

立法會
Legislative Council

LC Paper No. CB(1)1822/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/11/2

**Bills Committee on
Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012**

**Minutes of the first meeting
held on Wednesday, 21 March 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon Fred LI Wah-ming, SBS, JP (Chairman)
Hon James TO Kun-sun
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon WONG Ting-kwong, BBS, JP
Dr Hon LEUNG Ka-lau
- Members absent** : Hon Starry LEE Wai-king, JP
Hon Paul TSE Wai-chun, JP
Hon Tanya CHAN
- Public officers attending** : Agenda Item II
Mrs Alice CHEUNG
Deputy Secretary for Commerce and Economic
Development (Commerce & Industry)³

Mr YAU Kin-chung
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)
Special Duties

Mr CHEUNG Sai-yan
Head of Trade Controls
Customs and Excise Department

Mr LAM Po-chuen
Head of Consumer Protection Bureau 2
Customs and Excise Department

Mr Eamonn MORAN
Law Draftsman
Department of Justice

Ms Angie LI Sau-lee
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Mr Joey LO
Senior Council Secretary (1)3

Action

I. Election of Chairman

Mr Fred LI was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(LC Paper No. CB(3)511/11-12 -- The Bill

File Ref: CITBCR 05/08/1 -- Legislative Council Brief
issued by the Commerce
and Economic
Development Bureau

LC Paper No. CB(1)1321/11-12(01) -- Marked-up copy of the
Telecommunications
Ordinance

- LC Paper No. LS37/11-12 -- Legal Service Division Report
- LC Paper No. CB(1)1321/11-12(02) -- Paper on Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 prepared by the Legislative Council Secretariat (background brief)
- LC Paper No. CB(1)1321/11-12(03) -- Letter from Assistant Legal Adviser to the Administration dated 15 March 2012)

The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

- Admin 2. The Administration was requested to provide information on whether the existing legislation regulating the sale of financial products provided protection for customers against the unfair trade practices proposed to be prohibited under the Bill.

Invitation of views

3. Members agreed to invite relevant stakeholders and members of the public to give views on the Bill at the third meeting scheduled for 24 April 2012 at 8:30 am.

(Post-meeting note: With the concurrence of the Chairman, a proposed list of organizations to be invited to give views at the meeting was circulated to members vide LC Paper No. CB(1)1380/11-12 issued on 23 March 2012.)

III. Any other business

4. The Chairman reminded members that the second meeting would be held on 12 April 2012 at 2:30 pm.
5. There being no other business, the meeting ended at 10:25 am.

Council Business Division 1
Legislative Council Secretariat
14 May 2012

**Proceedings of the first meeting of
Bills Committee on
Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012
on Wednesday, 21 March 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000023 - 000242	Mr Fred LI Wah-ming Dr LEUNG Ka-lau Mr James TO	Election of Chairman Invitation of views	
000243 - 001942	Chairman Administration	Briefing by the Administration on the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 (the Bill).	
001943 - 003636	Chairman Mr WONG Kwok-hing Administration	<p>Mr WONG Kwok-hing suggested that the short title of the Bill should be amended to reflect the proposed extension of the scope of the Trade Descriptions Ordinance (TDO) (Cap. 362) to cover services.</p> <p>The Administration advised that the proposed extension of the scope to cover services was clearly reflected by a number of references to services under the Bill. For instance, under Clause 3(9), the definition of "product" was defined to mean any goods or service. Under the Bill, there would be two definitions of "trade description" in relation to goods and services respectively. Clause 32 of the Bill proposed to amend the long title of TDO to specifically prohibit, among others, false trade descriptions in respect of services.</p> <p>Mr WONG Kwok-hing enquired whether the Administration would propose Committee Stage amendments to introduce a cooling-off period.</p> <p>The Administration advised that a cooling-off arrangement was covered in the public consultation report published in January 2011. In the light of the concerns expressed by stakeholders about operational difficulties, including arrangements for consumers to exercise the right of cancellation, refund arrangements and small-value transactions, the Administration considered that the cooling-off period would affect the business operation of a wide range of traders. To ensure that this issue would not affect the timely introduction of other legislative amendments to enhance consumer protection, the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Administration proposed to first take forward those amendments aimed at criminalizing commonly seen unfair trade practices on which there was already a consensus. The Administration would continue to study how to address the concerns about the cooling-off period after the enactment of the Bill.</p>	
003637 - 005558	<p>Chairman Mr Vincent FANG Administration Assistant Legal Adviser (ALA)</p>	<p>Mr Vincent FANG said that the retail and service sectors welcomed the Bill targeting the unscrupulous traders which were the black sheep of the industry. Noting that the "while stocks last" promotion approach was very common, he urged the Administration to provide sufficient safeguards in the Bill to ensure that businesses acting in good faith would not be inadvertently caught by the offences of bait advertising or bait and switch, for example, by specifying the amount of stock that a business should be able to supply so that honest traders could comply. He also expressed concern about the practicability of the cooling-off period in the context of beauty salon services.</p> <p>The Administration noted Mr FANG's concerns and advised that for the bait and switch offence, it would be too inflexible to specify a threshold or percentage of the quantity of a product above which a trader should not switch to promote another product. Under the Bill, the intention of using designated tactics with a view to promoting a different product would have to be proven before the offence could be established. It would provide sufficient protection for businesses acting in good faith from being inadvertently caught.</p> <p>In relation to the proposed section 13H(2) of TDO, ALA queried whether the trader must be proved to have had "the intention of promoting a different product" at the time of making an invitation to purchase, or merely at the time of engaging in any of the acts or omissions under paragraphs (a) to (c).</p>	
005559 - 011230	<p>Chairman Mr WONG Ting-kwong Administration</p>	<p>In response to Mr WONG Ting-kwong's enquiry, the Administration advised that all traders and products, except the exempt persons and excluded products listed in Schedules 3 and 4, would fall under the ambit of the new offences. There was no plan at this juncture to criminalize the act of failing to pay damages awarded by the Court in a civil claim lawsuit. False trade descriptions related to goods such as hairy crabs were already</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>prohibited under the existing TDO. Separately, clause 15 of the Bill (which dealt with the liability of directors, partners and other relevant persons) sought to alter the current arrangements by placing the burden of proof on the prosecution, i.e. it would be necessary for the prosecution to prove the consent or connivance of the directors or partners of a body corporate before they could be convicted.</p>	
011231 - 013410	Chairman Dr LEUNG Ka-lau Administration	<p>In response to Dr LEUNG Ka-lau's enquiry, the Administration advised that a registered medical practitioner would only be exempted under the Bill when he or she was acting in the capacity of a registered medical practitioner. Professional conduct of registered medical practitioners was governed by the Medical Council of Hong Kong. If the registered medical practitioner undertook marketing activities outside his or her professional practice which involved aggressive commercial practices, he or she would not be exempted simply by virtue of his status as a registered medical practitioner. A medical group was not a registered medical practitioner and therefore would not qualify as an exempt person under the Bill.</p> <p>In response to Dr LEUNG Ka-lau's enquiry, the Administration advised that in view of the presence of sector-specific regimes, the Administration considered that certain sectors such as the financial services sector should not be brought under the ambit of the expanded TDO.</p>	The Administration to follow up as stated in paragraph 2 of the minutes.
013411- 014631	Chairman Administration	<p>In response to the Chairman's enquiry about the problem of price cutting scam where prices were marked up prior to being cut down, the Administration advised that the Bill proposed to expand the definition of "trade description" in relation to goods to the effect that false indications of any matters (including price indications) with respect to goods would be prohibited. While the "while stocks last" disclaimer itself might not be sufficient for traders to protect themselves from committing the offence of bait advertising, they would not be liable to the offence if they were able to supply the products at the specified price for a period or in quantities that were reasonable.</p> <p>In response to the Chairman's enquiry about the compliance-based enforcement mechanism, the Administration advised that it was aimed at</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>encouraging compliance and facilitating settlement. Criminal sanctions would be considered depending on the seriousness of the breach, number of consumers affected and past record of the trader, etc. In response to the Chairman's concern that officers of the Customs and Excise Department (C&ED) would be given too much discretionary power under the compliance-based mechanism, the Administration advised that C&ED would issue enforcement guidelines for its frontline officers to follow after consulting the public on proposed guidelines. C&ED's decision to prosecute or to resort to the compliance-based mechanism would be subject to the consent of the Secretary for Justice.</p> <p>In response to the Chairman's enquiry about the timing of commencement of the Bill in 2013, the Administration advised that it would take time to work out implementation details, and C&ED would have to equip themselves to cope with the new modus operandi.</p>	
014632 - 015230	Chairman Mr Vincent FANG Administration	<p>Mr Vincent FANG opined that the Bill tended to over-protect the consumers at the expense of the honest traders. Consumers should also take responsibility for their own purchase decisions. He also considered that to protect consumers from unscrupulous traders, public education should be stepped up to "let the buyer beware" of unfair trade practices.</p> <p>The Administration advised that it would launch a public education campaign to tie in with the commencement of the amended TDO. The proposed section 13D set out the characteristics of the average consumer, including that the consumer should be reasonably well informed, reasonably observant and circumspect. This would apply a standardized and objective test to facilitate the compliance of traders.</p>	
015231 - 015545	Chairman Administration	Meeting arrangement	