

Nov. 28, 2003

Dr. Thomas W.H. Chung
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Department of Health
3/F, Public Health Laboratory Centre
382 Nam Cheong Street,
Kowloon

Dear Dr. Chung

Ref : Comment on the Consultation Document -- Regulation of Health Claims
Opinion on the modification of the proposal as suggested by Department of Health on Nov. 7, 2003

The Direct Selling Association of Hong Kong Limited (HKDSA) has submitted our comment on the "Consultation Document -- Regulation of Health Claims" (abb. as Consultation Document) to you on Nov. 5, 2003. Our representatives have been invited and participated in the consultation seminar hosted by your Department on Nov. 7, 2003. You and your colleagues have urged the trade to accept the Consultation Document with some minor adjustments as announced in the meeting by you and your colleagues. Such adjustments include the proposal to remove some of the restrictions on health claim proposed in the Consultation such as the detoxification, etc.

Our member companies have thoroughly and carefully evaluated the Consultation Document and the subsequent proposal on the relaxation of certain health claims restriction as announced by you and your colleagues. However, the concern of HKDSA on the Consultation Document remains the same. We have the following added comments.

1. The basic principle of using a medicinal regulation to regulate food product is inappropriate.

Minor modification cannot wipe out the wrong direction of the Consultation Document. The Undesirable Medical Advertisements Ordinance (UMAO) is meant to be a medicinal regulation, regulating claims related to specific diseases. The newly proposed schedule, however, regulates information and claims of orally consumed products not directly related to specific diseases. Using a medicinal regulation to regulate non-medicinal food is totally unacceptable and inappropriate.

2. Unchecked power on the modification of the Health Claim Schedule

The Consultation Document suggests the provision of authority to the Director of Health to amend or include more health claims into the newly established Health Claim Schedule to restrict the advertisement of products or services. Such provision of power without any mechanism on the prior consultation to the trade is of great concern. We are most worried that inappropriate restriction on advertisements on food or food supplement products will be imposed in the future without prior consultation with the industry.

3. There is insufficient time for thorough consultation of the industry.

The Consultation Document was announced on end-Sept. There are only 6 weeks for the industry to understand and to express the opinion on such important amendment of regulation. After the public forums held in October by your Department, you and your colleagues have already modified the proposal of legislation again and again in the November public forums held by your Department. The proposed modifications have, unfortunately, caused more concern than comfort to the industry. One example is your Department has decided not to regulate claims of “ordinary food” even if the claims are unacceptable under the newly proposed schedule. While definition of “ordinary food” is still unclear, we are also highly disturbed with the intention of the proposed schedule. Does it mean to regulate claims or “form” of oral products? The sudden and puzzling changes of position indicates that many issues caused by the Consultation Document have not been thoroughly considered and there is not enough time for proper consultation of the industry. We are afraid that a hasty legislative process will end up with detrimental regulation to both public and the industry.

HKDSA would urge the Department of Health to carefully consider the huge negative impact on the health food industry and the availability of products to consumers if the proposal of the Consultation Document is implemented. We would suggest the Government to withdraw the Consultation Document and to consider a thorough consultation of the industry instead of rushing and insisting on the proposal of this Consultation Document.

In short, HKDSA does not accept the proposal of the Consultation Document.

Yours sincerely

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cc Angela Keung, President, Direct Selling Association of Hong Kong

Mr. Stephen Ip, GBS, JP, Secretary for Economic Development and Labour

Mr. John Tsang, Secretary for Commerce, Industry & Technology

Dr. Yeoh Eng-Kiong, JP, Secretary for Health, Welfare and Food

Mr. G Leung, Director of Food, Environmental and Hygiene Department

Mrs. Selina Chow, Legislative Council, Wholesale & Retail

Ms. Pamela Chan, JP, Consumer Council

Mr. Mak Kwok Fung, Chairman, Panel on Health Services, Legislative Council