

Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012

**List of follow-up actions arising from the discussion
at the meeting on 12 April 2012**

1. The Administration was requested to:
 - (a) consider amending the phrase "purposes that are outside the person's trade or business" to "non-trade or non-business purposes" in the definition of "consumer" in clause 3(9) of the Bill to avoid ambiguity;
 - (b) consider amending paragraph (c) under the definition of "trade description" in relation to a service in clause 3(9) of the Bill to avoid any possible overlapping of matters covered in paragraphs (d) to (k); and
 - (c) consider, in relation to the definition of "commercial practice" in clause 3(9) of the Bill:
 - (i) whether there was adequate protection for consumers against unfair trade practices under the Bill such that no traders who claimed to engage solely in business to business or wholesale trading would be able to circumvent the measure to prohibit them from applying such practices for the reason that their commercial communication was not "directly connected with the promotion of a product to consumers or the sale or supply of a product to or from consumers";
 - (ii) amending the definition by adding "or indirectly" after "directly" to cover indirect communication/promotion (e.g. product placement in movies or TV shows) ; and
 - (iii) provide relevant case law (if any) to illustrate whether mere opinions or trade puff (as opposed to factual statements) about goods or services would amount to "trade descriptions", and advise whether negative advertising (e.g. "Don't buy this product if you want to be miserable for the rest of your life") would constitute "promotion" under the Bill.
2. The Administration was also requested to:
 - (a) provide information on the overseas experience in implementing the mandatory cooling-off period arrangement;

- (b) consider including in the speech to be delivered by the Secretary for Commerce and Economic Development (SCED) during the resumption of the Second Reading debate on the Bill the Administration's commitment to further examine the mandatory cooling-off period arrangement to ensure satisfactory implementation of the measure after the passage of the Bill; and
- (c) update members on the proposed timing for commencement of the Bill in the speech to be delivered by SCED during the resumption of the Second Reading debate on the Bill.

Council Business Division 1
Legislative Council Secretariat
25 April 2012