

立法會
Legislative Council

LC Paper No. CB(1)1186/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/07

Bills Committee on Trade Descriptions (Amendment) Bill 2007

**Minutes of third meeting on
Thursday, 6 March 2008, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Fred LI Wah-ming, JP (Chairman)
Hon Margaret NG
Hon SIN Chung-kai, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Ting-kwong, BBS

Members absent : Hon Andrew LEUNG Kwan-yuen, SBS, JP

**Public Officers
attending** : Agenda item II

Ms Annie CHOI Suk-han, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)³

Mr Luke AU YEUNG Ho-lok
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)⁶

Mr CHEUNG Sai-yan
Head of Trade Controls
Customs and Excise Department

Mr Gilbert MO Sik-keung
Deputy Law Draftsman
Department of Justice

Ms Karmen KWOK Man-yi
Government Counsel
Department of Justice

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)6

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Mr Justin TAM
Council Secretary (1)3

Ms Michelle NIEN
Legislative Assistant (1)9

Action

I Confirmation of minutes and matters arising

(LC Paper No. CB(1)949/07-08 -- Minutes of the meeting held on
18 February 2008)

The minutes of the meeting held on 18 February 2008 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)953/07-08(01) -- List of follow-up actions arising
from the discussion on
18 February 2008 prepared by the
Legislative Council Secretariat

LC Paper No. CB(1)953/07-08(02) -- Administration's response to item
4 of LC Paper No.
CB(1)953/07-08(01)

LC Paper No. CB(1)953/07-08(03) -- Summary of deputations' views on
individual clauses of the Bill
(position as at 4 March 2008)

LC Paper No. CB(1)1002/07-08(01) -- Summary of deputations' views on
(tabled and subsequently issued on individual clauses of the Bill with
6 March 2008) the Administration's response
(position as at 4 March 2008)
(Chinese version to follow)

LC Paper No. LS61/07-08 -- Information paper on statutory
(*Chinese version tabled and provisions in overseas jurisdictions*
subsequently issued on 6 March on misleading price indication,
2008) *misleading representations on*
after-sale services and misleading
representations in relation to
seller's connection with or
endorsement by any individual or
body and similar provisions
proposed under the Trade
Descriptions (Amendment) Bill
2007 prepared by the Assistant
Legal Adviser of Legislative
Council Secretariat

Other relevant papers issued previously

LC Paper No. CB(3)250/07-08 -- The Bill

LC Paper No. CB(1)808/07-08(02) -- Administration's paper on
supplementary information on
Overseas Legislation (response to
item 1 of LC Paper No.
CB(1)808/07-08(01)))

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up action to be taken by the Administration

3. The Administration was requested to take follow-up actions below.

(a) Clause 4 – amended section 2(1)

The definition of "trade description" in section 2(1) of the Trade Descriptions Ordinance (Cap 362) was proposed to be amended to cover information on the availability, scope, duration, cost, location and provider of after-sale inspection and maintenance service under clause 4(2) of the Bill. However, there was ambiguity as to whether the proposed amendment might cover information on the availability of spare parts for goods. The Administration was requested to make reference to comparable legislation in Australia in preparing draft Committee Stage amendment (CSA) to the proposed section 2(1)(k) to explicitly provide that information on after-sale services for goods would include the availability of "spare parts for goods".

(b) Clause 7 – proposed section 13A

- (i) Comparable legislation in overseas jurisdictions such as Australia, New Zealand, and the United Kingdom contained a general provision prohibiting misleading price indication. But such a provision was not proposed in the Bill. The Administration was requested to examine the feasibility of including a general provision in the Bill to this effect and prepare the draft CSA accordingly;
- (ii) To prepare draft CSA extending the scope of the proposed section 13A(1) to "units of quantity"; and
- (iii) In the proposed section 13A(2), to consider some deputations' proposal of setting out the relevant requirements on price signs, such as the size and colour, the font size of characters, etc.

(c) Clause 7 – proposed section 13C

To address members' concern about the wide scope of the proposed section 13C(2), which applied to representations made "in the course of any trade, business or profession", the Administration had agreed to introduce an amendment to narrow the scope to "...in connection with the supply or possible supply of goods...or in connection with the promotion by any means of the supply or use of goods..." with reference to the relevant provision in the Trade Practices Act 1974 of Australia.

Date of next meeting

4. Members noted that the next meeting of the Bills Committee would be held on 10 April 2008, at 4:30 pm. Members further agreed that the Bills Committee would consider outstanding policy issues relating to the Bill at the next meeting and if time permitted, the Committee would start clause-by-clause examination of the Bill.

III. Any other business

5. There being no other business, the meeting ended at 6:00 pm.

**Proceedings of the third meeting of
the Bills Committee on
Trade Descriptions (Amendment) Bill 2007
on Thursday, 6 March 2008, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000207 – 000239	Chairman	(a) Welcoming remarks by the Chairman (b) Confirmation of minutes of the meeting held on 18 February 2008 (LC Paper No. CB(1)949/07-08)	
000240 – 001957	Chairman Administration	<u>Briefing by the Administration</u> (a) <i>Comparison of the Bill with overseas legislation (LC Paper Nos. CB(1)953/07-08(02) and CB(1)808/07-08(02))</i> (i) On misleading price indication, misleading representations in relation to seller's connection with or endorsement by others, and misleading representations of after-sale services, most overseas legislation contained general non-specific provisions to allow flexibility in dealing with malpractices in the marketplace, and the provisions were applicable to goods and services; (ii) In respect of provisions in overseas legislation on misleading price indication, some were supplemented by definitions or narrower specific provisions to provide greater certainty. For instance, New York State of the United States (US) provided very specific provisions specifically setting out requirements on provision of price information for goods. The Administration considered that such an approach would be rigid and might create difficulties for the retail sector; and (iii) As regards misleading representations in relation to seller's connection with or endorsement by any individual or body, the Administration noted that under the legislation of some jurisdictions, there were express provisions providing that traders, suppliers or retailers of goods (not including third parties outside the transaction) were liable for making such representation. In cases where the overseas legislation was silent on the application of the relevant provisions to third parties, the Administration assumed that third parties would be held	

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		<p>responsible for making such misleading representations</p> <p>(b) <i>The Administration's response to deputations' views on individual clauses of the Bill (position as at 4 March 2008, LC Paper No CB(1)1002/07-087(01))</i></p> <p>(i) It was noted that deputations in general hoped that compliance with the provisions in the Bill should not be unduly onerous;</p> <p>(ii) As regards the provision of information relating to after-sale services for goods, the Administration would provide a grace period of, say, six months to enable retailers to upgrade their computer systems in meeting the requirement of providing the needed information in sales invoices;</p> <p>(iii) On the concern about possible overlap of the Bill with civil law of passing-off which concerned about trade marks owners or celebrities in protecting their rights, it had to be noted that the objective of the Bill was to enhance consumer protection and it had no direct relevance to the law of passing-off; and</p> <p>(iv) It would not be possible to lay down exhaustive definitions for terms such as "representations", "reasonable steps" in the provisions of the Bill. The court would need to adopt an objective reasonable man test in deciding whether a particular act had contravened the provision or not</p> <p>(c) <i>The Administration's response to views and concerns raised by members and deputations at previous meetings</i></p> <p>(i) The Administration would introduce Committee Stage amendments (CSAs) to extend the scope of the proposed section 13A by replacing "weight unit" with "units of quantity" as the latter term could include all units of measurement such as length, width, height, area, volume, capacity, weight and number;</p> <p>(ii) The Administration had reservations on the proposal of setting out the relevant requirements on price signs, such as the size and colour, the font size of characters etc, as the small traders might unwittingly</p>	<p>The Administration to take action as per paragraph 3(b)(ii) of the minutes</p> <p>The Administration to provide written response as per paragraph 3(b)(iii) of the minutes</p>

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		<p>fall foul of the law. In case of disputes, the court would need to adopt an objective reasonable man test in deciding whether the price indication had contravened the relevant provision or not; and</p> <p>(iii) To address the concern about the wide scope of the proposed section 13C(2) which covered misleading representations made "in the course of any trade, business or profession", the Administration would introduce CSA to narrow the scope to " ... in connection with the supply or possible supply of goods... or in connection with the promotion by any means of the supply or use of goods..." with reference to the relevant legislation in Australia</p> <p>(d) The Administration had received the report of the Stage Two Review (the Review Report) completed by the Consumer Council (CC) in which contained a package of recommendations including the introduction of a comprehensive Trade Practices Law in Hong Kong to regulate trade practices covering all goods and services. The Commerce and Economic Development Bureau would examine the recommendations with other bureaux and departments in mapping out the way forward for public consultation</p>	<p>The Administration to take action as per paragraph 3(c) of the minutes</p>
<p>001958 – 002814</p>	<p>Chairman Mr Vincent FANG Administration</p>	<p>(a) Mr Vincent FANG's concern whether a person who made a representation that a famous person was considering purchasing the goods from the seller would commit an offence under the proposed section 13C(2)</p> <p>(b) Mr WONG Ting-kwong's concern about the responsibility of the seller under the proposed section 13C to clarify misunderstanding if a representation in relation to the seller's connection with or endorsement by others was made by the information recipient instead of the seller himself</p> <p>(c) The Administration's responses as follows: (i) The proposed section 13C(1) dealt with false representation. The proposed section 13C(2), which was essentially an anti-avoidance provision to prevent circumvention of section 13C(1), provided that if a person who made a representation (the maker) in relation to the seller's connection with or</p>	

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		<p>endorsement by others (the subject individual) ought reasonably to expect that the information recipient was likely to mistake the subject individual for another individual who was widely known to be of good standing and reputation because the name of the subject individual was identical with, or very similar to, that of the reputable individual, the maker should clarify that the subject individual was not the reputable individual. Otherwise, the maker committed an offence. As regards the circumstance mentioned in item (b) above, the seller should make the necessary clarification to avoid possible misunderstanding by the information recipient even though the seller was not the maker; and</p> <p>(ii) According to the proposed section 13C(3)(c), a representation that a seller was endorsed by an individual was made if it was suggested that the individual made a positive evaluation of the seller, or the seller had the permission, authorization, or consent of the individual without which the seller would not be able to sell the goods concerned lawfully</p>	
002815 – 003434	Administration Mr WONG Ting-kwong	<p>In response to the Bills Committee's request for the Administration to consider including "intention of the seller" as one of the elements of the offence under the proposed section 13C(2) and providing details of the reasonable steps to be taken by the seller under the proposed section 13C(2)(c), the Administration's advice as follows:</p> <p>(a) With the Administration's proposal to narrow the scope of the proposed section 13C(2), the "intention of seller" could be implied if he did not take reasonable steps to prevent the information recipient from believing that the seller was connected with or endorsed by the reputable individual or body; and</p> <p>(b) The Administration had reservations providing details of the reasonable steps to be taken by the maker of the representation in the Bill. It was believed that the court would adopt an objective reasonable man test in deciding whether a particular act had contravened the provision</p>	

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003435 – 004014	Chairman Administration Assistant Legal Adviser (ALA)	<p>(a) ALA's observation and concern that while the Price Marking Order 2004 (PMO) of the United Kingdom (UK) required sellers to indicate the selling prices for goods and specified the manner under which price information should be given, no such requirement was proposed in the Bill. The proposed section 13A would apply only where a trader displayed a price-indicating sign, it would not apply if the sellers did not indicate the price of goods by the display of signs. As such, the proposed section might be ineffective in protecting consumers</p> <p>(b) The Administration's response that comparable legislation in Australia and New Zealand only sought to regulate false or misleading representations with respect to the price of goods made verbally or in writing while those in UK and New York State required the mandatory display of price signs for products. Given that the trade practices and the business environment in Hong Kong already allowed provision of either verbal or written price information, the Administration had no intention to require the mandatory display of price signs at this stage. Mandatory display of price signs would have far-reaching implications, which required detailed examination and consultation with the retail industry</p>	
004015 – 010000	Chairman Mr WONG Ting-kwong ALA Administration Ms Audrey EU Mr Vincent FANG	<p>(a) ALA's observation that in addition to PMO which required mandatory indication of selling prices for goods, the UK's Consumer Protection Act also contained a general provision prohibiting misleading price indication. If it was the intention of the Bill to combat false or misleading price indication, the Bill should include an express provision to this effect</p> <p>(b) Agreement by Mr WONG Ting-kwong and Ms Audrey EU that the Bill should include a general provision to prohibit misleading price indication</p> <p>(c) The Administration's responses as follows: (i) False trade description was already a deceptive act and an offence under the Trade Descriptions Ordinance (TDO) (Cap. 362). However, the current definition of trade description had not included "price". In fact, the Administration had received few complaints about misleading price</p>	

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		<p>information given verbally. The Bill was to target at the more prevalent malpractice about misleading price information given in writing found in recent years; and</p> <p>(ii) While the Administration would examine ALA's suggestion, care must be taken to avoid imposing compliance burden on small retailers such as those in the wet markets</p>	<p>The Administration to take action as per paragraph 3(b)(i) of the minutes</p>
<p>010001 – 010907</p>	<p>Chairman ALA Administration Ms Audrey EU Mr WONG Ting-kwong</p>	<p>(a) ALA's observation that while the Bill sought to expand the definition of "trade description" to cover information on the availability, scope, duration, cost, location and provider of after-sale inspection and maintenance service, it might not cover information on the availability of spare parts for goods. In similar legislation in Australia and Singapore, there was an express provision relating to availability of spare parts for goods. Similar concern was also raised by CC in its submission (LC Paper No. CB(1)937/07-08(01))</p> <p>(b) Ms Audrey EU's concern that spare parts were usually not included in maintenance contracts or warranty for goods. As such, their availability or otherwise should also be specified to avoid misleading consumers. Mr WONG Ting-kwong agreed</p> <p>(c) The Administration's response that the seller would need to inform consumers about the availability of spare parts or otherwise by virtue of the proposed section 2(1)(n) which specified the scope of the facilities for the inspection, repair or maintenance service of the goods referred to in the proposed section 2(1)(k). Nevertheless, to specify the requirement more clearly, the Administration would consider proposing CSA to add the availability of spare parts in the proposed section 2(1)(k)</p>	<p>The Administration to take action as per paragraph 3(a) of the minutes</p>
<p>010908 – 011449</p>	<p>Chairman ALA Administration</p>	<p>(a) ALA's observation that unlike overseas legislation which sought to prohibit false as well as misleading representations relating to warranty and after-sale repair and maintenance services for goods, the Bill would make the offence under section 7 of TDO apply to representations on after-sale services which were false "to a material degree". As such, representations which were merely misleading would not be caught. In other words, TDO</p>	

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		<p>seemed to impose a higher threshold than similar legislation in overseas legislation</p> <p>(b) The Administration's response that "false to a material degree" helped screen out cases of having only insignificant differences in the trade descriptions. Amending section 7 could have far-reaching implications on other provisions of TDO and various industries, and was beyond the Administration's current legislative intent</p>	
011450 – 012708	Chairman Ms Audrey EU Mr Vincent FANG Administration	<p>(a) Ms Audrey EU's concern about the scope of the proposed section 13C(2), in particular if the representation made by the seller contained trivial or insignificant information</p> <p>(b) Mr Vincent FANG's concern about difficulties for the prosecution to prove that the seller had made false or misleading representations verbally to consumers</p> <p>(c) The Administration's responses as follows:</p> <p>(i) While the Administration would move CSA to narrow the scope of the proposed section 13C(2), it had reservations to include "intention" of the information providers such as sellers or tour guides as one of the elements of the offence as it would be difficult to produce evidence to prove intention; and</p> <p>(ii) In enforcing the provisions in relation to false or misleading representations, the Administration would act on complaints, and if necessary, collect relevant evidence through undertaking "undercover" operations</p>	
012709 – 013104	Chairman Mr Vincent FANG Administration	Date of next meeting and subject of discussion	