



Hong Kong Consumer Council Report Highlights Trends and Pitfalls in Online Retailing

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February 2017

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In November 2016, the Hong Kong Consumer Council published an in-depth [study](#) into online retail in Hong Kong, with particular focus on the airlines & travel, food & beverage, clothing & beauty and computer & electronic products sectors. The study identifies a number of pitfalls in the commercial and legal environment in which online retail is conducted, and makes some important recommendations to the government to review the legal framework.

The study highlights the importance for online businesses to familiarise themselves with the interplay between the various laws applicable to various aspects of online retailing, including in particular **data privacy, trade descriptions, online contracting, competition, and consumer rights** in general. As a good starting point, we recommend online retailers to conduct a **wholesale review** of their online business model, the relevant T&Cs, privacy policy and contracting mechanism.

Online shopping in Hong Kong

The study finds that the percentage of consumers who shop online in Hong Kong lags behind those in other countries. The figure was at only 23% in 2014, compared to around 70% for the Mainland, Japan, Europe and the US. However, the study recognises that online shopping in Hong Kong will continue to take off with globalisation.

When asked, consumers cited numerous concerns about the online environment as reasons for not shopping online in Hong Kong. Accordingly to the study, the sectors examined face particular challenges when it comes to online retailing. For example, consumers complained about duplicate bookings due to the complexity of using online booking systems in the airlines sector. Another common complaint was that consumers were unable to redeem vouchers purchased on group buying sites.

Pitfalls in online retailing

More generally, the study highlights a number of pitfalls in online retailing. We elaborate on these below.

1. Privacy risk

There has been an upward trend in information and communications technology related complaints to the Privacy Commissioner. Consistent with this trend, the study flags that:

- Online businesses may be failing to observe the six data protection principles in the Personal Data (Privacy) Ordinance ("PDPO") and are possibly, among other things, collecting excessive personal data and using personal data for direct marketing without consent.
- When delivery is outsourced, not all platform operators restrict delivery agents by a confidentiality undertaking on handling customer data.
- Digital security is identified as a particular concern for online platforms or shops, given the large amount of personal data collected and the multiple databases used to hold personal data. Online platforms may be an easy target of malware, hacking and phishing attacks. See our report on some of the data breach incidents in Hong Kong [here](#).

2. Unfair trade practices

The study highlights that online shoppers are particularly vulnerable to misleading and deceptive practices as they may not be able to examine goods and have few avenues to seek clarifications.

Online shoppers are also more likely to be influenced by misleading or "paid" product reviews and discover unexpected surcharges towards the end of a transaction. Unfair trade practices are identified as a problem in the beauty sector. For example, beauty shops sell discount coupons online and then engage in high pressure sales tactics to sell expensive

additional treatments to consumers at the time of redemption.

The study reminds online traders that they are subject to the same criminal sanctions as those for the physical world under the Trade Descriptions Ordinance ("**TDO**"). Under TDO, it is an offence to engage in the following unfair trade practices: (a) omitting or hiding material information; (b) aggressive commercial practices (see [here](#) for the first conviction for this practice in the beauty sector); (c) bait advertising; (d) bait and switch; and (e) wrongly accepting payment.

3. Allocation of responsibilities

The study also suggests that the matrix of commercial relationships in online retailing adds a further layer of complexity to the commercial and legal environment for online retail. Very often, one or more of the following parties may be involved: the customer, the supplier of the goods or services, search engines directing consumers to the online shop or platform, the platform for its marketing service, payment gateways, bank and credit card companies for payment settlement and delivery companies.

In practice, these various parties may have back-to-back contracts in place to disclaim liability wherever possible. This makes it difficult to resolve complaints arising from online retailing.

4. Licensing concerns

The study reveals that ordering food & beverage online has become increasingly popular.

Licensing is a particular concern for the food & beverage sector, which is highly regulated with different licensing arrangements for food manufacture, importation, distribution and retailing to protect public health. The study highlights the need to observe the same food safety and licensing requirements as street vendors.

5. Competition concerns

In Hong Kong, the Second Conduct Rule of the Competition Ordinance prohibits a business with a substantial degree of market power from abusing that power. The study considers that online platforms derive significant market power from their large scale operations and the information they possess.

With such power comes the possibility of abuse. For example, in the airline and hotels sector, the study flags that online travel agencies with a large share of the travel booking market may be restricting the ability of smaller hotels to market rooms at lower prices by requiring the hotels to give them the best available rate.

Recommendations to the Hong Kong Government

In view of the problems associated with online retail, some of the measures that the study recommends the government to consider for regulating online retail are:

1. **Legislate for consumers' right to withdraw.** In some jurisdictions (e.g. the EU, UK and China), consumers can withdraw from online transactions within a specified period without a reason depending on the condition of the goods. Certain exclusions apply, such as for perishable and time-limited goods.
2. **Legislate for a mandatory information provision.** This would cover all essential information, including the total price of the goods or services (inclusive of delivery charges, taxes and any other costs), the full identity and contact details of the trader, the duration of the contract, details about the right to withdraw, and the complaints handling policy.
3. **Legislate to clarify consumer rights and remedies for digital content.** Presently, it is unclear whether digital content (e.g. software, music and video) is classified as a "good" or a "service" and accordingly whether the Sale of Goods Ordinance or the Supply of Services (Implied Terms) Ordinance are applicable to contracts

for supply of digital content. Doubts therefore arise as to whether the rights and remedies under such ordinances are available to consumers of digital content. The UK has passed legislation to address this issue.

4. **Monitor how online platforms exercise their market power.** The study flags that the business practices of large Internet platforms have raised the attention of antitrust authorities overseas, and their influence on competition in Hong Kong should be monitored.
5. **Understand big data implications and how it is being used.** This is particularly relevant for large platforms that collect a large amount of customer and transaction information, and have the ability to leverage such information for customer profile analysis.
6. **Establish an online dispute resolution ("ODR") mechanism.** As it may not be practical to bring legal action for online claims, an ODR mechanism can help consumers identify the party answerable and facilitate out-of-court settlement in a cost-effective manner. The EU has established a common ODR platform for EU members.

Best practices for online businesses

We set out below some of the best practices to help businesses avoid the pitfalls of operating in an online environment:

1. **Provide full information relating to the transaction.** To enhance transparency and avoid subsequent disputes, online businesses should set out all relevant information, including about the product, price, delivery terms and the trader in a clear and conspicuous manner.
2. **Maintain clear online business policies.** These include a privacy statement, personal information collection statement, user-friendly terms and conditions of sale and purchase (as well as a summary if helpful), return and refund policy and performance pledges.
3. **Maintain a "goodwill" return and refunds policy.** This will instil confidence

in consumers and encourage online shopping.

4. **Display final prices and provide a summary review before concluding the transaction.** The prices displayed should be inclusive of delivery charges, taxes and other costs. This will reduce the number of cancellation requests and subsequent complaints from customers.
5. **Handle data securely and comply with PDPO.** See [here](#) for our overview and tips for complying with the various requirements under PDPO.
6. **Steer clear of unfair trade practices.** In the online retail space, especially watch out for pricing claims/comparisons, product/photo discrepancies, bait advertising, false/misleading endorsements, etc.
7. **Ensure compliance with all relevant safety and food regulations.** Any mandatory licenses should be displayed online. The fact that a business is operating online does not exonerate it from its obligation to obtain all necessary licences and comply with safety requirements.
8. **Provide a customer support and complaints channel for online consumers.** This allows consumers to seek clarifications before making a decision to enter into a transaction, and allow timely settlement of disputes.
9. **Retailer to retain overall responsibility.** The study recommends that overall responsibility for any problems should remain with the retailer. Retailers are recommended to provide clear and accurate information and contacts for all firms that have been subcontracted to supply services e.g. delivery, credit, payment handling.

Conclusion

Concerns about the online environment in Hong Kong are not surprising as consumer protection laws were designed for brick and mortar operations. There is also the added complexity of commercial relationships online which makes the scope for confusion, miscommunication,

errors and delay potentially greater. It is of paramount importance for businesses operating online to be wary of the pitfalls in online retailing and the potential "hot spots" of customer complaints, and implement best practices to stay out of trouble.

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