

香港特別行政區政府
商務及經濟發展局
工商及旅遊科



COMMERCE, INDUSTRY AND TOURISM BRANCH
COMMERCE AND ECONOMIC
DEVELOPMENT BUREAU
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

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21 January 2008

Dear Ms Fung,

Trade Descriptions (Amendment) Bill 2007

Thank you for your letter of 9 January 2008. Our response to the questions raised in your letter are set out below:

Proposed Part IIA

- (a) We agree to your suggestion of amending the heading to "FALSE, MISLEADING OR INCOMPLETE INFORMATION". The same amendment also applies to the long title under clause 3(a).
- (b) We confirm that the offences under Part IIA do apply to employees of a retailer. In this connection, you may wish to note that a defence is already available under s. 26 of the Ordinance. Moreover, an additional defence would be available under s. 13C (4) for offences under s. 13C.

Proposed s. 13A

- (a) The new section is intended to apply to signs that indicate the price per weight unit, even if the sign contains information apart from the price and the weight unit. We consider that the current wordings do reflect our intent.
- (b) We consider that "a similar purpose" under s. 13A(2)(a) should adequately reflect the purpose of a notice, placard, label etc, which is to provide information.
- (c) Our intention is to compare any letter, word, numeral or character on the sign that indicates the price or the weight unit with other letters, words, numerals or characters. We therefore consider that the current wordings are required.
- (d) Same as (c) above.
- (e) We do not agree to the setting of the size of a price label or the font size of the characters because price labels of different designs and sizes are used for different sales purposes. Using the terms "substantially less conspicuous" and "unreasonably far apart" would be more practicable.
- (f) Our major concern is weight unit. We do not intend to extend the control to other units like "item" or "piece".

Proposed s. 13B

- (a) We agree with your suggestion that the determination under s.13B(3) should not be limited to the factors in (a) to (e).
- (b) We agree with your suggestion that there should be a reference to s. 2 of Part 2 of Schedule 2 so as to define "principal function" more clearly.
- (c) We consider that the word "representation" already allows different forms of representation. Further elaboration may not add to the clarity, and on the contrary, could be even more restrictive.

Proposed s. 13C

- (a) We intend to cover all relevant professions, including tour guides, in the proposed provision. The relevant trade associations have been consulted.
- (b) S. 13C(1) applies whenever a person has made a false representation about a seller's connection with or endorsement by an individual or body. As for s. 13C(2), the factors, such as "good standing and reputation" and "take reasonable steps to prevent" etc. have been included to prove that a representation is misleading. We do not see the need to amend the subject section.
- (c) S. 13C(1) does reflect our intent. False representation involving an individual or body, whether or not it is reputable, will be an offence. However, in s. 13C(2), the criterion of "good standing and reputation" is required as it applies to situations where the name of an individual or body referred to by the retailer is similar to or identical with the name of another individual or body of "good standing and reputation".
- (d) We consider that the term "body" in s. 13C should be wide enough to cover different types of organizations, including companies, bodies corporate, partnerships etc.
- (e) We have deliberately juxtaposed "body" with "individual" in s. 13C to illustrate the difference between the two. It should not carry any implications regarding the interpretation of "person" in the same Ordinance.
- (f) We consider that s. 13C(1) should only apply to "false" representation, as "misleading representation" lacks clarity.
- (g) The offence in Section 13C(1) is a strict liability offence. We agree with your suggestion of using "did not know and had no reason to believe that the statement was false" as the defence in s. 13C(4).
- (h) We consider it not practicable to set out the criterion for "good standing and reputation" in s. 13C(2). We believe that the court will have to look at the

facts of each case and use an objective test.

- (i) We confirm that the wordings in s. 13C(3) do reflect our intent.

Proposed Schedule 2

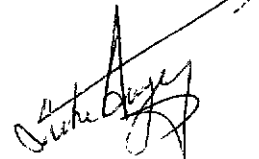
- (a) We consider that “cellular radio network” and “public switched telephone network” need not be defined as the general meaning will suffice. We agree with your suggestion of adding the word “and” between paragraphs (a) & (b).
- (b) We agree that the factors determining the principal functions of a product should not be limited to those in s. 2 of Part 2. The “document” in paragraph 2(b) can be in any format, including electronic ones.

Drafting Matters

- (a) Clause 4: We agree with your suggestion to replace “facilities” by “services”, and “service of the goods” by “maintenance of the goods”.
- (b) S. 13C(3): We agree with your suggestion.
- (c) Schedule 2: We agree to delete “數碼” from the Chinese text of “Portable Multimedia Player”, so that it reads “便攜式多媒體播放器”.

Please let me know if you need further clarifications.

Yours sincerely,



(Luke Auyeung)

for Secretary for Commerce and Economic Development