

香港特別行政區政府
商務及經濟發展局
工商及旅遊科



香港金鐘添美道二號
政府總部西翼二十三樓

Your Ref. : LS/S/14/13-14
Our Ref. : CITB CR 08/18/3

COMMERCE, INDUSTRY AND TOURISM BRANCH
COMMERCE AND ECONOMIC
DEVELOPMENT BUREAU
GOVERNMENT OF THE HONG KONG
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By Facsimile (2877 5029)

13 March 2014

Mr. Stephen Lam
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr. Lam,

**Sub-committee on Toys and Children's Products Safety
(Additional Safety Standards or Requirements) Regulation,
Toys and Children's Products Safety (Repeal) Regulation and
Toys and Children's Products Safety (Amendment) Ordinance 2013
(Commencement) Notice**

I refer to your letter of 11 March 2014 raising questions in relation to the defence available to a person charged with an offence under the Toys and Children's Products Safety Regulation (Cap. 424B) (the Regulation) or under section 8 of the Toys and Children's Products Safety Ordinance (Cap. 424) (the Ordinance).

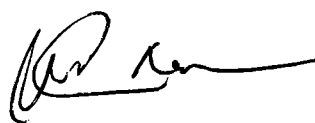
As mentioned in our letter dated 19 February 2014, section 8(1) of the Ordinance was amended by the amendment exercise in 2010 to provide that a toy or children's product must comply with '*any additional safety standard established by regulation*', in addition to the general safety requirement. Therefore, since the 2010 amendment exercise, non-compliance with any additional safety standard established by regulation would constitute an offence under section 8 of the Ordinance for which the statutory defences under section

8(7) are available. The common law defence of honest and mistaken belief is available to a person charged with an offence under the Ordinance or the Regulation.

The standard of proof required by section 8(7) of the Ordinance should be proof on the balance of probabilities.

All in all, we do not consider the defendant's right of defence to be prejudiced by the present exercise.

Yours sincerely,



(Manda Chan)

for Secretary for Commerce and Economic Development

c.c. DoJ (Attn.: Ms Frances Hui) (Fax No. 2869 1302)
DoJ (Attn : Ms Lily Ho) (Fax No. 2536 8352)
DoJ (Attn : Ms Florence Ling) (Fax No. 2869 0670)