

立法會
Legislative Council

LC Paper No. CB(1)2642/11-12
(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 eighth meeting
held on Monday, 4 June 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 Ting-kwong, BBS, JP
Hon Starry LEE Wai-king, JP
Hon Tanya CHAN
- Members absent** : Hon WONG Kwok-hing, MH
Dr Hon LEUNG Ka-lau
Hon Paul TSE Wai-chun, JP
- 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

Mr Peter SZE Chun-fai
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)2069/11-12(01) -- List of follow-up actions arising from the discussion at the meeting on 29 May 2012

LC Paper No. CB(1)2069/11-12(02) -- Administration's responses to the submission from the Hong Kong Retail Management Association

LC Paper No. CB(1)2032/11-12(01) -- Submission from Hong Kong Retail Management Association dated 28 May 2012

- LC Paper No. CB(1)2069/11-12(03) -- Full set of draft Committee Stage amendments (CSAs) proposed by the Administration
- LC Paper No. CB(1)2007/11-12(04) -- Administration's paper on marked-up version of the Bill showing the proposed CSAs and the justifications for proposing the CSAs
- LC Paper No. CB(1)1824/11-12(03) -- Administration's paper in response to letter from Assistant Legal Adviser as set out in LC Paper No. CB(1)1321/11-12(03)
- 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(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. LS37/11-12 -- Legal Service Division Report
- 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**).

Legislative timetable

2. The Bills Committee completed scrutiny of the Bill. The Chairman said that subject to confirmation that the Committee Stage amendments (CSAs) were in order, he would give a verbal report on the Bills Committee's deliberation at the House Committee on 8 June 2012 recommending resumption of the Second Reading debate on the Bill at the Council meeting of 20 June 2012. He also reminded the Administration that the deadline for giving notice of CSAs would be 11 June 2012.

(Post-meeting note: As the Administration subsequently proposed to resume the Second Reading debate on the Bill at the Council meeting of 27 June 2012 instead of 20 June 2012, the deadline for giving notice to move CSAs to the Bill was changed to 16 June 2012.)

II. Any other business

3. There being no other business, the meeting ended at 9:44 am.

Council Business Division 1
Legislative Council Secretariat
27 September 2012

**Proceedings of the eighth meeting of
Bills Committee on
Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012
on Monday, 4 June 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 - 000530	Chairman	Opening remarks by the Chairman.	
000531 - 000700	Chairman Administration	Briefing by the Administration on CSAs to be moved by the Secretary for Commerce and Economic Development (LC Paper No. CB(1)2069/11-12(03))	
000701 - 000757	Chairman Assistant Legal Adviser (ALA) Administration	The Bills Committee noted that since the proposed section 7A in clause 8 of the Bill would be renumbered as section 7A(1) by the Administration's proposed CSA to clause 8, references to the proposed section 7A in other parts of the Bill would also be amended as appropriate.	
000758- 001100	Chairman Administration	Discussion on the arrangement for the resumption of the Second Reading debate on the Bill.	
001101 - 002726	Chairman Administration	Briefing by the Administration on its response to the submission from the Hong Kong Retail Management Association (HKRMA) (LC Paper No. CB(1)2069/11-12(02)).	
002727 - 003606	Chairman Mr Vincent FANG Administration	<p>Mr Vincent FANG expressed disappointment with the Administration's dismissal of HKRMA's genuine concerns. He relayed the traders' concern that the salesperson would still have doubts whether he/she would commit the offence of "misleading omission" if he/she failed to communicate verbally to the consumer any promotion items on offer. Mr FANG added that it was common for shops selling telecommunications or electronic products to offer another product to the consumers when the product being advertised or promoted was sold out. He asked whether such a practice might be regarded as a "bait advertising" or "bait and switch" practice.</p> <p>The Administration advised that in the offences against prohibited unfair trade practices under the Bill, reference should be made to the concept of the "average consumer", including that the consumer was reasonably well informed, reasonably observant and circumspect. For example, the average consumer should be aware that there were differences in price of various types of wines, and should look for the wine list for price information if he/she was</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>sensitive to price. It was appreciable that the circumstances of the commercial practice were such that it was impractical in the light of the time limitation for the salesperson to communicate verbally to the consumer price information on all types of wines available in the bar.</p> <p>The Administration added that in order to establish the offence of "bait and switch", the intention of promoting a different product had to be proven. In addition, one of three conditions had to be satisfied, namely, the trader refused to show or demonstrate the product, refused to take orders for the product or deliver it within a reasonable time, and showed or demonstrated a defective sample. The threshold of proving beyond reasonable doubt that the trader had committed the offence was high, and it was unlikely for honest traders to fall into the criminal net inadvertently.</p>	
003607 - 004150	Chairman ALA Administration	Discussion on HKRMA's proposal for an additional defence for the offence of misleading omissions.	
004151 - 004630	Chairman WONG Ting-kwong Administration	<p>Mr WONG Ting-kwong opined that although the threshold for contravention was high, the traders were concerned about dealing with unreasonable consumers after the passage of the Bill. He urged the Customs and Excise Department (C&ED) to exercise caution in undertaking enforcement actions.</p> <p>The Administration advised that C&ED would exercise due diligence and examine all the circumstances of each complaint, including meeting with the complainant to ascertain the facts of the case, before taking any enforcement decisions. The Administration would launch a widespread promotion campaign for both traders and consumers after the passage of the Bill.</p>	
004631 - 005638	Chairman Mr Vincent FANG Mr WONG Ting-kwong Administration	<p>In response to Mr Vincent FANG's and Mr WONG Ting-kwong's enquiry, the Administration advised that a mere promotional offer to "entice" consumers to spend more so as to obtain benefits in terms of discounts or gifts would not constitute an offence of "bait advertising".</p> <p><i>(Post-meeting note: On 15 June 2012, Hon Vincent FANG gave notice to move CSAs to clause 19 of the Bill to propose further additional defences for the offences of bait advertising and wrongly accepting payment.)</i></p> <p>Discussion on C&ED's handling of complaints about alleged unfair trade practices.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration advised that C&ED deployed the Quick Response Team (QRT) to handle urgent complaints about alleged contraventions of Trade Descriptions Ordinance (Cap. 362) (TDO), with a view to protecting the rights of consumers. QRT would also clarify any misunderstandings between the traders and the consumers.</p>	
005639 - 011500	<p>Chairman Ms Tanya CHAN Ms Starry LEE Administration</p>	<p>Ms Tanya CHAN opined that it would not be easy for honest traders to fall into the criminal net inadvertently due to the high criminal threshold. To facilitate the understanding of the amended TDO by traders and consumers alike, she urged the Administration to step up promotion and education (e.g. through distributing leaflets and organizing seminars, etc.) to enhance the traders' and the consumers' understanding of the enforcement guidelines and allay the concerns of the trades after the passage of the Bill.</p> <p>Sharing a similar view, the Chairman suggested that the Administration should consider setting up a hotline to answer enquiries on the amended TDO, and that C&ED and the Consumer Council (CC) should enhance public education.</p> <p>The Administration reiterated its pledge to consult the trades in drafting the enforcement guidelines and to step up public education for the trades and consumers. It would incorporate concrete examples in the enforcement guidelines as far as possible to facilitate the trades' understanding. The complaint referral mechanism between C&ED and CC would be further improved.</p> <p>Discussion on overseas experience in implementing similar consumer protection legislation.</p>	
011501 - 011600	<p>Chairman Administration</p>	<p>Arrangement for the resumption of Second Reading.</p>	