

**Bills Committee on Trade Descriptions (Amendment) Bill 2007**

**Summary of deputations' views on individual clauses of the Bill**

Abbreviations: The Civic party (CP) (LC Paper No. CB(1)840/07-08(02))  
The Democratic Party (DP) (LC Paper No. CB(1)885/07-08(01))  
Hong Kong Jade Wholesalers & Retailers Association Ltd (HKJWRA)  
The Hong Kong Institute of Trade Mark Practitioners (HKITMP) (LC Paper No. CB(1)808/07-08(03))  
The Hong Kong Chinese Importers' & Exporters' Association (HKCIEA) (LC Paper No. CB(1)840/07-08(03))  
Hong Kong Jewellery & Jade Manufacturers Association (HKJJMA)  
Hong Kong General Chamber of Commerce (HKGCC) (LC Paper No. CB(1)808/07-08(04))  
The Hong Kong Electronic Industries Association Ltd (HKEIA) (LC Paper No. CB(1)808/07-08(05))  
The Chinese General Chamber of Commerce (CGCC) (LC Paper No. CB(1)808/07-08(06))  
Dr CHAN Tung, Chairman of Sham Shui Po District Council (SSPDC) (LC Paper No. CB(1)808/07-08(07))  
Hong Kong Trade Services Council (HKTSC) (LC Paper No. CB(1)808/07-08(08))  
The Hong Kong Association of Pharmaceutical Industry (HKAPI) (LC Paper No. CB(1)840/07-08(04))  
Consumer Council (CC) (LC Paper No. CB(1)939/07-08(01))

Clause/Issue	Concern/View
General	<p>1.1 CP expresses the following concerns:</p> <ul style="list-style-type: none"><li data-bbox="421 1161 2134 1278">(a) While supporting the Government's initiative in introducing amendments to existing legislation to protect consumers, CP considers that care should be taken to avoid over-legislation and imposing compliance burden on honest traders; and</li><li data-bbox="421 1321 2134 1437">(b) The Administration should expedite the introduction of legislative amendments covered under the comprehensive review (the Stage Two Review) currently being undertaken by the Consumer Council (CC) with a view to regulating sales malpractices in various trades, including real properties transactions and the services sector, as well</li></ul>

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	<p>as examining the need to increase the power of CC to offer comprehensive protection for consumers.</p> <p>1.2 DP expresses support for the Bill in general. DP urges that legislative amendments relating to regulation of the services sectors, with priority given to paid-TV service, telecommunication service, and beauty service, should be expedited to deter malpractices of inducing consumers into transactions through misrepresentation in advertisements. As regards regulation on the sale of residential properties, DP suggests that information contained in the sales descriptions should be subject to legal control. DP also opines that the Stage Two Review should cover the examination of CC's role, its functions and powers.</p> <p>1.3 HKITMP queries about</p> <ul style="list-style-type: none"><li>(a) The reason for criminalizing under the Bill certain conduct of retailers which have traditionally been a civil concern. It is unclear how the new criminal offences under the Bill will interact with the law of passing off. Moreover, the scope of the criminal offences is uncertain and vague since they are expressed in terms unfamiliar to the courts and for which there is no history of case law and jurisprudence;</li><li>(b) Why the provisions in the Trade Descriptions Ordinance (Cap. 362) only applies to goods but not services. Given the intention of the Administration is to protect consumers, it will be advisable to include "the provision of services" under the Bill; and</li><li>(c) The enforceability of the proposed amendments since they required many subjective assessments. For instance, what is a "representation", when is a "representation" misleading, and what constitutes "good standing or reputation"? The Bill coupled with vague and untested language needs to be considered seriously.</li></ul> <p>1.4 HKCIEA welcomes the proposed amendments to strengthen protection for consumers and tourists, boost business of the retail and tourism industries, and reinforce Hong Kong's reputation as a "Shoppers' paradise". Moreover, consideration should be given to expand the definition of "trade description" to cover the services sectors so as to combat malpractices of the services providers.</p>

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	<p>1.5 HKJJMA is worried that the enforcement of the proposed amendments may affect the operation of the retail industry and cause unnecessary disputes between the retailers and consumers.</p> <p>1.6 HKGCC supports the Bill in general</p> <p>1.7 HKEIA gives full support to the Bill.</p> <p>1.8 CGCC supports the Bill in general.</p> <p>1.9 SSPDC supports the Bill as it will help strengthen regulation of sales practices of the retailers and restore consumers' confidence. The Bill should be enacted and implemented as soon as possible.</p> <p>1.10 HKTSC supports the Bill which helps combat the malpractices of a small group of unscrupulous traders. However, the proposals should avoid imposing compliance burden on small and medium-sized retailers and negative impact on the sale of parallel imported goods.</p> <p>1.11 CC expresses full support to the Bill to strengthen consumer protection. It considers that the amendments should be enacted and implemented as an expeditious and practical tool to address some of the inadequacies in the existing Trade Descriptions Ordinance and the trade practice issues arising from these inadequacies.</p>
Clause 4	<p>2.1 CGCC opines that the proposed amendment requiring sellers to record in sale invoices details including the availability of after-sale services for a product, the places where the services are provided etc, may be cumbersome for general retailers. In particular, small-sized retailers may not have the required resources to run computer systems. CGCC suggests requiring the retailers to provide information on the importers who are responsible to provide the after-sale services.</p> <p>2.2 CC suggests adding "or parts of the goods" after "facilities for the inspection, repair or service of the goods" in the amended section 2(1)(k) to reflect the extent of protection more clearly and to keep in line with the existing definition of "trade description" which covers prescribed indications with respect to "any goods or parts of goods".</p>

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<p>Clause 7 – Proposed section 13A</p>	<p>3.1 CP is concerned that</p> <ul style="list-style-type: none"> <li>(a) As the proposed section 13A only seeks to regulate price signs set by reference to weight unit, unscrupulous retailers may circumvent the regulation by using other units of measurement, such as length or number of counts, in displaying the price of the goods. The Administration should consider extending the scope of the proposed section to cover other units of measurement;</li> <li>(b) The lack of clarity of the phrases "substantially less conspicuous" and "unreasonably far apart" under the proposed section 13A(2)(b) may adversely affect retailers' creativity and honest retailers may unwittingly fall foul of the law. CP urges that the said phrases should be clearly defined; and</li> <li>(c) While the Administration has no intention to require mandatory display of price signs by retailers or prohibit price bargaining, the Bill has made detailed provisions for display of price sign and on the need to inform potential customers whether the price of the goods included any basic accessories of the goods. There was concern that the provisions may discourage retailers from displaying price signs in order to avoid contravention of the new requirement. The Administration should ensure that consumers will be provided with sufficient information on price to make informed decision on purchases.</li> </ul> <p>3.2 Regarding the requirement on price signs for goods, HKCIEA suggests that consideration should be given to set out the relevant requirements, such as the size and colour of the price sign, the font size of the characters, the size of the price indication in relation to the weight unit or other units of measurement and the distance between the two. This will facilitate compliance of the new requirements by retailers and provide clarity to consumers.</p> <p>3.3 CGCC supports the proposed amendment to regulate misleading price indications.</p> <p>3.4 CC is concerned about the effectiveness of the proposed section 13A in protecting consumers against misleading price indication. Retailers may indicate the price in a sign and deliberately omit information such as weight unit, but give such information only verbally upon consumers' enquiries. Consideration should be given to extend the scope of the proposed section 13A to cover omission of essential information concerning the weight unit or price from the signs</p>

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	displayed.
Clause 7 – Proposed section 13B	<p>4.1 CP expresses the following concerns:</p> <ul style="list-style-type: none"> <li>(a) The proposed section 13B may have impact on the sale of parallel imported goods as the "basic accessories" connected with these goods are usually not usable in the local environment. The Administration should clarify whether "basic accessories" referred to in the proposed section 13B(2)(a) is applicable to parallel imported good;</li> <li>(b) Software like CD-Rom that associated with electronic products should be included as "basic accessories" in the proposed section 13B(2)(a) and amendments should be considered to clearly spell out the inclusion in the provision; and</li> <li>(c) Sellers may adopt sales strategy to offer goods at reduced prices by excluding basic accessories of or after-sale services for the concerned goods. The proposed section 13B(3)(e), where "the price of the goods at which they were supplied to the seller included the accessories" will be one of the considerations in determining whether any basic accessories of any goods are reasonably expected to be included in the price of the goods, may have impact on the above mentioned sales strategy. The Administration should ensure that the Bill could safeguard the interest of consumers in making informed purchase decisions while allowing room for price bargaining.</li> </ul> <p>4.2 HKTSC suggests that the sellers should be regarded as complying with the requirement under the proposed section 13B(1) if they have clearly indicated in the price signs that the price is not inclusive of certain basic accessories.</p>
Clause 7 – Proposed section 13C	<p>5.1 HKJWRA is concerned about whether a seller referred an artificially coloured jadeite jade as natural Fei Cui will commit an offence of making a false representation under the proposed section 13C(1).</p> <p>5.2 HKITMP expresses concerns or makes suggestions as follows:</p> <ul style="list-style-type: none"> <li>(a) Concern about the impact of the proposed section 13C as misrepresentations are normally disputed by the celebrities themselves or competitors and making out a case in passing off can be difficult. It queries about the</li> </ul>

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	<p>appropriateness to impose criminal liability in such an area where certainty is highly in issue;</p> <ul style="list-style-type: none"><li data-bbox="421 373 2123 485">(b) There is no requirement that the individual or body referred to in the proposed section 13C(1) is reputable. A criminal offence could be committed even if the individual or body actually has no protectable goodwill under the common law;</li><li data-bbox="421 533 2123 612">(c) There is no need to establish confusion and damage to the plaintiff for the purpose of an offence under the proposed section 13C(1) and (2);</li><li data-bbox="421 660 2123 692">(d) The difference between the offence under the proposed section 13C(1) and (2) is unclear;</li><li data-bbox="421 740 2123 772">(e) The terms "false" and "representation" in the proposed section 13C(1) should be clearly defined;</li><li data-bbox="421 820 2123 932">(f) Whether the proposed section 13C(2) only applies to misunderstanding arising from the use of names and not other indications of a connection such as the use of a photograph or get-up, and whether the use of names means legitimate identical or similar names;</li><li data-bbox="421 979 2123 1059">(g) Suggestion to use "confusion" under passing off instead of "likely to mistake" in the proposed section 13C(2) if they are intended to be equivalent;</li><li data-bbox="421 1107 2123 1187">(h) The test of "widely known to be of good standing and reputation" under the proposed section 13C(2) is not the same as "goodwill" under passing off; and</li><li data-bbox="421 1235 2123 1347">(i) The phrase "prove that he had reasonable cause to believe that the representation was true" under the proposed section 13C(4) appears to be vague. It is more appropriate to have a positive requirement for knowledge since it is a defence for a criminal offence.</li></ul> <p data-bbox="331 1378 2123 1410">5.3 CGCC agrees that a defence should be provided in proposed section 13C(4) for a person charged under 13C(1).</p>

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	<p>5.4 As the Bill has not defined "widely known to be of good standing and reputation ("reputable individual or body")", and that celebrities and prestigious organizations could already prohibit unauthorized use of their names or trade marks under relevant existing legislation, HKTSC does not consider it necessary to introduce new control regarding sellers' connection with reputable individual or body, and suggests to delete the proposed section 13C.</p> <p>5.5 CC urges the Administration to consider amending the proposed section 13C(4) to add "when it was made" after "the representation was true".</p>
Other issues	<p>6.1 HKJWRA proposes to introduce three definitions for Fei Cui to reflect their different qualities and enquires about how retailers should record the descriptions of the articles bearing Fei Cui in the invoice or sale receipt.</p> <p>6.2 HKGCC expresses concerns as follow:</p> <p>(a) The proposed amendments to be introduced under subsidiary legislation seem in effect putting all the legal responsibilities upon the sellers of specialty items like diamond, gold, and natural fei cui, to make full and clear product description to general consumers. The proposed amendments may prohibit the sale of such specialty items by general retailers. It is suggested that manufacturers and/or importers of these specialty items should also assume such responsibilities.</p> <p>(b) The proposed amendments to be introduced under subsidiary legislation will require sellers to provide technical and cumbersome information in the sales invoices. There will be difficulty for general retailers to comply with the new requirements.</p> <p>6.3 CGCC expresses concern on proposed legislative amendments in the Administration's consultation paper issued in July 2007 regarding misrepresentation of natural Fei Cui, diamond, platinum and on core features of electronic products, as well as inadequate information provided in invoices for gold and platinum. For details, please refer to paragraphs 4 to 9 of CGCC's submission (LC Paper No. CB(1)808/07-08(06)).</p> <p>6.4 HKTSC considers that the Government should step up consumer education and publicity through the Internet and</p>

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6.5	<p>electronic media, and at border control points so as to increase the awareness of consumers and visitors of sale malpractices and enhance their alertness to protect their own interests.</p> <p>HKAPI highlights the harmful effect of counterfeit drugs and expresses grave concern on the low levels of fines for the offence. Pointing out that countries like the United States, European Union member states and many Asian countries have enacted special legislation against counterfeit pharmaceutical, HKAPI suggests consideration be given to adding provisions on pharmaceuticals under the Bill for regulating the sales of counterfeit pharmaceuticals.</p>

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