

**UNDESIRABLE MEDICAL ADVERTISEMENTS
(AMENDMENT) ORDINANCE 2005**

CONTENTS

Section	Page
1. Short title and commencement	A485
2. Long title amended	A485
3. Short title amended.....	A485
4. Interpretation.....	A485
5. Section added	
3B. Prohibition of advertisements relating to certain orally consumed products; exceptions therefrom ..	A487
6. Certain defences; provision as to Chinese medicine practitioners	A489
7. Penalty	A489
8. Section added	
8. Enforcement provisions	A491
9. Diseases and conditions in respect of which advertisements are prohibited or restricted.....	A493
10. Schedule 4 added	
Schedule 4 Claims for orally consumed products in respect of which advertisements are prohibited or restricted	A495
11. Minor amendments.....	A505
Consequential Amendments	
Specification of Public Offices	
12. Schedule amended.....	A505
Schedule Minor amendments to Undesirable Medical Advertisements Ordinance (Cap. 231)	A505

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 16 OF 2005

L.S.

Donald TSANG
Chief Executive
7 July 2005

An Ordinance to amend the Undesirable Medical Advertisements Ordinance.

[]

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Undesirable Medical Advertisements (Amendment) Ordinance 2005.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Health, Welfare and Food by notice published in the Gazette.

2. Long title amended

The long title to the Undesirable Medical Advertisements Ordinance (Cap. 231) is amended by adding “and health” after “medical”.

3. Short title amended

Section 1 is amended by repealing “醫藥廣告” and substituting “廣告(醫藥)”.

4. Interpretation

Section 2(1) is amended—

- (a) in the definition of “medicine” by repealing the full stop at the end and substituting a semicolon;
- (b) by adding—

“ “orally consumed product” (口服產品)—

- (a) means a product (whether or not it is a medicine) for human consumption which is intended to be taken orally and is in any of the following forms—
 - (i) pill;
 - (ii) capsule;
 - (iii) tablet;
 - (iv) granule;
 - (v) powder;
 - (vi) semi-solid;
 - (vii) liquid; or
 - (viii) a form similar to any of the forms mentioned in subparagraphs (i), (ii), (iii), (iv), (v), (vi) and (vii); and
- (b) does not include a product which is customarily consumed only as food or drink (that is to say, to provide energy, nourishment or hydration) or to satisfy a desire for taste, texture or flavour.”.

5. Section added

The following is added—

“3B. Prohibition of advertisements relating to certain orally consumed products; exceptions therefrom

(1) No person shall publish, or cause to be published, an advertisement for an orally consumed product which makes for the product a claim specified in column 1 of Schedule 4, or any similar claim, except as allowed under the provisions in column 2 of that Schedule (as read subject to the Note in that Schedule).

(2) Where section 3(1) does not apply to an advertisement by virtue of section 3(2), in so far as the advertisement is also an advertisement for an orally consumed product, subsection (1) does not apply to the advertisement.

(3) For the purposes of this section—

- (a) the sale or supply, or offer or exposure for sale or supply, of an orally consumed product in a labelled container or package shall constitute the publication of an advertisement;
- (b) the supply, inside any container or package containing any orally consumed product, of information relating to that or any other product shall not constitute the publication of an advertisement;

(c) “any similar claim” (任何類似的聲稱) means a claim that can reasonably be understood to be to the like effect as the specified claim, by reference to all the relevant circumstances.

(4) Where, in an advertisement for an orally consumed product published in contravention of subsection (1), a person named in that advertisement is held out as being a manufacturer or supplier of the product, that person is presumed, until the contrary is proved, to have caused the advertisement to be published.

(5) Where an advertisement for an orally consumed product published in contravention of subsection (1) gives the name, address or telephone number of, or indicates some other means of contacting, a person, and that person manufactures or supplies the product, that person is presumed, until the contrary is proved, to have caused the advertisement to be published.”.

6. Certain defences; provision as to Chinese medicine practitioners

Section 5(1) is amended—

- (a) by adding “, 3B” after “section 3”;
- (b) by repealing paragraph (c) and substituting—
 - “(c) the medical and para-medical staff of—
 - (i) any hospital or maternity home to which the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165) applies;
 - (ii) any clinic to which the Medical Clinics Ordinance (Cap. 343) applies;
 - (iii) any hospital, maternity home or clinic maintained by the Government, the Chinese University of Hong Kong or the University of Hong Kong;
 - (iv) any hospital, maternity home or clinic managed or controlled by the Hospital Authority established under the Hospital Authority Ordinance (Cap. 113);”.

7. Penalty

Section 6 is amended—

- (a) by adding “, 3B” after “section 3”;
- (b) by repealing “of \$10,000” and substituting “at level 5 and imprisonment for 6 months”;

- (c) by repealing “to a fine of \$25,000” and substituting “for an offence under the same section to a fine at level 6”.

8. Section added

The following is added—

“8. Enforcement provisions

(1) The Director of Health may in writing authorize any public officer to be an inspector for the purposes of this Ordinance.

(2) For the purpose of ascertaining whether the provisions of this Ordinance are being complied with, an inspector may—

(a) at any reasonable time enter—

(i) any premises at which any medicine, surgical appliance or orally consumed product is manufactured, stored or sold;

(ii) any premises at which any treatment is provided;

(b) require any person found in the premises and whom the inspector reasonably suspects to have committed an offence under section 3, 3B or 4, to give to the inspector the person’s name and address and evidence of identity;

(c) in the premises make such examination and inquiry and do such other things, including the taking of copies of advertisements, as are reasonably necessary for such purpose.

(3) If a magistrate is satisfied by information upon oath that there are reasonable grounds for believing that—

(a) an offence against section 3, 3B or 4 is being or has been committed in any premises; or

(b) there is or may be in any premises anything which is or contains, or which is likely to be or to contain, evidence of the commission of an offence against any of those sections,

the magistrate may issue a warrant authorizing any inspector to enter and search the premises.

(4) If a warrant has been issued under subsection (3) in respect of any premises, an inspector may—

(a) at any time, using such force as is necessary, enter and search the premises;

(b) remove anything which obstructs such entry and search;

(c) detain any person found in the premises, for such period as is reasonably required to permit the search to be carried out, if the person might prejudice the search if not so detained; and

- (d) inspect, seize and detain anything which is or contains, or which appears to the inspector to be or to contain, evidence of the commission of an offence against section 3, 3B or 4.
- (5) When exercising any of the powers conferred by subsection (2) or (4), an inspector must, if so requested by any person, produce for inspection by that person written evidence of the inspector's authority.
- (6) A person who—
 - (a) wilfully delays or obstructs an inspector in the exercise of the powers conferred by subsection (2) or (4); or
 - (b) fails without reasonable excuse to give any information which the inspector reasonably requires the person to give under subsection (2),commits an offence and is liable on conviction to a fine at level 3.”.

9. Diseases and conditions in respect of which advertisements are prohibited or restricted

Schedule 1 is amended—

- (a) in item 2, in column 2, by adding at the end—
“Prevention of common colds.”;
- (b) in item 3, in column 2, by repealing everything after “roundworm” and substituting a full stop;
- (c) in item 5, in column 2, by repealing “Temporary relief” and substituting “Relief”;
- (d) in item 12, in column 2, by repealing “Provision of dietary supplements” and substituting “None”;
- (e) in item 14, in column 2, by repealing the second sentence and substituting—
“Prevention of pimples.

Relief of symptoms of eczema and allergies by oral antihistamine preparations.

Treatment, where applied to an external surface of the body, of pimples, eczema, skin allergies, athlete's foot and fungal nail infection.”.

10. Schedule 4 added

The following is added—

“SCHEDULE 4

[s. 3B]

CLAIMS FOR ORALLY CONSUMED PRODUCTS IN RESPECT OF WHICH
ADVERTISEMENTS ARE PROHIBITED OR RESTRICTED

Column 1 Claim	Column 2 Exemption
1. Prevention, elimination or treatment of breast lumps, including eliminating the blockage of milk ducts of the breast, helping to eliminate disease-causing factors or lumps, relieving the associated discomfort symptoms, helping to improve the metabolism of breast tissue, effectively disintegrating and eliminating abnormal cell tissues and lumps.	None.
2. Regulation of the function of the genitourinary system and/ or improvement of symptoms of genitourinary problems such as frequent urination, urgent urination, dripping urination, poor stream, difficulty in urination, urination at night, impeded prostatic function and uncontrollable urinary discharge or incontinence.	None.
3. Regulation of the endocrine system and/or maintenance or alteration of hormonal secretions, including helping to maintain hormones at optimal level, stimulating the hypothalamus, increasing secretion of oestrogen, promoting normal secretion of the female hormone,	None.

Column 1
Claim

Column 2
Exemption

- regulating the female endocrine function, improving imbalance of male hormone secretion, helping to maintain balance of hormonal secretions in men and women, stimulating hormonal secretions, regulating endocrine secretion, balancing endocrine secretion, increasing secretion of growth hormone, stimulating the thyroid gland.
4. Regulation of body sugar or glucose and/or alteration of the function of the pancreas, including regulating blood sugar, suppressing or reducing the absorption of glucose, reducing the blood sugar level, increasing the metabolism of body sugar, being suitable for diabetic patients, being against blood sugar, being suitable for people with high blood sugar, improving the function of the pancreas, stimulating the secretion of insulin.
- (a) Subject to paragraph (b), the following claims are allowed—
- (i) “This product is suitable for people concerned about blood sugar. 此產品適合關注血糖的人士服用。”;
 - (ii) “This product may assist in stabilizing blood sugar. 此產品或有助於穩定血糖。”;
 - (iii) “This product is intended for people concerned about blood sugar. 此產品以關注血糖的人士為對象。”; and
 - (iv) “This product is for the consumption by people concerned about blood sugar. 此產品供關注血糖的人士服用。”.
- (b) In relation to a product which is not registered under the Pharmacy and Poisons Ordinance (Cap. 138) or the Chinese Medicine Ordinance (Cap. 549), the claims referred to in paragraph (a)(i), (ii), (iii) and (iv) are allowed only if the advertisement clearly includes the following disclaimer—

Column 1
Claim

Column 2
Exemption

“This product is not registered under the Pharmacy and Poisons Ordinance or the Chinese Medicine Ordinance. Any claim made for it has not been subject to evaluation for such registration. This product is not intended to diagnose, treat or prevent any disease. 此產品沒有根據《藥劑業及毒藥條例》或《中醫藥條例》註冊。為此產品作出的任何聲稱亦沒有為進行該等註冊而接受評核。此產品並不供作診斷、治療或預防任何疾病之用。”

(See Note)

5. Regulation of blood pressure, including regulating blood pressure, controlling blood pressure, reducing blood pressure, being suitable for people with high blood pressure.
- (a) Subject to paragraph (b), the following claims are allowed—
- (i) “This product is suitable for people concerned about blood pressure. 此產品適合關注血壓的人士服用。”;
 - (ii) “This product may assist in stabilizing blood pressure. 此產品或有助於穩定血壓。”;
 - (iii) “This product is intended for people concerned about blood pressure. 此產品以關注血壓的人士為對象。”; and
 - (iv) “This product is for the consumption by people concerned about blood pressure. 此產品供關注血壓的人士服用。”.

Column 1
Claim

Column 2
Exemption

- (b) In relation to a product which is not registered under the Pharmacy and Poisons Ordinance (Cap. 138) or the Chinese Medicine Ordinance (Cap. 549), the claims referred to in paragraph (a)(i), (ii), (iii) and (iv) are allowed only if the advertisement clearly includes the following disclaimer—

“This product is not registered under the Pharmacy and Poisons Ordinance or the Chinese Medicine Ordinance. Any claim made for it has not been subject to evaluation for such registration. This product is not intended to diagnose, treat or prevent any disease. 此產品沒有根據《藥劑業及毒藥條例》或《中醫藥條例》註冊。為此產品作出的任何聲稱亦沒有為進行該等註冊而接受評核。此產品並不供作診斷、治療或預防任何疾病之用。”

(See Note)

6. Regulation of blood lipids or cholesterol, including preventing high blood lipids, helping to maintain normal blood lipids, lowering blood lipids, reducing or regulating cholesterol, balancing blood cholesterol, excreting cholesterol in the blood vessel outside the body, being suitable for people
- (a) Subject to paragraph (b), the following claims are allowed—
- (i) “This product is suitable for people concerned about blood lipids/ cholesterol. 此產品適合關注血脂／膽固醇的人士服用。”;
- (ii) “This product may assist in stabilizing blood lipids/ cholesterol. 此產品或有助於穩定血脂／膽固醇。”;

Column 1
Claim

with high blood lipids or
high cholesterol.

Column 2
Exemption

- (iii) “This product is intended for people concerned about blood lipids/cholesterol. 此產品以關注血脂／膽固醇的人士為對象。”;
and
(iv) “This product is for the consumption by people concerned about blood lipids/cholesterol. 此產品供關注血脂／膽固醇的人士服用。”.

(b) In relation to a product which is not registered under the Pharmacy and Poisons Ordinance (Cap. 138) or the Chinese Medicine Ordinance (Cap. 549), the claims referred to in paragraph (a)(i), (ii), (iii) and (iv) are allowed only if the advertisement clearly includes the following disclaimer—

“This product is not registered under the Pharmacy and Poisons Ordinance or the Chinese Medicine Ordinance. Any claim made for it has not been subject to evaluation for such registration. This product is not intended to diagnose, treat or prevent any disease. 此產品沒有根據《藥劑業及毒藥條例》或《中醫藥條例》註冊。為此產品作出的任何聲稱亦沒有為進行該等註冊而接受評核。此產品並不供作診斷、治療或預防任何疾病之用。”.

(See Note)

Note: If the advertisement is wholly or mainly in the English or Chinese language, a claim stated in column 2 may be limited to that language, but where there is included in the same advertisement any other claim or disclaimer that is stated in column 2, that other claim or disclaimer (as the case may be) shall also be limited to that language.”.

11. Minor amendments

The provisions of the Ordinance specified in column 2 of the Schedule to this Ordinance are amended in the manner specified in column 3 of that Schedule.

Consequential Amendments

Specification of Public Offices

12. Schedule amended

The Specification of Public Offices (Cap. 1 sub. leg. C) is amended, in the Schedule, in the entry relating to “衛生署署長”, by repealing “醫藥廣告” and substituting “廣告 (醫藥)”.

SCHEDULE

[s. 11]

MINOR AMENDMENTS TO UNDESIRABLE MEDICAL ADVERTISEMENTS ORDINANCE (CAP. 231)

Item	Provision	Amendment
1.	Section 2(1)	In the definition of “藥物”, repeal “專有” and substitute “專賣”.
2.	Schedule 1	(a) In the heading, repeal “病或” and substitute “病及”. (b) In item 2, in column 2— (i) repeal “外用”; (ii) in the Chinese text, repeal the third sentence and substitute—

Item	Provision	Amendment
		“減輕以下症狀：傷風、咳嗽、一般稱為流行性感冒的情況及類似的上呼吸道感染。”
		(c) In item 4, in column 1, repeal “愛滋病” and substitute “後天免疫力缺陷綜合症 (愛滋病)”.
		(d) In item 5, in column 2, repeal “塞竇症狀” and substitute “塞竇”.
		(e) In item 7, in column 2— (i) repeal “nauseau” and substitute “nausea”; (ii) repeal “便秘症狀” and substitute “便秘”; (iii) repeal “痔及” and substitute “痔以”.
		(f) In item 8— (i) in column 1, repeal “精神發育” and substitute “智力”; (ii) in column 2, add “症狀” after “痛”.
		(g) In item 9, in column 1, repeal “genito-urinary” and substitute “genitourinary”.
		(h) In item 10, in column 2, repeal “適當或需多加調節飲食” and substitute “足或有增加飲食需要”.
		(i) In item 12, in column 1, repeal “活動過少或過多有關的任何器官或機能性病理” and substitute “任何部分活動過少或過多有關的任何其他器官性或機能性的”.
		(j) In item 13— (i) in column 1, repeal “病理” and substitute “性的”; (ii) in column 2, add “部” after “眼”.
		(k) In item 14, in column 2— (i) add “external” after “protective”; (ii) repeal “皮膚症狀” and substitute “皮膚方面的情況”.
3.	Schedule 2	In item 1, repeal “醫治” and substitute “舒緩”.