

**For discussion
On 24 June 2002**

LegCo Panel on Food Safety and Environmental Hygiene

**OBSTRUCTION AND NUISANCES CAUSED BY
ON-STREET PROMOTIONAL STANDS**

PURPOSE

This paper informs Members of the legislative controls over obstruction and nuisances caused by on-street promotional stands, and the enforcement actions taken by the Food and Environmental Hygiene Department (“FEHD”) against such activities.

BACKGROUND

2. On-street promotional stands are mainly found in locations with high pedestrian flow, such as entrances/exits of MTR/KCR stations, and main thoroughfares in busy districts such as Causeway Bay, Mongkok, Shamshuipo and Shatin. These stands are usually placed by -

- (a) Operators promoting mobile phone, internet services and other subscription-based services;
- (b) Salespersons handing out promotional flyers; and
- (c) Individuals who offer to buy second-hand electrical appliances, such as televisions and mobile phones.

3. On-street commercial promotional activities, including the setting up of mobile stands/placards to display commercial products, and the stacking up of promotional items nearby, can cause obstruction to pedestrian movement. They also attract complaints from nearby shops and residents. The problem is

most commonly found during rush hours, weekends and public holidays.

LEGISLATION

4. The following legislative provisions may be used to restrict and control on-street commercial promotional activities -

(a) Obstruction

Under section 4A of the *Summary Offences Ordinance (Cap. 228)*, it is an offence to set out any thing which obstructs, inconveniences or endangers any person or vehicle in a public place. The maximum penalty is a fine of \$5,000 or imprisonment for three months.

(b) Touting

Under section 6A of Cap. 228, it is an offence to importune another person in a public place to buy any goods or services and causes annoyance to that person. The maximum penalty is a fine of \$2,000 in the case of a first offence and imprisonment for 6 months in the case of a second or subsequent offence.

5. It should be noted that environmental hygiene related offences actionable under the *Public Health and Municipal Services Ordinance (Cap. 132)* are normally not applicable to on-street promotional activities, for the following reasons -

(a) Obstruction of scavenging operations

Under section 22(1)(a) of Cap. 132, it is an offence to obstruct any scavenging or conservancy operation. Since the advertisement boards or stands displayed by the promoters can be readily picked up or removed from the scene and the promoters are usually cooperative in doing so, they are seldom a cause of obstruction to scavenging operations.

(b) Hawking

Section 83B(1) of Cap. 132 provides that no person shall hawk in any street without a licence, where hawking is defined as the selling of goods or merchandise in a public place. On-street promotional activities are usually performed by the display of placards/signboards etc to promote trade or business and do not involve the actual sale of goods or merchandise. These activities therefore fall outside the definition of hawking.

CONSIDERATIONS

6. In dealing with problems arising from on-street promotional activities, we have taken into account the following factors -

(a) Impact on environmental hygiene

The primary problem caused by on-street promotional activities is obstruction. They are not usually associated with environmental hygiene problems such as hawking and obstruction to scavenging operations.

(b) Public safety

On-street promotional activities may pose danger to public safety, as pedestrians in crowded areas may be forced to walk outside of pavements due to obstruction caused by such activities.

(c) Impact on the economy/business

There have been complaints from shop owners that on-street promotional activities obstruct their shop fronts and affect their business adversely. However, others believe that on-street promotional activities provide a useful source of employment and Government should exercise flexibility in taking enforcement actions against these activities.

FEHD'S ENFORCEMENT

7. According to our field observation, the majority of on-street promotional stands are placed alongside railings, against blank walls, etc., thus leaving space for pedestrian flow and do not cause serious obstruction problems. Most of the operators/promoters are responsive to our advice and will cooperate by removing their stands as soon as verbal warning is given to them. Only in rare cases do they ignore our warnings.

8. The setting up of on-street promotional stands is a relatively minor street management problem. We, therefore, adopt the strategy that for ad hoc and minor breaches, we will give warnings in the first instance, to be followed by prosecution action if the warnings are unheeded. However, we will prosecute without prior warning under the following circumstances –

- (a) the extent of obstruction is serious (e.g. several promotional stands put together and causing serious obstruction to pedestrians, or the promotional stands are set up right in front of MTR stations blocking entry/exit); and/or
- (b) the obstruction is the subject of repeated public complaints.

We will keep the strategy under constant review in light of the situation on the ground and the extent of obstructions caused.

9. In 2001, FEHD instituted a total of 10 prosecutions for contravening section 4A of Cap.228 against obstruction caused by on-street promotional stands. The fines imposed on conviction cases were between \$200 and \$500 and the average fine was about \$340.

ADVICE SOUGHT

10. Members are invited to give their views on the problem as a whole, and the enforcement actions taken by FEHD.

Food and Environmental Hygiene Department
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