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28 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,

**Six items of subsidiary legislation under the
Trade Descriptions Ordinance gazetted on 18 April 2008
(L.N. 79 to L.N. 84)**

Further to my letter of 23 April 2008, I should be grateful if you would further clarify the matters set out in the Annex.

I would appreciate it if you would let me have the Administration's reply in both languages at your earliest convenience.

Yours sincerely,

(Connie FUNG)
Assistant Legal Adviser

Encl.

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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L.N. 81 to L.N. 83

- (a) It is noted that under paragraph 4 of the existing Trade Descriptions (Marking) (Gold and Gold Alloy) Order (Cap. 362 sub. leg. A) (the Gold Marking Order) and Trade Descriptions (Marking) (Platinum) Order (Cap. 362 sub. leg. C) (the Platinum Marking Order), every article of gold or gold alloy or platinum that is supplied or offered for supply by “any person in the course of trade or business” is required to bear a mark which indicates the fineness of the gold or platinum content. The phrase “any person in the course of trade or business” is wide enough to cover persons who may be the manufacturers or their agents supplying the articles to retailers as well as retailers who supply the articles at retail level to consumers. The adding of “at retail level” to paragraph 4 of the Gold Marking Order and the Platinum Marking Order in section 2 of L.N. 82 and section 4 of L.N. 83 respectively would have the effect of narrowing the scope of application of paragraph 4 of the above two Orders to retailers only. Is there any reason that manufacturers or their agents would no longer be required to ensure that the articles concerned are marked in accordance with paragraph 4 of the above two Orders? What is the reason for making this change?
- (b) Under paragraph 6 of the existing Gold Marking Order and the Platinum Marking Order, a person who supplies any article of gold or platinum in the course of trade or business is required to deliver to the purchaser at the time of supply an invoice or receipt which shall contain information including details of the mark required under paragraph 4. It appears that paragraphs 4 and 6 of these two Orders, when read together, could be construed as suggesting that the legislative intent of the provisions concerned is that manufacturers of articles of gold or platinum are responsible for marking on the articles the fineness of gold or platinum content while retailers are required to provide to consumers information on the articles in invoices or receipts based on the details of the mark borne on the articles. This interpretation seems to accord with the trade practice as the manufacturers of the gold or platinum articles should be in a better position than the retailers to know or find out the fineness of the gold or platinum content. If paragraphs 4 and 6 of the above two Orders, as interpreted above, represent the approach currently adopted for gold and platinum articles, should the same approach be adopted for the five regulated electronic products in L.N. 81, i.e. requiring manufacturers or their agents to mark on the products the prescribed information? This approach, if adopted, will facilitate retailers in issuing invoices or receipts to purchasers at the time of supplying the electronic products concerned.

L.N. 81

- (a) Section 3 of L.N. 81, as drafted, appears to be wide enough to include retailers selling second-hand mobile phones, digital cameras, digital camcorders, digital audio players and portable multimedia players in the course of their trade or business. Does this reflect the Administration's intention? If so, has the Administration consulted the relevant retailers on whether there would be difficulties in complying with the requirement to issue invoices or receipts?

- (b) If a product is described as “數碼攝錄相機” on its package or advertisement, is it intended that this product should be a “regulated electronic product” under L.N. 81? If so, should the definition of “regulated electronic product” be amended? Please also consider how the principal function of the above product can be determined? With the development of technology, it appears possible that a single electronic product may have multiple functions. Is it intended that L.N. 81 should apply to such product? If so, should appropriate amendments be made to reflect this intention clearly?