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Secretary for Health, Welfare and Food
(Attention: Mr Jeff LEUNG,
Principal Assistant Secretary (H)1)
Health, Welfare and Food Bureau
19/F., Murray Building
Garden Road
Central
Hong Kong

6 December 2004

BY FAX

Total no. of page(s) : (2)

Dear Mr Leung,

Undesirable Medical Advertisements (Amendment) (No. 2) Bill 2004

I refer to your letter dated 19 November 2004 and would like to seek your further clarification on the Bill as follows-

Clause 4 – definition of “orally consumed product”

2. Please elaborate on how your policy intent, i.e. to regulate advertisements for the so-called “health foods”, which are mostly presented in dosage form of pills, tablets, capsules, powders, sachets, liquid etc. is reflected in the proposed definition of “orally consumed product” or elsewhere in the Bill.

Clause 5 – statutory defence for a publisher or a retailer

3. In this Bill, a person who has published an advertisement for an “orally consumed product” with prohibited claims commits an offence. Under section 61(3) of the Public Health and Municipal Services Ordinance (Cap. 132), a person who has published an advertisement of food or drugs with false or misleading labels has a defence if he can prove that he did not know that the advertisement was of such a character or that he received the advertisement in the ordinary course of business. Similar statutory defence is also provided to an innocent publisher for publishing advertisements of goods with false trade description under section 27 of the Trade Descriptions Ordinance (Cap. 362). But no such defence is provided in this Bill. How can a publisher, not being the manufacturer of the product, know whether a product, for example, fish oil candy, tea good for the pancreas, is a “customarily consumed food or drink” or not? What if his view differs from the Administration?

4. In response to the reason for not providing a statutory defence to an innocent publisher or a retailer who has no knowledge of the claims, the Administration states that a warning system to the distributor of the product and the publisher of the advertisement has been put in place. However, a warning system is different from a statutory defence. Could you please provide the reason for adopting a different approach, i.e. not providing a statutory defence, in this Bill?

Clause 5 – prohibition of a true claim

5. On the prohibition of a claim which is true or which can be substantiated, the Administration says that “the truthfulness of the claims is not a consideration”. Why should the advertisement of a true claim be regarded as “undesirable” and has to be prohibited by law?

6. It is appreciated if you could reply in both Chinese and English at your earliest convenience.

Yours sincerely,

(Anita HO)
Assistant Legal Adviser

c.c. DoJ (Attn: Miss Frances HUI, SGC and Ms Grace LEUNG, GC)
LA