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11 April 2008

Mr Luke Au Yeung
Principal Assistant Secretary for
Commerce and Economic Development
(Commerce and Industry Special Duties)
Commerce and Economic Development Bureau
8/F West Wing
Central Government Offices
Ice House Street Central
Hong Kong

BY FAX

Fax No. : 2530 2984

Dear Mr Au Yeung,

Trade Descriptions (Amendment) Bill 2007

Pursuant to the Bills Committee meeting held on 10 April 2008, I should be grateful if you would follow up the following issues:

- (a) At the above meeting, Hon Audrey EU asked whether the proposed paragraphs (k) to (p) of the definition of “trade description”, as drafted, would cover the situation where a retailer did mention the availability of service for the inspection, repair or maintenance of the goods, but omitted to inform the consumer other ancillary information such as the charge or cost involved. In reply, the Administration explained that retailers would be required under the subsidiary legislation to be made under section 4 of the Trade Descriptions Ordinance (Cap. 362) (TDO) to include in the sales invoice the availability of after-sale inspection or repair services and the charge or cost involved. However, according to the “Information paper on proposed amendments to TDO and its subsidiary legislation to strengthen consumer protection” provided by the Administration for discussion at the meeting of the Panel on Economic Development on 22 October 2007 (LC Paper No. CB(1)76/07-08(02)), the requirements under the relevant subsidiary legislation would apply to five popular electronic products only, namely, digital camcorder, digital camera, mobile phone, digital audio (MP3) player and portable multimedia player. Further, no mention is made in the said information paper about the requirement to include the charge or cost for the after-sale services in the sales invoice. In this regard, please clarify how the concern raised by Ms EU could be addressed in relation to other types of goods.

- (b) The proposed section 13C(2), as drafted, seems to assume that the accused, at the time of making the representation, knew that the name of the subject individual or body represented is identical with, or very similar to, that of an individual or body who or which is widely known to be of good standing and reputation. Is there any reason for not taking into account the situation where the alleged offender did not have the relevant knowledge? Would the Administration consider making knowledge on the part of the accused an element of the offence by adding, for example, “and he knows or has reason to believe that the name of the subject individual or body is identical with, or very similar to, that of a reputable individual or body after “(“subject individual or body”)” in proposed section 13C(2)(a)?
- (c) Please clarify whether the proposed section 13A would apply if the sign displayed on, or in close proximity to, the goods exposed for sale in a shop only indicates a price while a notice is posted in the shop indicating that the price shown on all signs displayed in the shop is a price set with reference to a specified unit of quantity, but such notice is not placed in a conspicuous position in the shop. If the proposed section does not apply, what protection, if any, is available to consumers under the law in the above situation?
- (d) Regarding the proposed amendments to the Bill set out in the Annex to the Administration’s paper (LC Paper No. CB(1)1185/07-08(04)), please clarify the following:
 - (i) In the proposed paragraphs (k) to (p) of the definition of “trade description”, should “service” be replaced by “services”? According to paragraph 5 of the above Administration’s paper, “services” is proposed to replace “facilities”.
 - (ii) While the word “and” is proposed to be added between paragraphs (a) and (b) under the English text of the definition of “mobile phone” in Part 2 of Schedule 2, there is no corresponding amendment proposed to the Chinese text of the definition, and hence no such amendment is shown in the Chinese version of the marked-up copy (LC Paper No. CB(1)1205/07-08(01)). Please confirm whether “及” should be added between paragraph (a) and (b) of the Chinese text of the definition to make it match with the English text.

I would appreciate it if you would let me have the Administration's reply in both languages by 18 April 2008.

Yours sincerely,

(Connie FUNG)
Assistant Legal Adviser

cc: DoJ (Attn: Mr Gilbert MO, DLD(BD&A)) Fax No. 2536 8126
DoJ (Attn: Miss Karmen KWOK, GC) Fax No. 2536 8176
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