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Secretary for Health, Welfare and Food  
Health, Welfare and Food Bureau  
(Attn: Mrs Ingrid YEUNG, DS(H)2)  
19/F, Murray Building  
Garden Road, Hong Kong

By Fax (2840 0467) and By Post

4 July 2006

Dear Mrs YEUNG

**Smoking (Public Health) (Amendment) Bill 2005 (“the Bill”)**

I refer to the Administration’s Response to a question raised by the Assistant Legal Advisor at the Bills Committee meeting on 27 June 2006 issued by the Intellectual Property Department and received by me today.

The Paper purports to answer my request “for a written confirmation on the justifications for giving protections to unregistered trade marks in use, trade names in use and well-known marks.”. I would like to clarify that I do not doubt that unregistered trade marks in use, trade names in use and well-known marks should be protected. My request is for a written response to the issues set out in my letter dated 24 June 2006, in particular:

- (a) as an unregistered trade mark is not protected by the action of passing off, nor the Trade Marks Ordinance, whether it is within the scope of “property” to be “徵用” or “deprived” under Basic Law Article 105;
- (b) whether a well-known trade mark is within the scope of “property” to be “徵用” or “deprived” under Basic Law Article 105;
- (c) in the light of the Administration’s advice to members of the Bills Committee that prohibition of registered trade marks that contain words prohibited under the proposed section 10(3) on packaging of tobacco products would amount to de facto deprivation of property under Basic Law Article 105 and that the “serious risk” of litigation as assessed by the Department of Justice led to the Administration’s proposal of “grandfathering and notation” approach, and the Administration’s advice at the Bills Committee meeting on 27 June 2006 that the worry of the risks in relation to the unregistered trade marks in use, trade names

in use and well-known marks is relatively less, whether prohibition of unregistered trade marks in use, trade names in use and well-known marks which contain words prohibited under the proposed section 10(3) on packaging of tobacco products would amount to de facto deprivation of property under Basic Law Article 105 (as in the case of registered trade marks), the assessment of the risk involved and should the Administration's proposal of "grandfathering and notation" approach be extended to unregistered trade marks in use, trade names in use and well-known marks; and

- (d) whether drafting of the new CSAs reflects the Administration's proposed policy.

It is appreciated that your reply in both Chinese and English could reach us by close of play, 11 July 2006.

Yours sincerely

(Monna LAI)  
Assistant Legal Adviser