

立法會
Legislative Council

LC Paper No. CB(1)2516/11-12
(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 fourth meeting
held on Thursday, 26 April 2012, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon Fred LI Wah-ming, SBS, JP (Chairman)
Hon Vincent FANG Kang, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Starry LEE Wai-king, JP
Dr Hon LEUNG Ka-lau
Hon Paul TSE Wai-chun, JP
Hon Tanya CHAN
- Members absent** : Hon James TO Kun-sun
Hon WONG Kwok-hing, MH
- Public officers attending** : Agenda Item I

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. Meeting with the Administration

(LC Paper No. CB(1)1689/11-12(01) -- List of follow-up actions arising from the discussion at the meeting on 12 April 2012

LC Paper No. CB(1)1689/11-12(02) -- Administration's response to issues raised at the meeting on 12 April 2012

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 prepared by the Legal Service Division
- 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
- LC Paper No. CB(1)1510/11-12(01) -- Latest marked-up version showing the proposed amendments to the Trade Descriptions Ordinance and the Telecommunications Ordinance prepared by the Administration)

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

II. Any other business

2. The Chairman reminded members that the fifth and sixth meetings would be held on 15 May 2012 at 4:30 pm and 17 May 2012 at 2:30 pm respectively.

(Post-meeting note: The sixth meeting originally scheduled for 17 May 2012 was subsequently cancelled. The sixth meeting was held on 21 May 2012.)

3. There being no other business, the meeting ended at 12:49 pm.

Council Business Division 1
Legislative Council Secretariat
3 September 2012

**Proceedings of the fourth meeting of
Bills Committee on
Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012
on Thursday, 26 April 2012, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 - 000400	Chairman Administration	Opening remarks by the Chairman	
000401- 001154	Chairman Administration	Briefing by the Administration on its responses to questions raised by the Bills Committee at the meeting on 12 April 2012 (LC Paper No. CB(1)1689/11-12(02).	
001155 - 001440	Chairman Administration	<p>Discussion on the mandatory cooling-off periods in selected jurisdictions.</p> <p>In response to the Chairman's enquiry, the Administration advised that the examples of cooling-off period arrangements imposed showed that cooling-off period arrangements in selected overseas jurisdictions covered only specific products or modes of transactions. Distance selling contracts included contracts concluded by means of distance communication on the internet or by telephone rather than face-to-face communication. The cooling-off period arrangements already in place in the telecommunications and insurance industries in Hong Kong were adopted on a voluntary basis.</p>	
001441 - 001630	Chairman Assistant Legal Adviser (ALA) Administration	<p>Discussion on whether product placement in movies or TV shows constituted "promotion".</p> <p>The Administration responded that product placement might or might not constitute "promotion" depending on the circumstances and the manner in which a product was featured in a film or TV programme.</p>	
001631 - 001800	Chairman Administration	<p>Clause-by-clause examination of the Bill (Chinese version)</p> <p><u>Latest marked-up version (LC Paper No. CB(1)1510/11-12(01)</u></p> <p><u>Clause 3(9) – definition of "exempt person"</u></p> <p>Members raised no query.</p>	

Time marker	Speaker	Subject(s)	Action required
001801 - 002006	Chairman Mr WONG Ting-kwong Administration	<u>Clause 3(9) – definition of "invitation to purchase"</u> In response to members' enquiry, the Administration advised that a commercial communication that did not indicate the price of a product would not be regarded as an "invitation to purchase", although it might still constitute a "commercial practice".	
002007 - 002230	Chairman ALA Administration	<u>Clause 3(10) – proposed sections 2(4) and 2(5)</u> Discussion on examples of the types of services supplied in relation to immovable property which were intended to be covered by the Bill.	
002231 - 002506	Chairman ALA Administration	<u>Clause 4 – Section 4 amended (marking and provision of information, etc. orders)</u> Members raised no query.	
002507 - 002607	Chairman Administration	<u>Clause 5 – Section 5 amended (information to be given in advertisements)</u> Members raised no query.	
002608 - 002734	Chairman Administration	<u>Clause 6 – Section 6A added (applying a trade description to services)</u> Members raised no query.	
002735 - 002800	Chairman ALA Administration	In response to ALA's enquiry about the drafting issues of clauses 4, 5 and 6, the Administration advised that the issues would be dealt with in the written response to ALA's letter dated 15 March 2012.	
002801- 003337	Chairman Administration ALA Mr Paul TSE	<u>Clause 7 – Section 7 heading amended (offences in respect of trade descriptions)</u> <u>Clause 8 – Section 7A added (offences in respect of trade description of services)</u> Discussion on the different scopes of application of the proposed offences of false trade description of goods and services, and whether the long title of the Trade Descriptions Ordinance (Cap 362) (TDO) should be amended to reflect the scope of application of the offence of false trade description of services supplied or offered to be supplied to consumers. The Administration advised that the issues would be dealt	

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		<p>with in the written response to ALA's letter dated 15 March 2012.</p> <p>Discussion on the meaning of "applying" a false trade description under section 6 and the proposed section 6A.</p>	
003338 - 003410	Chairman Administration	<p><u>Clause 9 – Section 8 amended (trade descriptions used in advertisements)</u></p> <p>Members raised no query.</p>	
003411 - 004513	Chairman Administration Mr Vincent FANG Mr Paul TSE	<p><u>Clause 10 – Section 12 amended (prohibited import and export of certain goods)</u></p> <p><u>Clause 11 – Section 13 repealed (power to exempt goods sold for export)</u></p> <p>In response to Mr Vincent FANG's enquiry, the Administration advised that clause 11 proposed to repeal section 13 of the TDO which narrowed the coverage of trade description for goods by excluding those goods sold for export from the control over false, misleading or incomplete information in relation to the physical characteristics (rather than chemical or nutritional attributes) of such goods.</p> <p>In response to Mr Paul TSE's enquiry, the Administration advised that the proposed section 21A aimed at giving an extra-territorial application to the proposed new offences under the TDO. It had no direct connection with clauses 10 and 11.</p>	
004514 - 004832	Chairman Administration	<p><u>Clause 12 – Part IIA repealed (false, misleading or incomplete information)</u></p> <p>Members raised no query.</p>	
004833 - 012600	Chairman Mr WONG Ting-kwong Dr LEUNG Ka-lau ALA Administration	<p><u>Clause 13 – Part IIB added (Unfair Trade Practices)</u></p> <p><u>Proposed section 13D – Average consumer</u></p> <p>Discussion on the definition of "average consumer".</p> <p>In response to members' enquiry, the Administration advised that an employee of a company or a LegCo Member's office would not be regarded as a consumer. An individual who purchased goods or service for the main purpose of trade or business would not fall into the definition of a consumer. The definition of the average consumer in the Bill was in line with the definition used in</p>	

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		<p>similar legislation in other common law jurisdictions. Expanding the scope of the average consumer to cover individuals purchasing goods or services in the course of business would not be in line with the legislative intent of the Bill of enhancing protection for consumers.</p> <p>Mr WONG Ting-kwong opined that the definition of an "average consumer" should cover a "user", including a business user, to cope with future developments of business model and changing business environment in Hong Kong. He hoped that the Administration would review the definition after the passage of the Bill.</p> <p>Discussion on the difference between "materially" and "appreciably" in the proposed section 13D and "significantly" in the proposed section 13F.</p> <p>The Administration advised that it was considering standardizing the use of the abovementioned adverbs. It would provide a written response to address this issue and ALA's questions raised in his letter dated 15 March 2012 regarding the proposed section 13D(3), (4) and (5). The concern raised by the Consumer Council whether the expression "only" in 13D(3)(b)(ii) should be deleted would also be addressed in the written response.</p>	
012601 - 014322	Chairman ALA Mr WONG Ting-kwong Administration	<p><u>Proposed section 13E – Misleading omissions</u></p> <p>In response to ALA's enquiry, the Administration advised that despite the use of the word "hides" in the proposed section 13E(2)(b), the proposed offence of misleading omission was a strict liability offence in respect of which the presumption of <i>mens rea</i> was displaced.</p> <p>The Administration would provide a written response to ALA's questions raised in his letter dated 15 March 2012 regarding the nature of the offence and the use of the term "hides" (隱瞞) in the proposed section 13E(2)(b), the Chinese rendition of "arrangements for delivery" and "arrangements for performance" in the proposed section 13E(4)(f)(ii) and (iii), and the definitions of "material information" and "professional diligence" under the proposed section 13E(5).</p>	
014323 - 020110	Chairman ALA Mr WONG Ting-kwong Dr LEUNG Ka-lau	<p><u>Proposed section 13F – Aggressive commercial practices</u></p> <p>In response to ALA's and Mr WONG Ting-kwong's enquiry, the Administration advised that the list of factors to be taken into account in the proposed section 13F(3) was not an exhaustive one. It only listed the factors</p>	

Time marker	Speaker	Subject(s)	Action required
	ALA Administration	<p>which the court must take account of. The court might consider other factors as it saw fit. The Administration advised that it was not necessary to define "harassment" in the Bill because the ordinary dictionary meaning, i.e. being subject to constant interference or intimidation, would suffice for the purpose of the Bill. The Administration would provide a written response to ALA's questions raised in his letter dated 15 March 2012.</p> <p>Discussion on the meaning of "factual context" and "all of its features and circumstances" in the proposed section 13F(2).</p> <p>Mr WONG Ting-kwong opined that the expressions "factual context" and "all of its features and circumstances" were unclear and might lead to abuse by unreasonable consumers against honest traders.</p> <p>The Administration advised that the requirement of considering the factual context and all of the features and circumstances of the commercial practice would provide protection to both consumers and honest traders.</p> <p>Discussion on "specific misfortune or circumstance" in the proposed subsection 13F(3)(c). The Administration would provide a written response to ALA's questions raised in his letter dated 15 March 2012.</p>	
020111-020060	Chairman Administration	Meeting arrangement	