

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

香港金鐘道八十八號
太古廣場第一期二十九樓

LEVEL 29, ONE PACIFIC PLACE
88 QUEENSWAY
HONG KONG

5 May 2008

Ms Connie Fung
Assistant Legal Adviser
Legislative Council Secretariat
8 Jackson Road Central
Hong Kong
(Fax: 2877 5029)

Dear Ms Fung,

**Six Items of Subsidiary Legislation made under the
Trade Descriptions Ordinance (Cap.362)
and gazetted on 18 April 2008 (L.N. 79 to L.N. 84)**

Thank you for your letters of 23 and 28 April 2008 (hereafter referred to as “your first letter” and “your second letter” respectively). Our responses are set out below:

**Trade Descriptions (Provision of Information on Natural Fei Cui) Order
(L.N. 79 of 2008)**

Section 2

Paragraph 1 of your first letter

2. We believe the proposed definition of “natural fei cui” should be adequate. However, we agree that a reference to section 3 of the Definition Regulation (L.N. 42 of 2008) would improve the clarity of the definition.

Paragraphs 2 and 3 of your first letter

3. To remove the ambiguity in relation to an article “inlaid” or “mounted” with natural fei cui, we agree to adopt the terminologies used in the definition of “article of diamond”.

4. The phrase “for the purpose of adornment” is included in defining “article of diamond” as it is necessary to distinguish jewellery items from those articles that are mounted with diamonds for industrial purpose. Similar problems do not arise in the case of fei cui, hence, it is unnecessary to include the same phrase in the definition of “article of natural fei cui”.

Schedule

Paragraph 4 of your first letter

5. For greater clarity and consistency, we agree to the suggestion of citing the name of the subsidiary legislation in which “fei cui” is defined, similar to the Schedule for diamond under L.N. 80 of 2008.

Paragraph 5 of your first letter

6. We note your concern and will amend the definition of “natural” when applied to “fei cui” so as to align it with section 3 of the Definition Regulation (L.N. 42 of 2008).

Trade Descriptions (Provision of Information on Regulated Electronic Products) Order (L.N. 81 of 2008)

Section 2

Paragraph 6 to 8 of your first letter

7. As the Trade Descriptions (Amendment) Bill 2007 will be amended, we will also amend the corresponding provisions in this Order to ensure consistency.

Paragraph 9 of your first letter

8. Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) defines “document” as “any publication and any matter written, expressed or described upon any substance by means of letters, characters, figures or marks, or by more than one of these means” and “publication” includes “any record, tape.....by means of which any words or ideas may be mechanically, electronically or electrically produced, reproduced, represented or conveyed”. Hence, we consider that it would not be necessary to define “document” in the Order.

Section 3

Paragraph 10 of your first letter

9. As the Trade Descriptions (Amendment) Bill 2007 will be amended, we will also amend sections 3(2)(f) and 3(3) in this Order to ensure consistency.

Paragraph 11 of your first letter

10. It would be impracticable to require retailers to provide too much information on the sales invoice/receipt. Information on the availability of spare parts and the cost for after-sale service and/or spare parts are already defined as a form of “trade description” under the Trade Descriptions (Amendment) Bill 2007. It would be an offence if retailers provide false information in this regard. We believe that in most cases, they may not know the cost of after-sale services/spare parts, which are to be provided by the importer. In such circumstances, they should only tell the customer honestly that they do not know.

Paragraph 12 of your first letter

11. We agree to amend sections 3(3)(a) and (b) by using “contain information on the place” to replace “show the place”.

Schedule

Paragraph 13 of your first letter

12. The information required in column 2 of the Schedule are the core features of the relevant electronic products. Retailers should have such basic information. We consulted the trades in August and September last year. Only one association has commented that such may lead to the longer waiting time for the customers. No association has expressed difficulties in complying with this particular requirement.

Paragraph 14 of your first letter

13. We agree with your observation, and will amend column 2 of the Schedule to include the situation where a memory card is not provided with the product.

Paragraph 15 of your first letter

14. We understand consumers are generally concerned about the “built-in storage capacity” of MP3 and MP4, but not digital cameras, mobile phones and digital camcorders. Hence, mandatory provision of such information for the latter three products would not be necessary.

Paragraph 16 to 18 of your first letter

15. We will amend the various sections as proposed.

Trade Descriptions (Marking)(Gold and Gold Alloy)(Amendment) Order 2008 (L.N. 82 of 2008)

Paragraph 19 of your first letter

16. We believe this requirement will make it easier for consumers to know the fineness of the gold content of the article that they are buying.

Paragraph 20 of your first letter

17. While we are of the view that the current drafting is adequately clear, we have no difficulties in adopting your suggestion of adding “by virtue of paragraph 5(1)” after “such part of the article” in section 4(2)(d)(ii).

Paragraph 21 of your first letter

18. We agree with your suggestion of making use of this exercise to replace the obsolete citation in the Notice.

Trade Descriptions (Marking)(Platinum)(Amendment) Order 2008 (L.N. 83 of 2008)

Paragraph 22 of your first letter

19. As the word “any” should not change the meaning of the relevant sections, we have no strong views on its inclusion or otherwise. However, we do notice that different usage has been adopted in different legislation.

Paragraph 23 of your first letter

20. Same as paragraph 17 above.

Trade Descriptions (Definition of Platinum)(Amendment) Regulation 2008 (L.N. 84 of 2008)

Paragraph 24 of your first letter

21. This Regulation is made under section 33 of the Trade Descriptions Ordinance to assign definite meanings to the expression “platinum” used in the course of trade or business. Section 7 of the Ordinance stipulates that a person commits an offence if he falsely applies a trade description to any goods in the

course of trade or business. Together with section 2, we believe the use of the expression “platinum” would be a false trade description if the article does not fit the definite meanings of “platinum” under the Regulation. The penalty provision is set out in Section 18 of the Ordinance.

References to “in the course of trade or business at retail level” in L.N. 79 to 83 of 2008

Paragraph 25 of your first letter

22. A trader who sells goods to consumers is regarded as supplying goods in the course of trade or business at retail level. We believe the court will interpret “at retail level” according to its ordinary meaning and taking into account the facts of each case.

Requirement for Retailers to Provide Information under L.N. 79 to 83 of 2008

Paragraph 26 of your first letter

23. Information that have to be provided under L.N. 79 to 83 and which do not fall under the definition of “trade description” under section 2 of the Trade Descriptions Ordinance are the name of the supplier, the price of the product and the date of the transaction. Consumers should have no problem verifying such information in the sales invoice/receipt, and enquire or dispute the accuracy of the invoice/receipt if there is a discrepancy. Other information that cannot be verified by the consumer at once, such as the resolution or storage capacity, are considered as the “strength” or “performance” of the product and are within the definition of “trade description”.

Paragraph 27 of your first letter

24. It has been a general trade practice in Hong Kong that invoices or receipts are issued in English or Chinese. This is also the case for the sale of

parallel imported electronic products.

Paragraph 28 of your first letter

25. There is no evidence suggesting that consumers are misled by retailers using illegible invoices or receipts.

L.N. 81 to L.N. 83 of 2008

Item (a)

26. The objective of the concerned subsidiary legislation is consumer protection. However, this will not preclude manufacturers or wholesalers from following the requirements when they supply goods to retailers, as retailers will need to comply with the statutory requirements anyway. We understand that currently, it is already a trade practice for manufacturers or wholesalers to supply marked articles to retailers upon the latter's request.

Item (b)

27. Different trades have different practices and constraints. What is practicable for one trade may not be feasible for other products. Marking on gold or platinum items has long been an established local trade practice. The same does not apply to electronic products, and we have doubts whether it would be practicable to require overseas manufacturers or wholesalers to "mark" the prescribed information on the products concerned.

L.N. 81 of 2008

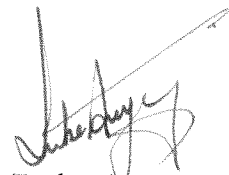
Item (a)

28. The requirements will equally apply to the sale of second-hand products. From the consumer protection perspective, we do not see any reason why second-hand products should be exempted.

Item (b)

29. In drafting the definitions of the 5 types of regulated electronic products, we have already taken into account goods with multiple functions. Our current approach is one of “principal function”. As for your example “數碼攝錄相機”, we believe we should define it as a digital camera, if its principal function is a camera.

Yours sincerely,

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

(Luke Auyeung)

for Secretary for Commerce and Economic Development