compensation for any loss or damage suffered by him by reason of the seizure or detention.

(3) On an application under subsection (1) or (2), the Court of First Instance may make such order for compensation as it deems fit.

(Added 11 of 1996 s. 17. Amended 25 of 1998 s. 2)

Section:	30K	Rules	25 of 1998 s. 2	01/07/1997
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Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

The Chief Justice may make rules of court regulating and prescribing the procedure and the practice to be followed in the Court of First Instance under this Part, and any matters incidental to or relating to that procedure or practice, including rules prescribing any matter or thing that under this Part is to be or may be prescribed by rules of court.

(Added 11 of 1996 s. 17. Amended 25 of 1998 s. 2)

Section:	32	Trade marks containing trade descriptions	L.N. 31 of 2003	04/04/2003
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PART IV

MISCELLANEOUS

The fact that a trade description is a trade mark, or part of a trade mark, does not prevent it from being a false trade description when applied to any goods, except where the following conditions are satisfied, that is to say-

- (a) that it could have been lawfully applied to the goods if this Ordinance had not been enacted;
- (b) that the trade mark as applied is used to indicate such a connection between the goods and the owner of the trade mark or a person licensed to use the trade mark; and (Replaced 35 of 2000 s. 98)
- (c) that the person who is the proprietor or owner of the trade mark is the same person as, or a successor in title of, the proprietor or owner on the commencement of this Ordinance. (Amended 35 of 2000 s. 98)

[cf. 1968 c. 29 s. 34 U.K.]

Section:	33	Definition Orders	65 of 2000	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 65 of 2000 s. 3

Where it appears to the Chief Executive in Council- (Amended 65 of 2000 s. 3)

- (a) that it would be in the interest of persons to whom any goods are supplied; or
- (b) that it would be in the interest of persons by whom any goods are exported and would not be contrary to the interest of persons to whom such goods are supplied in Hong Kong,

that any expressions used in relation to the goods should be understood as having definite meanings, the Chief Executive in Council may by regulations assign such meanings either- (Amended 65 of 2000 s. 3)

- (i) to those expressions when used in the course of a trade or business as, or as part of, a trade description applied to the goods; or
- (ii) to those expressions when so used in such circumstances as may be specified in the regulations,

and where such a meaning is so assigned to an expression, it shall be deemed for the purposes of this Ordinance to have that meaning when used as referred to in paragraph (i) or, as the case may be, paragraph (ii) of this section.

[cf. 1968 c. 29 s. 7 U.K.]

Section:	34	Saving for civil rights		30/06/1997
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A contract for the supply of any goods shall not be void or unenforceable by reason only of a contravention of any provision of this Ordinance.

[cf. 1968 c. 29 s. 35 U.K.]

Section:	35	Compensation for loss of goods seized under section 15(1)(f)		30/06/1997
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(1) Where any goods are seized or detained by an authorized officer under section 15 the Government shall, subject to this section, be liable to compensate the owner of the goods for any loss suffered by him by reason of the

seizure or detention thereof or by reason that the goods, during the detention, are lost or damaged or deteriorate; but the owner shall not be entitled to compensation for any such loss if-

- (a) the goods are forfeited;
- (b) he is convicted of an offence under this Ordinance committed in relation to the goods; or
- (c) an order has been made in respect of the goods under section 30(4). (Amended 2 of 1987 s. 7)

(2) In any proceedings against the Government in respect of a claim for compensation on any of the grounds referred to in subsection (1), the amount of the compensation recoverable shall be such amount as is just and equitable in all the circumstances of the case, including the conduct and comparative blameworthiness of-

- (a) the owner of the goods;
- (b) the person in charge or control of the goods at the time they were seized;
- (c) the agents of the person specified in paragraphs (a) and (b); and
- (d) authorized officers, public officers and other persons concerned.

(3) No proceedings shall be maintainable in respect of any claim for compensation on any of the grounds referred to in subsection (1) unless the proceedings are commenced-

- (a) in the case of a claim for compensation in respect of goods released to their owner by order of a court or magistrate or by any person having authority to release the goods to him, not later than 6 months after the release thereof;
- (b) in the case of a claim for compensation on the ground that any goods were lost during the detention thereof, not later than 6 months after-
  - (i) the discovery by the owner of the existence of such ground; or
  - (ii) the date on which the owner could, by the exercise of reasonable diligence, have discovered the existence of such ground,
 whichever is the earlier.

[cf. 1968 c. 29 s. 33 U.K.]

Schedule:	1	TABLE	L.N. 264 of 2008	02/03/2009
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SCHEDULE 1\*

[section 3]

Number of carats		Indicates gold of fineness of
8	.....	333 parts per thousand
9	.....	375 parts per thousand
12	.....	500 parts per thousand
14	.....	585 parts per thousand
15	.....	625 parts per thousand
18	.....	750 parts per thousand
22	.....	916.6 parts per thousand

and so in proportion for any other number of carats.

**Note:**

\* (Amended 19 of 200 s. 9)

Schedule:	2	GOODS SPECIFIED FOR PURPOSES OF SECTION 13B	L.N. 264 of 2008	02/03/2009
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[section 13B]

PART 1

1. Digital audio player
2. Digital camcorder

3. Digital camera
4. Mobile phone
5. Portable multimedia player

## PART 2

### 1. Definitions of products

In this Schedule—

“digital audio player” (數碼音響播放器)—

- (a) means any portable device the principal function of which is to play digital audio files in one or more audio encoding formats from any storage medium;
- (b) includes the product commonly known as MP3 player; and
- (c) does not include portable optical disc player;

“digital camcorder” (數碼攝錄機) means any portable device the principal function of which is to make a recording in digital format on any medium from which a moving image may by any means be reproduced;

“digital camera” (數碼相機) means any portable device the principal function of which is to record and store an image in digital format on any medium from which a still image may by any means be reproduced;

“mobile phone” (手提電話) means any portable device the principal function of which is for mobile communication through a cellular radio network with—

- (a) standard voice function of a telephone; and
- (b) interconnection to the public switched telephone network (PSTN);

“portable multimedia player” (便攜式多媒體播放器)—

- (a) means any portable device the principal function of which is to play digital multimedia files in one or more media recording formats from any storage medium;
- (b) includes the product commonly known as MP4 player; and
- (c) does not include portable optical disc player.

### 2. Determination of principal function

In determining the principal function of a product for the purposes of this Schedule, regard shall be had to—

- (a) the description applied to the product on its package;
- (b) the description applied to the product in any document relating to the supply of the product;
- (c) the description applied to the product in any promotional material and advertisement concerning the product; and
- (d) any other relevant information.

(Schedule 2 added 19 of 2008 s. 10)