

**立法會**  
*Legislative Council*

LC Paper No. CB(1)2438/11-12  
(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 third meeting  
held on Tuesday, 24 April 2012, at 8:30 am  
in Conference Room 1 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  
Hon Paul TSE Wai-chun, JP  
Hon Tanya CHAN
- Member attending** : Dr Hon Samson TAM Wai-ho, JP
- Members absent** : Hon Starry LEE Wai-king, JP  
Dr Hon LEUNG Ka-lau
- Public officers attending** : Agenda Item I  
Mrs Alice CHEUNG  
Deputy Secretary for Commerce and Economic  
Development (Commerce & Industry)<sup>3</sup>

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

**Attendance by  
Invitation**

: Agenda item I

Hong Kong General Chamber of Commerce

Mr Watson CHAN  
Senior Director  
Policy

Hong Kong Small and Medium Enterprises  
Association

Mr Andrew KWOK Chi-wah  
3rd Vice-President

Democratic Party

Mr LAM Lap-chi  
The Standing Committee of the Democratic Party/  
Kwai Tsing District Councillor

Individual

Mr Andrew CHIU Ka-yin  
Eastern District Councillor and Accredited  
Mediator

Federation of Beauty Industry (HK) Ltd

Mr IP Sai-hung  
Founding Chairman

The Cosmetic & Perfumery Association of Hong  
Kong

Mr Paul LEUNG  
Vice President  
Chairman of Regulatory Committee

Supervisory Group

Mr WONG Tak-chi  
Administrative Officer

Public Service Monitoring Group

Mr CHAN Chi-hang  
Secretary

Hong Kong Retail Management Association

Ms Polly LAI  
Representative

The Hong Kong Chinese Importers' & Exporters'  
Association

Mr Michael HUI Wah-kit  
Vice President

Kowloon West New Dynamic

Ms WONG Hiu-yin  
Assistant District Officer (YTM)

Consumer Council

Ms Connie LAU, JP  
Chief Executive

Civic Party

Mr Simon WONG  
Chairman of Kowloon East District Branch

Communications Association of Hong Kong

Dr Hubert CHAN Chung-ye, JP  
Chairman

Democratic Alliance for the Betterment and  
Progress of Hong Kong

Mr Joe LAI Wing-ho  
Standing Committee Member

**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

Ms May LEUNG  
Legislative Assistant (1)3

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**I. Meeting with deputations and the Administration**

1. Hong Kong General Chamber of Commerce  
(LC Paper No. CB(1)1623/11-12(01) – Submission)
2. Hong Kong Small and Medium Enterprises Association  
(LC Paper No. CB(1)1805/11-12(01) – Submission)

3. Democratic Party  
(LC Paper No. CB(1)1805/11-12(02) – Submission)
4. Mr Andrew CHIU Ka-yin, Eastern District Councillor and Accredited Mediator
5. Federation of Beauty Industry (HK) Ltd  
(LC Paper No. CB(1)1623/11-12(02) – Submission)
6. The Cosmetic & Perfumery Association of Hong Kong  
(LC Paper No. CB(1)1623/11-12(03) – Submission)
7. Supervisory Group  
(LC Paper No. CB(1)1657/11-12(01) – Submission)
8. Public Service Monitoring Group  
(LC Paper No. CB(1)1657/11-12(02) – Submission)
9. Hong Kong Retail Management Association  
(LC Paper No. CB(1)1623/11-12(08) – Submission)
10. The Hong Kong Chinese Importers' & Exporters' Association  
(LC Paper No. CB(1)1644/11-12(01) – Submission)
11. Kowloon West New Dynamic  
(LC Paper No. CB(1)1657/11-12(03) – Submission)
12. Consumer Council  
(LC Paper No. CB(1)1644/11-12(02) – Submission)
13. Civic Party  
(LC Paper No. CB(1)1805/11-12(03) – Submission)
14. Communications Association of Hong Kong  
(LC Paper No. CB(1)1623/11-12(04) – Submission)
15. Democratic Alliance for the Betterment and Progress of Hong Kong  
(LC Paper No. CB(1)1805/11-12(04) – Submission)

Submissions from deputations/individuals not attending the meeting

1. Mr YEUNG Wai-sing, Eastern District Councillor  
(LC Paper No. CB(1)1561/11-12(01) – Submission)

2. Mr CHIN Wai-lok  
(LC Paper No. CB(1)1623/11-12(05) – Submission)
3. PCCW  
(LC Paper No. CB(1)1623/11-12(06) – Submission)
4. Mr CHENG Tsuk-man, Shatin District Councillor  
(LC Paper No. CB(1)1623/11-12(07) – Submission)
5. Architects Registration Board  
(LC Paper No. CB(1)1644/11-12(03) – Submission)
6. The Professional Commons  
(LC Paper No. CB(1)1644/11-12(04) – Submission)
7. The Law Society of Hong Kong  
(LC Paper No. CB(1)1644/11-12(05) – Submission)
8. 全港豬肉零售業聯席會議  
(LC Paper No. CB(1)1657/11-12(04) – Submission)

At the invitation of the Chairman, 15 deputations/individuals as listed in the appendix presented their views.

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).
3. The Administration was requested to provide its responses to the views expressed by the deputations/individuals and the written submissions received by the Bills Committee.

*(Post-meeting note: The information provided by the Administration on summary of deputation's views was issued to members vide LC Paper No. CB(1)1915/11-12(01) on 21 May 2012.)*

## **II. Any other business**

4. There being no other business, the meeting ended at 10:42 am.

**Proceedings of the third meeting of  
Bills Committee on  
Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012  
on Tuesday, 24 April 2012, at 8:30 am  
in Conference Room 1 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000000 - 000245	Chairman	Opening remarks by the Chairman.	
000246 - 000635	Hong Kong General Chamber of Commerce	Presentation of views (LC Paper No. CB(1)1623/11-12(01))	
000636 - 000944	Hong Kong Small and Medium Enterprises Association	Presentation of views (LC Paper No. CB(1)1805/11-12(01))	
000945 - 001346	Democratic Party	Presentation of views (LC Paper No. CB(1)1805/11-12(02))	
001347 - 001841	Mr Andrew CHIU Ka-yin	Presentation of views  Mr Andrew CHIU opined that it was important to provide for a cooling-off period in long-term contracts for goods or services, such as those involving direct marketing and telemarketing, pre-paid coupons for health spas and fitness programmes. Such contracts might not necessarily be entered into with the use of aggressive commercial practices. The provision of a cooling-off period would provide protection for the consumers.	
001842 - 002333	Federation of Beauty Industry (HK) Ltd	Presentation of views (LC Paper No. CB(1)1623/11-12(02))	
002334- 002713	The Cosmetic & Perfumery Association of Hong Kong	Presentation of views (LC Paper No. CB(1)1623/11-12(03))	
002714 - 003149	Supervisory Group	Presentation of views (LC Paper No. CB(1)1657/11-12(01))	
003150 - 003640	Public Service Monitoring Group	Presentation of views (LC Paper No. CB(1)1657/11-12(02))	

Time marker	Speaker	Subject(s)	Action required
003641 - 004047	Hong Kong Retail Management Association	Presentation of views (LC Paper No. CB(1)1623/11-12(08))	
004048 - 004518	The Hong Kong Chinese Importers' & Exporters' Association	Presentation of views (LC Paper No. CB(1)1644/11-12(01))	
004519 - 004854	Kowloon West New Dynamic	Presentation of views (LC Paper No. CB(1)1657/11-12(03))	
004855 - 005315	Consumer Council	Presentation of views (LC Paper No. CB(1)1644/11-12(02))	
005316 - 005738	Civic Party	Presentation of views (LC Paper No. CB(1)1805/11-12(03))	
005739 - 010130	Communications Association of Hong Kong	Presentation of views (LC Paper No. CB(1)1623/11-12(04))	
010131 - 011200	Democratic Alliance for the Betterment and Progress of Hong Kong	Presentation of views (LC Paper No. CB(1)1805/11-12(04))	
011201 - 011635	Chairman Administration	The Administration advised that the Bill would lack flexibility and become vulnerable to circumvention if it was drafted in an over-prescriptive way. It would not be advisable to list in the Bill prohibited practices in very exact and detailed terms as new practices could evolve any time. The Administration had adopted a forward looking approach in the drafting of the Bill by providing a non-exhaustive list of the factors which must be taken into account when determining whether a practice should be considered aggressive. In drafting the Bill, reference had been made to other common law jurisdictions such as the United Kingdom and Australia which adopted similar legislation. In comparison, the Bill would not be inferior to such overseas legislation in terms of legal certainty and clarity. The Administration would issue guidelines and for this purpose would consult relevant stakeholders after the passage of the Bill.	
011636 - 012157	Chairman Administration	On the issue of strict liability for certain offences such as "misleading omission", the Administration advised that the courts had recognized that the presumption of mens rea	



Time marker	Speaker	Subject(s)	Action required
		<p>could be displaced where the statute was concerned with an issue of social concern, and where it could be shown that the creation of strict liability would be effective in promoting the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited acts. The unfair trade practices to be regulated under the Bill would fall into this category. In fact, under the existing offence of "false trade description" in the Trade Descriptions Ordinance (Cap. 362) (TDO), the presumption of <i>mens rea</i> was already displaced.</p> <p>The Administration added that notwithstanding the displacement of the presumption of <i>mens rea</i>, the burden of proof still rested with the prosecution.. For example, for the "bait advertising" offence, the prosecution had to prove that a reasonable person had no ground to believe that the trader would be able to offer for supply the products in question at the specified price, or the trader failed to offer those products for supply at that price, for a period that was, and in quantities that were, reasonable having regard to the nature of the market and the nature of the advertisement. In the "bait-and-switch" offence, which was not a strict liability offence, the prosecution had to prove the trader's practice of making an offer to sell a product at a specified price and then, with the intention of promoting a different product, applied any of the defined tactics as specified in the Bill. Additional defences were provided for in the new sections 26A and 26B for the offences of bait advertising and wrongly accepting payment on top of the existing general defence provision in section 26 of the TDO.</p>	
012158 – 012458	Chairman Administration	<p>On the concern about liability of the directors, partners, etc., the Administration advised that under clause 3 of the Bill, the term "trader" was defined as any person (other than an exempt person) who, in relation to a commercial practice, was acting, or purporting to act, for purposes relating to the person's trade or business. Moreover, the proposed section 2(5) provided that a reference to a trader included any person acting in the name of, or on behalf of, a trader. Depending on the facts of the case, frontline staff members or the management of a company could be liable. Nevertheless, defences for mistake were provided for under section 26 of the TDO. The Secretary for Justice had to take into account all the circumstances of the case including all acts of the relevant persons before making a decision to prosecute or otherwise. The burden of proof would rest with the prosecution which had to prove beyond all reasonable doubt that a defendant was guilty of an offence.</p>	

Time marker	Speaker	Subject(s)	Action required
012459 – 012858	Chairman Administration	<p>On the concern about the issue of guidelines under the proposed section 16BA on matters in relation to which an authorized officer might exercise powers under the TDO, the Administration advised that it would provide more concrete examples in the guidelines and consult the trades before issue. Meanwhile, the Administration would provide a broad framework of the guidelines in draft for the reference of the Bills Committee.</p> <p>Regarding the compliance-based enforcement mechanism, the Administration advised that the proposed mechanism of accepting written undertakings aimed at encouraging compliance and facilitating quicker settlement. The mechanism would be adopted as far as possible, subject to the nature and circumstances of the case and the written consent of the Secretary for Justice.</p>	
012859 – 013045	Chairman Administration	<p>On the concern about the enforcement powers of the Communications Authority (CA) and the Customs and Excise Department (C&amp;ED), the Bill proposed that C&amp;ED would be tasked to enforce the proposed offences, with concurrent enforcement powers to be conferred on the CA in respect of telecommunications and broadcasting services. The concurrent enforcement arrangement would be effected by means of the signing of a memorandum of understanding for the purpose of co-ordinating the performance of C&amp;ED and CA's respective functions.</p>	
013046 - 013246	Chairman Administration	<p>On the concerns raised by the Consumer Council about the proposed sections 13D(3)(b)(i), 13D(3)(b)(ii), 13F(3), 13F(3)(c), 18A and 36, the Administration would provide a written response in due course.</p> <p>On the concern about the power to enter premises and inspect and seize goods and documents under the proposed section 15 raised by the Hong Kong Chinese Importers' &amp; Exporters' Association, the Administration advised that in response to concerns raised by the trades during the consultation, the proposed power of the C&amp;ED in the Bill had already been narrowed down to requiring a trade or business to produce any books or documents required to be kept under the TDO or its subsidiary legislation.</p>	
013247 - 013800	Chairman Administration	<p>On the concerns raised by the Supervisory Group on the "markup-and-slash-price" tactic and false trade descriptions of goods in supermarkets, the Administration advised that such concerns had been addressed in the Bill which proposed to expand the definition of "trade description" in relation to goods to the effect that false indications of any matters with respect to goods (including</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>the existence of price advantages) would be prohibited. Regarding the role of the Consumer Council in handling complaints, the C&amp;ED was working with the Consumer Council to improve the referral mechanism between them.</p> <p>Regarding the cooling-off period, the Administration advised that it had met with different stakeholders and discussed detailed arrangements for implementing the cooling-off period proposal. Trade associations and others expressed concerns about practical arrangements including notification arrangements, the arrangements for consumers to exercise the right of cancellation, the refund arrangements and small-value transactions. The proposal involved a wide range of traders and products, and would also affect business operation and the process in which consumers entered into contracts. The Administration had to spend more time to study how to address these concerns properly in legislation. To ensure this issue would not affect the timely introduction of other legislative amendments to enhance consumer protection, the Administration had decided to first take forward those amendments aimed at criminalizing commonly seen unfair trade practices on which there was already a consensus. The Administration would, however, continue to study how to address the above concerns about the cooling-off period proposal after the passage of the Bill.</p>	
013801 - 014235	Chairman Mr Vincent FANG	Mr Vincent FANG declared that he was the Chairman of the Federation of Beauty Industry (HK) Ltd (FBIHK). He said that the objectives of the FBIHK were, among others, to enhance the unity of the beauty industry, upgrade the professional qualifications and ethics of the beauty practitioners. He opined that in formulating any piece of legislation, a balance of the interests of all stakeholders should be struck. Whilst a cooling-off period arrangement would protect the consumers, they should also be made aware of the need to take responsibility for their own purchase decisions, so that they would not make impulsive purchase decisions in the knowledge that they could always obtain a refund with the protection of the cooling-off period.	
014236-015520	Chairman Mr WONG Kwok-hing Administration Consumer Council Mr WONG Ting-kwong	<p>Discussion on the way forward in respect of the cooling-off period proposal.</p> <p>The Administration advised that after the completion of the work associated with this Bill, another round of consultation on the cooling-off period would have to be carried out before a new set of proposals were formulated.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>In response to Mr WONG Kwok-hing's enquiry, the Administration advised that protection for consumers from unreasonable barriers to termination of telecommunications services was provided in the proposed section 13F(3)(d).</p> <p>The Consumer Council advised that it supported the introduction of a cooling-off arrangement in fixed-term contracts and prepaid contracts with long-term financial commitment of substantial value. In its newly released report titled "Unfair Terms in Standard Form Consumer Contract", the Consumer Council proposed the adoption of fair terms in standard form consumer contracts and the implementation of a cooling-off period to safeguard consumer rights.</p> <p>Discussion on the proposed offence of "bait-and-switch".</p>	
015521 - 020654	<p>Chairman Ms Tanya CHAN Federation of Beauty Industry (HK) Ltd Communications Association of Hong Kong Mr Andrew CHIU Ka-yin Administration</p>	<p>Discussion on the Consumer Council's report entitled "Unfair Terms in Standard Form Consumer Contract", and its proposals for the adoption of fair terms in standard form consumer contracts, and for the charging of a reasonable administrative fee by the trader incurred on the consumer's cancellation of contract.</p> <p>Discussion on the effectiveness of the code of practice for the beauty industry issued in 2006.</p> <p>On the cooling-off period arrangement, FBIHK opined that it would be unfair to honest traders if consumers were allowed to disregard an agreement signed under no harassment, coercion or undue influence without any reasons.</p> <p>The Communications Association of Hong Kong opined that the power of enforcement in respect of contraventions in the telecommunications sector should be vested solely with the CA to streamline the workflow.</p> <p>Mr Andrew CHIU Ka-yin opined that the interests of the traders and consumers were not diametrically opposed. Consumers should not be presumed to be "unreasonable". The traders and consumers should cooperate in the formulation of a cooling-off period arrangement which would be beneficial to all parties.</p>	
020655 - 020734	Chairman	Meeting arrangement	

Council Business Division 1  
Legislative Council Secretariat  
7 August 2012