

立法會
Legislative Council

LC Paper No. LS3/04-05

**Paper for the House Committee Meeting
on 15 October 2004**

**Legal Service Division Report on
Undesirable Medical Advertisements (Amendment) (No. 2) Bill 2004**

I. SUMMARY

- 1. Object of the Bill** To prohibit or restrict the advertising of six types of health claims for some orally consumed products and to make some other miscellaneous amendments.

- 2. Comments**
 - (a) The Administration intends to regulate the advertisement of certain claims for some health food under the Undesirable Medical Advertisements Ordinance (Cap. 231).

 - (b) The advertising of claims for an orally consumed product relating to the prevention, elimination or treatment of breast lumps, regulation of the function of the genitourinary system and regulation of the endocrine system will be prohibited.

 - (c) The advertising of claims for an orally consumed product relating to the regulation of body sugar or glucose and/or alteration of the function of the pancreas, regulation of blood pressure and regulation of blood lipid or cholesterol will be restricted.

- 3. Public Consultation** A public consultation exercise was held in the last quarter of 2003. The medical professional bodies and academics were supportive of the proposal while the major opposing views came from the trade.

- 4. Consultation with LegCo Panel** At the meeting of the Panel on Health Services on 8 December 2003, members expressed divergent views.

- 5. Conclusion** As divergent views were expressed by members of the Panel on Health Services of the last term and the trade on the policy aspects of the Bill, and with reference to the decision of the House Committee made last term, it is recommended that a Bills Committee be formed.

II. REPORT

Object of the Bill

To widen the scope of the Undesirable Medical Advertisements Ordinance (Cap. 231) ("the Ordinance") so as to prohibit or restrict the advertising of six types of health claims for some orally consumed products and to make some miscellaneous amendments.

LegCo Brief Reference

2. File Ref. HWF CR1/3231/03 Pt. 8 issued by the Health, Welfare and Food Bureau in October 2004.

Date of First Reading

3. 13 October 2004.

Background

4. The Undesirable Medical Advertisements (Amendment) Bill 2004 (the former Bill) was introduced into LegCo on 11 February 2004. Pursuant to a decision of the House Committee made at its meeting held on 13 February 2004, a Bills Committee was formed to scrutinize the Bill. Owing to the unavailability of a Bills Committee slot, the former Bill lapsed upon the dissolution of the second term of the LegCo. The Administration re-introduced this Bill into LegCo in the 2004-05 legislative session.

Comments

5. The Ordinance restricts advertisements relating to medical matters. This Bill seeks to widen the scope of the Ordinance so that it will also regulate the advertising of six types of undesirable claims for orally consumed products. These six types of claims will be subject to two levels of restriction. With the following three types of claims, advertisements for orally consumed products will be prohibited, i.e. -

- (a) prevention, elimination or treatment of breast lumps;
- (b) regulation of the function of the genitourinary system and/or improvement of symptoms of genitourinary problems; and
- (c) regulation of the endocrine system and/or maintenance or alteration of hormonal secretions.

6. With the following three types of claims, advertisements may be allowed if a specified disclaimer is added onto the packaging and in the advertisement of the orally consumed product, i.e. -

- (a) regulation of body sugar or glucose and/or alteration of the function of the pancreas;
- (b) regulation of blood pressure; and
- (c) regulation of blood lipids or cholesterol.

7. According to the Administration, the Bill is intended to regulate claims for "health food" products such as medicines, shark's cartilage capsules and fish oil capsules and not conventional food such as cereals, cooking oil, fruit and vegetables. Claims for these products have to be regulated because they may imply the prevention or treatment of certain diseases, which may cause members of the public to delay seeking proper medical advice and treatment.

8. The Bill will also make the following amendments so as to –

- (a) increase the penalties for contravention of the Ordinance;
- (b) empower the Director of Health to appoint inspectors to enforce the provisions under the Ordinance, such as to enter and search premises and take possession of property for prosecution purposes; and
- (c) make some minor textual amendments.

9. This Bill is the same in substance as the former Bill except a minor drafting amendment to Clause 7 of the Bill.

Public Consultation

10. According to the Administration (see LC Paper No. CB(2)524/03-04(06)), an Expert Committee consisting of representatives from the Consumer Council, Chinese medicine practitioners, medical practitioners, pharmacists and a nutritionist was set up at the end of 2002 to study and recommend a list of health claims to be prohibited in orally consumed products. The Committee recommended that nine types of health claims should be prohibited. A public consultation exercise was held during the last quarter of 2003 on those nine types of health claims. In general, the medical professional bodies and academics were supportive of the proposal while the major opposing views came from the trade.

Consultation with LegCo Panel

11. The Administration consulted the Panel on Health Services on 8 December 2003 on the proposal to regulate health claims (see LC Paper No. CB(2)1171/03-04). The following views were expressed by Members -

- (a) using the Ordinance to regulate "health food" was patently wrong as these products did not contain any medicine. A new piece of legislation should be enacted to regulate misleading or exaggerated claims and that all health food should be required to undergo testing to substantiate their claims before they could be offered for sale in Hong Kong;
- (b) there were numerous deficiencies in the Administration's proposal. Regulation of health claims should best be carried out after the completion of registration of proprietary Chinese medicine in several years' time;
- (c) the revised proposal still had too many grey areas; and
- (d) in view of the reservations expressed by members on the proposal, the Chairman of the Panel urged the Administration to withhold its plan to introduce the Bill in early 2004.

12. In light of the comments received, the Administration has excluded three types of health claims from regulation, i.e. the regulation of the immune system, the promotion of detoxification and slimming/fat reduction since these claims pose relatively lesser risks to public health.

Conclusion

13. As divergent views were expressed by members of the Panel on Health Services of the last term and the trade on the policy aspects of the Bill, and with reference to the decision of the House Committee made last term, it is recommended that a Bills Committee be formed to scrutinize the Bill in detail.

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