

香港特別行政區政府
商務及經濟發展局
工商及旅遊科



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CB(1)1417/07-08(01)

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

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Ms Connie Szeto
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road Central
Hong Kong
(Fax: 2869 6794)

29 April 2008

Dear Ms Szeto,

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

Thank you for your letters of 11 April 2008. Our responses to the issues raised are set out below:-

Proposed section 13A

2. We have re-drafted section 13A(2)(b) and added a new section 13A(3) to better reflect our policy intent. The CSA is at the Annex.
3. It would be up to the court to determine whether the hypothetical scenario mentioned in bullet (c) of your second letter has contravened the law based on the actual facts of the case. Our initial view is that it is likely to have contravened the revised section 13A(3) as set out in the Annex.

Proposed section 13C

4. Regarding bullet (2) of your first letter and bullet (b) of your second letter, we believe there should not be any conflict between the proposed section 13C(2) and the defence under section 13C(5). The onus of proof is on the prosecution, who will have to prove beyond reasonable doubt the three elements in section 13C(2). The element in section 13C(2)(b) requires an objective reasonable man test i.e. whether the defendant in the circumstances of the case “ought reasonably to expect” that the information recipient is likely to mistake the individual or body that the defendant has referred to for another reputable individual or body. The defendant’s state of mind is irrelevant for the prosecution. If the defendant would like to invoke section 13C(5) as his defence, he would need to prove on a balance of probabilities that he believed that the information recipient had not mistaken the individual or body for another reputable individual or body. We believe the court will take both the prosecution’s case and the defendant’s defence into account before it makes its judgment.

Section 2(1), paragraphs (k) – (p) of the definition of “trade description” and the Trade Descriptions (Provision of Information on Regulated Electronic Products) Order

5. Regarding bullet (a) of your second letter, please refer to Paper CB(1)76/07-08(2) discussed at the Panel on Economic Development on 22 October 2007, in which we have explained that the current exercise aims to strengthen our regulatory tools against certain malpractices which have been the focus of complaints. Accordingly, the requirement to set out in an invoice or receipt certain specified information, including the availability or otherwise of after-sale service and whether such service is free or not, would only apply to five popular electronic products. If, in the future, there are other products that warrant similar treatment, we will consider initiating legislative amendments for the purpose.

Section 2(1), paragraphs (k) – (p) of the definition of “trade description”

6. We apologize for the inconsistency. The word “service” should be more appropriate.

Schedule 2, Part 2

7. We apologize for the inadvertent error. We will add “及” between paragraphs (a) and (b) in the Chinese text of the definition of “mobile phone”.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Luke Auyeung', with a long, sweeping flourish extending to the right.

(Luke Auyeung)

for Secretary for Commerce and Economic Development

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

Proposed Committee Stage Amendments

7. Part IIA added

The following is added -

"PART IIA

FALSE, MISLEADING OR INCOMPLETE INFORMATION

**13A. ~~Signs indicating p~~Price per
~~weight unit of quantity on signs must give~~
~~clear information~~readily comprehensible**

(1) Any person who, without reasonable excuse, displays in the course of any trade or business a sign which -

(a) indicates a price set by reference to any ~~weight unit of quantity~~ for any goods that are exposed for sale; but

(b) fails, within the meaning of subsection (2)(b), to ~~give clear information as to the actual price of the goods~~indicate the price per unit of quantity in a readily comprehensible manner,

commits an offence.

(2) For the purposes of subsection (1) -

(aa) "quantity" (數量) includes length, width, height, area, volume, capacity, weight and number;

- (a) "sign" (標誌) includes notice, placard, label and any other article that serves a similar purpose;
- (b) a sign which indicates the price set by reference to any weight-unit of quantity for any goods fails to indicate the price per unit of quantity in a readily comprehensible manner ~~give clear information as to the actual price of the goods~~ if -
- (i) any letter, word, numeral or character on the sign that indicates the price or the weight-unit of quantity is partially or completely obscured while some other such letters, words, numerals or characters are visible;
- (ii) because of any discrepancy between the manner of presentation of any letter, word, numeral or character on the sign that indicates the price or the weight-unit of quantity ~~is, having regard to~~ and that of any other letter, word, numeral or character on the sign that indicates the price or the unit of quantity in terms of-
- (A) the size and distinctiveness of the letters, words, numerals or characters; and/or
- (B) the colour of the letters, words, numerals or characters as contrasted

with the colour of the background on which they are~~it is~~ marked, ~~substantially less conspicuous than other letters, words, numerals or characters on the sign that indicate the price~~it is reasonably likely that a person not having a close look at the sign will be unable to apprehend the accurate price per that unit of quantity; or

- (iii) the letters, words or characters on the sign that indicate the ~~weight~~unit of quantity are unreasonably far apart from the letters, words, numerals or characters on the sign that indicate the price.

(3) If a person -

(a) displays in the course of any trade or business a sign that indicates the price of any goods set by reference to a unit of quantity; and

(b) displays another sign that indicates that unit of quantity by reference to which the actual price of such goods is to be calculated,

subsections (1) and (2) shall have effect in relation to the person as if such signs were a single sign.