

Competition & Antitrust and Trade

## Steering Away from Unfair Trade Practices

### Introduction

The Consumer Protection (Fair Trading) Act ("**CPFTA**") is the general legislation that protects consumers against unfair practices and grants consumers additional rights in respect of goods that do not conform to contract. The Competition and Consumer Commission of Singapore ("**CCCS**") administers the CPFTA. The Consumers Association of Singapore ("**CASE**") remains the body that generally first reviews complaints from local consumers and, to the extent that it cannot be resolved through negotiations, mediation or entering into a voluntary settlement, refers errant suppliers who persist in unfair trade practices to CCCS for investigation. Consumer protection is taken seriously in Singapore, with CCCS ready to take errant suppliers to court to require them to cease acting in an unfair or misleading manner.

In this Update, we highlight a recent case which demonstrates exactly this, where CCCS commenced action against an errant supplier to prevent it from engaging further in unfair trade practices. We also outline updates issued by CASE on areas that it is focussing on to combat unfair trade practices, as highlighted by new CASE president, Mr Melvin Yong.<sup>1</sup>

### Unfair Trade Practices

Under the CPFTA, it is generally an unfair practice for a trader of consumer transactions to, amongst other aspects:

- do or say anything, or omit to do or say anything, if as a result a consumer might reasonably be deceived or misled;
- make a false claim; or
- take advantage of a consumer if the trader knows or ought reasonably to know that the consumer is not in a position to protect his own interests; or is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction.

The CPFTA set out provisions targeted at traders who persist in engaging in unfair practices. Amongst others, a District Court or a High Court could grant a declaration and an injunction against an errant trader to stop unfair practices on the application of CCCS.

<sup>1</sup> ["My first 100 days" - Mr Melvin Yong, CASE President \(30 Sept 2021\)](#)

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## **Recent Case Highlight: State Courts Order Fire Extinguisher Supplier to Cease Unfair Trading Practices**

In a recent case, the State Courts – on application by CCCS – ordered Fire Safety & Prevention (SG) ("FSPSG") to cease unfair trading practices involving the supply of fire extinguishers.

CCCS' investigations showed that the sole proprietor, Kelvin Tan and his employees (and ex-employees) "had persistently engaged in unfair practices under the CPFTA by making false and misleading claims while carrying out unsolicited door-to-door sales", as follows:

- Untrue representations that FSPSG was affiliated with or approved by the Government, the Singapore Civil Defence Force or various Community Centres to sell fire extinguishers, when it was not.
- Untrue representations that there was a new law or regulation requiring each household to own a fire extinguisher by a certain date.
- False representation that PAssion or NTUC cardholders, members of the Pioneer Generation or Singaporeans were entitled to a discount on the purchase of fire extinguishers sold by FSPSG
- Initially quoted consumers a lower price for a fire extinguisher and subsequently charged a much higher amount for same fire extinguisher.
- Represented that the fire extinguishers sold by FSPSG were non-refundable when consumers have the right to cancel the purchase of such fire extinguishers and obtain a refund pursuant to the Consumer Protection (Fair Trading) (Cancellation of Contracts) Regulations 2009.
- Represented that customers would enjoy yearly free replacements or servicing of fire extinguishers purchased from FSPSG when a replacement would only be provided if the relevant fire extinguisher had certain defects or was used under certain circumstances.

The series of false and misleading claims were clearly in violation of the CPFTA. Importantly, stating that the fire extinguishers sold were non-refundable was blatantly against what the rules allowed for. All goods sold must come with a refund policy under the law, subject to certain considerations. Considering the facts as a whole, the Court ordered that, among other things, with effect from 7 September 2021:

- Kelvin Tan trading as FSPSG was declared to have engaged in the unfair practices and was to stop engaging in any of these unfair practices and any unfair practices under the CPFTA.
- Various employees (or ex-employees) to stop abetting or aiding FSPSG to engage in any of the unfair practices and any unfair practices under the CPFTA.
- Each of these individuals must, over the next two years from the date of the court order, notify CCCS if there are any changes relating to the status of their employment, directorship, partnership, and ownership of a business.

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The conditions imposed are onerous in that not only do they impact the company in violation, but also employees in the company. The aim really is to impose constraints or sanctions that go to the root of doing business as the commercial impact can be prohibitive. The specific restrictions imposed on the employees in this case can make it difficult for employees to switch employment, for example.

## CASE Initiatives to Combat Unfair Trade Practices

In addition to the general provisions under the CFPTA, traders should also pay attention to the recent initiatives launched by CASE to target errant suppliers engaged in specific industries or practices. These initiatives have been launched given the rise in e-commerce and the increasing number of unfair practices surfacing, and also to ensure consumers are protected where there are large prepayments to be made or where they are seemingly putting themselves into heavy debt. The key aspects of what CASE seeks to enhance are as follows, and definitely to be welcomed:

- **Strengthening Consumer Protection in E-commerce**

From January 2020 to June 2021, it has been reported that about one in five complaints received by CASE were related to online purchases. Given the prevalence of complaints related to e-commerce, CASE is working with major online marketplaces in Singapore to establish a standardised dispute management framework for consumers to address issues of different platforms with varying scopes and service levels in their dispute resolution process.

- **Strengthening Protection Against Large Prepayments**

As part of CASE's efforts to protect consumers' prepayments or deposits, businesses accredited under selected CaseTrust schemes are required to protect consumers' prepayments or deposits. CASE intends to make this scheme more comprehensive and in-depth, for instance, by reaching out to industries where there are few accredited companies such as furniture, department stores and gyms. Further, CASE will work with hair, beauty and massage businesses to impose a five-day cooling-off period, which would allow consumers who regret their purchases to get a refund. It is indicated that CASE will eventually call for a mandatory cooling-off period for certain big-ticket, prepaid items.

- **Combating the Rise of Personal Debt**

Numerous financial firms have been promoting "[buy now, pay later](#)" (BNPL) instalment plans. Left unregulated, these plans have the grave potential to lead consumers, particularly the younger crowd, down the rabbit hole of spending unearned money. To stamp this out, CASE has indicated that it will "call for new regulations that will require retailers to inform consumers of the risks of taking up instalment payment schemes, such as interest rates that they will have to bear".

- **Price Transparency**

Price transparency allows consumers to make informed purchasing decisions. Besides the CCCS' Guidelines on Price Transparency, consumers may refer to online platforms, such as

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Price Kaki, that allow consumers to compare real prices of certain goods and remove the layer of "confusing market discounts".

- **Faster Action in Dealing with Errant Suppliers**

As noted above, the CPFTA contains deterrent provisions against recalcitrant suppliers who engage in unfair trade practices. However, investigations take time and there is a need for prompt action against errant businesses. As such, the CASE president has proposed pushing for "swifter and more rigorous enforcement of the CPFTA". CASE will set up an online forum for consumers to share honest and genuine reviews of products and services.

## Our Comments

The various consumer advisories that have been published by CASE and/or CCCS underscore the attention that the authorities are paying to unfair trade practice by retailers, especially in certain industries such as e-commerce.

CASE's initiatives and the cases show that the authorities will not hesitate to deal with errant suppliers. Suppliers should therefore be vigilant to "provide clear and accurate information on the prices, discounts and rights relating to their goods and services. They should not make false or misleading representations concerning the need for goods and services, or their affiliation to other organisations".

Separately, the enforcement action taken by CCCS has seemingly increased. Many are resolved eventually through commitments negotiated between CCCS and the alleged errant retailer. However, those that are not will face the consequences in court. Note that prior cases reflect that action has been taken not just against flagrant non-complying retailers, but also retailers who had believed that how they went to market was fair to consumers but were challenged otherwise by CCCS.

The lesson from the discussion in this Update is that retailers, whether e-commerce or traditional brick-and-mortar, must ensure that their practices are kosher. Having appropriate compliance protocols in place and training once every 12 to 24 months will aid in ensuring better compliance. As we near the year-end period, retailers large and small ought to relook at this area which in the last three to four years has seen enforcement action increase considerably.

If you have any queries on the subject matter of this Update, please feel free to contact our team members below who will be happy to assist.

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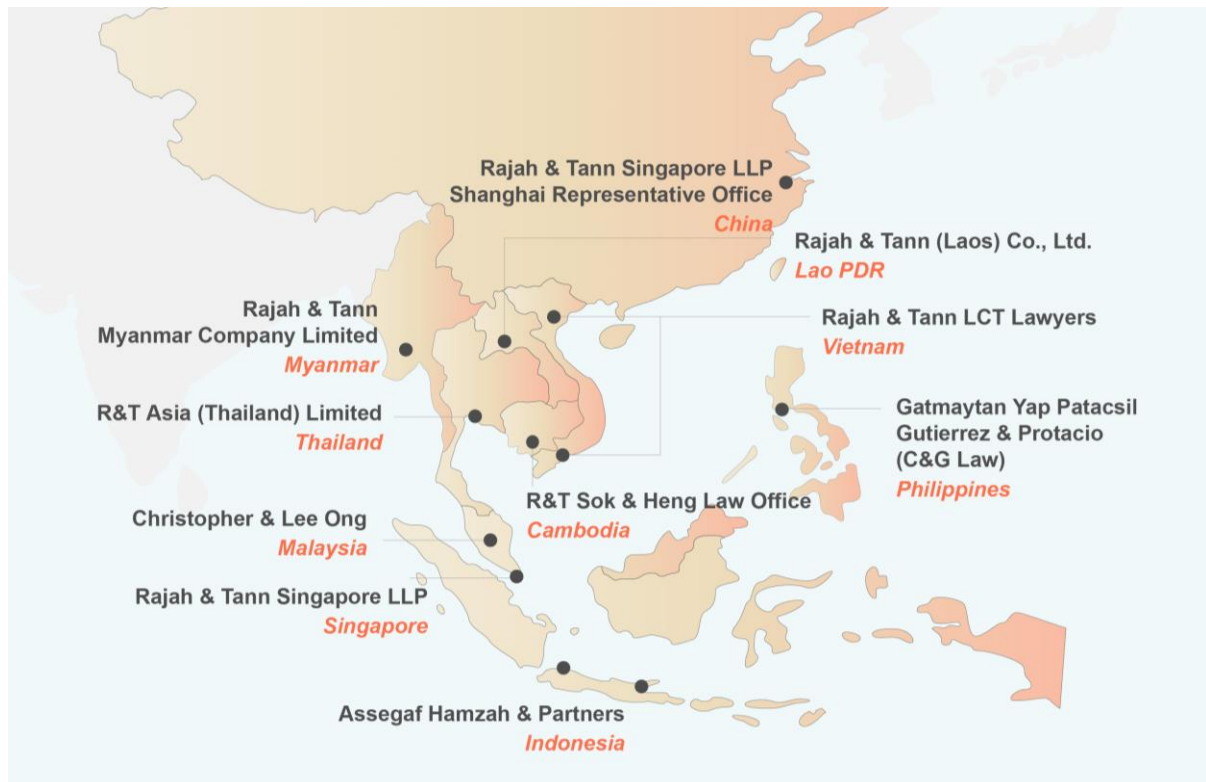
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