

## **Legislative Council Panel on Commerce and Industry**

### **No Fakes Pledge Scheme**

#### **Purpose**

This paper sets out the background of the “No Fakes Pledge” Scheme and responds to the questions raised by the Hon Fred Li in his letter dated 6 April to the Chairman of this Panel.

#### **Background of “No Fakes Pledge”**

2. The Intellectual Property Department (IPD) launched the “No Fakes Pledge” Scheme (“the Scheme”) in 1998 with the aim of encouraging retailers to make a pledge of selling genuine goods, promoting the awareness of intellectual property protection among retailers and consumers alike, so as to enhance tourists’ and consumers’ confidence about shopping in Hong Kong. All retail merchants participating in the Scheme must volunteer to make a pledge not to sell fakes. On doing so, they may post the “No Fakes” stickers and tent cards issued by issuing bodies in their shops. Over the years, trade associations participating in the Scheme as issuing bodies included the Hong Kong Record Merchants Association, the Hong Kong Retail Management Association and the Hong Kong General Chamber of Commerce. Organizations participating in the Scheme as supporting organizations included the Hong Kong Tourism Board, the Hong Kong & Kowloon Electrical Appliances Merchants' Association Limited, the Hong Kong General Chamber of Pharmacy Limited, the Chamber of Hong Kong Computer Industry and the Travel Industry Council of Hong Kong. To participate in the Scheme, a retail merchant had to be a member of either the issuing bodies or the supporting organizations. The issuing bodies, supporting organizations and IPD regularly met together to ensure the smooth operation of the Scheme.

3. Following an investigation into a “No Fakes” store by the Customs and Excise Department (C&ED) in end of September last year, IPD agreed with the issuing bodies and supporting organizations to tighten up the Scheme’s code of ethics in order to enhance public confidence in the Scheme. The additional provisions in the revised code of ethics allow issuing bodies or IPD as coordinator of the Scheme to terminate a member company’s membership if they have reason to believe that such member company has failed to comply with the revised code or if any action has been taken against it by C&ED. Moreover, the member company concerned will be asked to return the “No Fakes” sticker and tent card. To ensure fairness for the member company concerned, it can attend a hearing or submit any written representations concerning the matter. The issuing body concerned and IPD shall have the right to publicize any action taken against the member company concerned.

4. The revised code of ethics came into effect on 1 January 2006. The issuing bodies of the Scheme in 2006 are: the Hong Kong & Kowloon Electrical Appliances Merchants' Association Limited, the Hong Kong General Chamber of Pharmacy Limited, the Hong Kong Record Merchants Association Ltd., the Hong Kong Retail Management Association and the Chamber of Hong Kong Computer Industry. The supporting organizations are the Consumer Council and C&ED. To participate in the Scheme, a retail merchant has to be a member of one of the above issuing bodies and subject to record checking by the supporting organizations.

5. As the co-ordinator of the Scheme, IPD's responsibility includes –

- (i) to provide administrative support to the issuing bodies and supporting organizations in their processing and vetting of applications;
- (ii) to handle or refer public enquiries and complaints;
- (iii) to provide assistance to issuing bodies in handling cases concerning any member found breaching the code of ethics of the Scheme;
- (iv) to provide publicity funding and to promote the Scheme to the public and;
- (v) to manage the database and the website of the Scheme.

6. To uphold the integrity of the Scheme, the issuing bodies are responsible for monitoring the compliance of the Scheme and the supporting organizations will assist in providing market surveillance in this respect. The retail merchants of the Scheme also agree to allow officers of the C&ED to visit their premises for the purpose of monitoring compliance.

7. IPD discusses co-operation under the Scheme from time to time with established and respectable trade organizations from the retail industry with a view to bringing in new organizations representing different retail industries to become the issuing bodies under the Scheme.

8. As at 31 March 2006, the Scheme accepted over 290 retail merchants covering more than 2,550 outlets.

### **Response to Questions**

9. Our replies to the questions by the Hon Fred Li are set out at Annex.

**Replies to the Questions Raised by the Hon Fred Li**

- Q1. To which industries or organizations did IPD assign the duty of issuing ‘No Fakes’ stickers?
- A1. To promote the “No Fakes Pledge” Scheme, IPD will discuss and co-operate with any established and respectable retail organizations. It is the consensus of the existing participating organizations that any new organizations should also have a memorandum and articles of association which provide for sanctions against any of their members who breach their codes of ethics. The issuing bodies each have their own set of criteria for handling membership applications. The basic criteria for joining the “No Fakes Pledge” Scheme are that the retail merchants are willing to comply with the code of ethics, have been operating in Hong Kong continuously for more than six months and have passed vetting of no piracy record within one year by the supporting organizations.
- Q2. According to the information shown, why can’t retailers who are not members of retail organizations apply to join the Scheme?
- A2. As the issuing bodies of the Scheme, the retail organizations should assist in monitoring their members’ compliance and handle any case of breach in the code of ethics. There are a number of retail organizations in Hong Kong who know their members well, and whose memorandum and articles of association provide for additional sanctions against any of their members who breach their codes of ethics. Therefore, IPD believes the retail organization membership mechanism will bring more credibility to the Scheme in the eyes of the general public.
- Q3. Will there be any inefficiency in the monitoring or conflict of interest if the ‘No Fakes’ stickers are issued by the retail organizations to retail merchants who belong to the same retail industry?
- A3. The “No Fakes Pledge” Scheme is a voluntary scheme. Members of the issuing bodies can decide through which retail association they would like to join the Scheme based on their needs. Meanwhile, the issuing bodies assess membership applications against a prescribed set of rules. One of the issuing bodies, Hong Kong Retail Management Association, will consider membership applications from any retailer, irrespective of which trade they are in.

- Q4. If the retail organization only accepts the applications from the retail merchants who pay fees and belong to the same industry, does it imply that the organization is making profit by issuing the “No Fakes” sticker?
- A4. IPD believes the retail organizations will deal fairly with all the membership applications and there is no evidence to suggest that they will use the “No Fakes Pledge” Scheme to gain more membership fees. In fact, most of them become issuing bodies because their existing members encourage them to do so.
- Q5. What is the role of the Government in issuing the “No Fakes” stickers?
- A5. IPD’s role in the Scheme is to act as co-ordinator and to publicize the Scheme. IPD does not participate in the decision-making process regarding who should be granted or denied membership of the Scheme.
- Q6. Please briefly describe the Government’s job in the enhancement of monitoring compliance with the Scheme in 05-06 and 06-07.
- A6. To enhance public confidence in the Scheme, IPD agreed with the issuing bodies and supporting organizations to tighten up the code of ethics of the Scheme last year so that IPD and the issuing bodies may terminate a member company’s membership immediately if there are reasons to believe that the member company concerned has failed to comply with the code of ethics or if there is any action taken against it by C&ED. The revised code also provides a procedure under which IPD or the issuing bodies may disclose the name of the member company alleged to have breached the code of ethics. Furthermore, under the code of ethics of the Scheme, member companies are required to let C&ED conduct inspection of their premises. Through effective partnership with copyright and trademark owners and their relevant trade organizations, C&ED maintains close market surveillance over suspected counterfeiting and piracy activities. It will take swift actions against any shop suspected of selling counterfeit and pirated goods.