

LCQ12: Rights and interests of online shoppers

Following is a question by the Hon Starry Lee and a written reply by the Secretary for Commerce and Economic Development, Mr Edward Yau, in the Legislative Council today (May 12):

Question:

In 2018, the business receipts of local online traders from selling of goods, services or information through electronic means amounted to \$491.7 billion, representing an increase of 73 per cent when compared with those in 2012. However, the results of a survey conducted earlier this year by a political party on online shopping traps showed that over 45 per cent of the respondents had unpleasant experiences involving online shopping, most of which were related to the receipt of goods not matching the sale descriptions or being defective. In this connection, will the Government inform this Council:

(1) whether the authorities stepped up law enforcement efforts (e.g. making visits to dubious websites) in the past three years to combat online unfair trade practices; if so, of the details;

(2) whether it will consider amending the legislation to strengthen the regulation of online traders; if so, of the details; if not, the reasons for that;

(3) whether it will, by drawing reference from the practices of the authorities in the United Kingdom and Korea, establish an online shopping dispute resolution mechanism to enable buyers and sellers to settle their disputes by resorting to non-litigation means such as arbitration or mediation, which are relatively simpler, quicker and cheaper; if so, of the details; if not, the reasons for that; and

(4) whether it will consider strengthening the cooperation with the relevant Mainland departments, so as to more effectively follow up the complaints involving cross-boundary online shopping and implement public education initiatives; if so, of the details; if not, the reasons for that?

Reply:

President,

Having consulted the Customs and Excise Department (C&ED) and the Consumer Council (the Council), my reply to the question raised by the Hon Starry Lee is as follows:

(1) C&ED has all along adopted a two-pronged approach in combating unfair

trade practices that violate the Trade Descriptions Ordinance (Cap. 362) (TDO) by conducting proactive patrols and follow-up investigations to protect consumers, regardless of whether the cases involve physical traders or online shopping.

After receiving complaints, C&ED will take corresponding enforcement actions. These include, depending on the circumstances of the reported cases, conducting in-depth investigations through various means, such as test-purchase operation.

In dealing with unfair trade practices related to online shopping, C&ED monitors different types of illegal online activities by using tools for evidence collection and investigation, and initiate follow-up actions and prosecutions where appropriate. If local or overseas websites are found to be conducting illegal activities, C&ED may demand such websites to remove the relevant contents or links. Depending on the circumstances, joint operations with overseas enforcement agencies will also be mounted as and when required.

The number of complaints against unfair trade practices related to online shopping received by C&ED and relevant enforcement statistics in the past three years are as follows:

	2018	2019	2020
Number of complaint cases	1 561	999	3 995
Number of prosecution cases	4	2	5
Number of conviction cases	4	2	5
Number of convictions (company/individual)	5	2	5

If the cases involve offences beyond the jurisdiction of C&ED (such as the offence of fraud), C&ED will also refer such cases to other relevant law enforcement agencies (such as the Police) for immediate follow-up.

(2) The rights of consumers, including online shoppers, are currently protected by various laws in Hong Kong. The Sale of Goods Ordinance (Cap. 26), the Control of Exemption Clauses Ordinance (Cap. 71), the Supply of Services (Implied Terms) Ordinance (Cap. 457) and the Unconscionable Contracts Ordinance (Cap. 458) all regulate contracts related to transactions, for example, by stipulating implied conditions in the contract of sale of goods, including that the goods supplied are of merchantable quality and that a buyer has the right to reject defective goods unless he or she has a reasonable opportunity to examine the goods; a supplier of a service is obliged to carry out the service with reasonable care and skill and within a reasonable time; and the courts are empowered to refuse to

enforce, or to revise unconscionable terms in consumer contracts for the sale of goods or supply of services, etc.

In addition, the TDO prohibits unfair trade practices such as "false trade descriptions" (including a false trade description made by whatever means and in whatever form, e.g. paper, verbal and advertisement) and "misleading omissions" (including omitting or hiding material information, or providing material information in a manner that is unclear, unintelligible, ambiguous or untimely), and is applicable to both online and physical traders.

The Government will continue to keep a close watch on the development of online platforms and review the relevant laws as necessary for the protection of consumer rights.

(3) In accordance with the Consumer Council Ordinance (Cap. 216), the statutory functions of the Council include receiving and examining complaints by and giving advice to consumers of goods and services. The Council strives to help consumers protect their rights and in general resolve disputes between consumers and traders through mutually acceptable agreements. The Council is exploring the establishment of an online dispute resolution platform, so as to handle consumer complaints (including those related to online shopping) more efficiently.

(4) In order to strengthen cross-boundary collaboration in consumer redress, the Council has signed Memoranda of Understanding with consumer protection bodies in Macao and 26 mainland provinces and municipalities (including the nine municipalities in the Guangdong-Hong Kong-Macao Greater Bay Area) to establish mutual complaint referral mechanisms.

In addition, the Council reached an agreement with the China Consumers Association (CCA) in November 2019 to strengthen the support to Hong Kong consumers by joining the "Online Shopping Consumer Protection Express Platform" (the Platform) scheme established by the CCA. Under the Platform scheme, if a consumer has a dispute with a participating online trader and seeks assistance from the Council, as long as the conditions prescribed by the scheme are met (i.e. the complaint is between an individual consumer and a trader, the trader under complaint is among the designated online traders of the Platform, and the complainant has given his/her consent to have the case referred to the Platform for processing), the Council will upload the details of the complaint to the data system of the Platform. After that, the participating online trader can directly obtain from the system the details of the relevant complaint and directly contact the complainant to handle the complaint. The Platform will record the follow-up progress and result of the case. The Council can also access the Platform to learn the progress and record the relevant result after the case is closed.

On public education, the Council has been offering consumers alerts and suggestions related to online shopping through various channels. For example, the "CHOICE" Magazine published by the Council has featured articles on online shopping to remind consumers to pay attention to terms and conditions

such as goods return and refund arrangements before making purchases online. The Council has also, through interviews with newspapers, radio and TV stations, reminded consumers some common situations to be aware of, such as the difficulty to seek redress if a dispute arises with online shopping platforms located in other countries or territories, or the relative difficulty to verify the identity of service or product providers for online purchases through social media platforms, etc.