

立法會
Legislative Council

LC Paper No. CB(1)1993/99-00
(These minutes have been seen by the
Administration and cleared by the
Chairman)

Ref.: CB1/BC/17/98/2

Bills Committee on Trade Marks Bill

**Minutes of twentieth meeting held on
Thursday, 27 April 2000, at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon MA Fung-kwok
Hon James TO Kun-sun
Hon HUI Cheung-ching
Hon CHAN Kam-lam
Hon Mrs Sophie LEUNG LAU Yau-fun, JP
Hon SIN Chung-kai

Member absent : Hon FUNG Chi-kin

Public officers attending : Mr CHAU Tak-hay
Secretary for Trade and Industry

Mr Philip CHAN
Principal Assistant Secretary for
Trade and Industry

Mr Johann WONG
Assistant Secretary for Trade and Industry

Mr S R Selby
Director of Intellectual Property

Mr Rayman PERERA
Assistant Director (International Registration)
Intellectual Property Department (IPD)

Miss Finnie QUEK
Senior Solicitor, IPD

Clerk in attendance : Miss Odelia LEUNG
Chief Assistant Secretary (1)1

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Rosalind MA
Senior Assistant Secretary (1)6

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I Discussion on issues raised during clause-by-clause examination of the Bill

- (a) Information paper on clause 50(2) - “genuine use”
(LC Paper No. CB(1)1370/99-00(06))

Members noted the contents of the paper.

- (b) Information paper on clause 53 - “alteration of registered trade mark”
(LC Paper No. CB(1)1391/99-00(03))

2. Members noted the contents of the paper.

- (c) Comparison between the existing and the proposed time limits and extensions of time for trade mark applications
(LC Paper No. CB(1)1370/99-00(05))

3. The Chairman drew members’ attention to page 2 of the paper, which set out the differences between the time limits prescribed in Rule 18 of the existing Trade Marks Rules and in Rule 10 of the draft Trade Marks Rules. She proposed and members agreed that the contents of this paper would be discussed when the draft Trade Marks Rules were scrutinized.

- (d) Further note on the relief from groundless threats of infringement proceedings
(LC Paper No. CB(1)1327/99-00(02))

4. The Assistant Director of Intellectual Property (International Registration) briefed members on the paper. Upon members’ request at the meeting held on 21 February 2000, the paper set out

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the groundless threat provisions in the trade mark laws in five other common law jurisdictions and made a comparison with the relevant provisions in the Trade Marks Bill (the Bill). He advised that clause 24 was similar to the relevant provisions in the Patents Ordinance and the Registered Designs Ordinance, which were accepted internationally. As such, the Administration was of the view that clause 24 was appropriate and did not see the need for amendments or exemptions for legal practitioners.

5. The Chairman proposed and members agreed to discuss clause 19 before dealing with issues concerning clause 24.

II Discussion on parallel importation

6. Members noted the paper on “liberalizing parallel importation of trade mark goods — should there be additional labelling requirements?” (LC Paper No. CB(1)1457/99-00(01)) provided by the Administration. The Chairman referred members to a letter from Rapid Cargo Services International (Aust) Pty Ltd. (Rapid Cargo) about the labelling requirements imposed by the relevant Australian authorities, which was tabled at the meeting, as well as samples of labelled goods provided by authorized agents.

7. In relation to the contents of the letter from Rapid Cargo, the Chairman sought clarification from the Administration if the existing laws of Australia required imported goods to be labelled with the names and addresses of the importers. Secretary for Trade and Industry (STI) said that, according to the reply letter from the Australian Government, no additional labelling requirements had been imposed on imported goods as a result of the liberalization of parallel importation. Principal Assistant Secretary for Trade and Industry (PAS/TI) said that the Administration had written to the relevant authorities of Australia and Singapore on the matter. The replies received showed that neither country had drawn up any additional labelling requirements with regard to the provisions on liberalizing parallel importation under their respective trade mark laws. At the request of the Chairman, he undertook to provide members with copies of the replies from the two Governments for reference.

(Post-meeting note: The replies from the two Governments to the Administration were circulated to members vide LC Paper No. CB(1)1475/99-00.)

8. The Chairman pointed out that the crux of the issue was whether there were provisions in the laws of Australia which stipulated that goods had to be labelled with information on the importers, rather than whether such labelling requirements were imposed because of the liberalization of parallel importation. Mrs Selina CHOW opined that since clause 19 legitimized parallel imports, members had to consider the impacts of the provision on the industry and consumers from all perspectives. She said that the purpose of members’ request

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for imposing additional labelling requirements was to protect the interests of consumers by providing them with information on importers so that the consumers knew where to turn to should any problems arise from the goods they purchased.

9. Mr CHAN Kam-lam enquired about the similarities and differences between clause 19 and the relevant provisions in the laws of Australia. In addition, he asked if the Administration would make reference to the practice of the Australian authority and consider requiring the provision of importers' information for imported goods.

10. In response, PAS/TI pointed out that both Australia and Singapore had certain labelling requirements for imported goods for protection of consumers' interests. As set out in the information paper, there were safety and labelling requirements in a number of existing ordinances of Hong Kong to ensure that goods purchased by consumers were up to certain safety standards. The Administration was of the view that requiring imported goods to be labelled for the identification of importers could not achieve the purpose of enhancing consumer protection. As there was no contractual relationship between consumers and importers, it would be difficult for consumers to hold importers liable concerning product safety problems. As such, it might not be necessary for Hong Kong to adopt the same labelling requirements even if these were stipulated in the laws of some overseas jurisdictions.

11. STI added that the Administration did not agree with any proposal to incorporate additional labelling requirements into clause 19. As stated above, the measure could not enhance consumer protection. Furthermore, the Administration was of the view that upon the liberalization of parallel importation, it was inappropriate to impose restrictions which were stricter than the existing ones. If the proposal on additional labelling requirement was implemented, parallel importers might be subject to civil suit for not labelling the goods with their names and addresses, which would not be the case at present. He pointed out that the Consumer Council also supported the stance of the Government. Clause 19 only served to clarify the existing legislation and the Government did not think that trade mark owners should be given additional rights for this reason.

12. Mr James TO asked the Government to provide information, such as the volume of goods subject to the existing statutory labelling requirements and the percentage of such goods in the consumer goods market, for members to gauge the influence of the proposed labelling requirements on the market. Furthermore, he inquired whether the present labelling requirements asked for the provision of importers' information. According to the information paper furnished by the Administration, additional labelling requirements for the provision of importers' information would result in the increase in the cost of parallel imports, thus reduce the variety and number of goods and victimize consumers. He pointed out that the Government should put forward analytical data explaining the extent of cost increase due to the labelling requirements so

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that members could deliberate more specifically on the feasibility of the proposal. Mr MA Fung-kwok agreed that the Government should provide such figures.

13. PAS/TI advised that requirements on the degrees of safety and labelling were prescribed in many existing ordinances of Hong Kong. These included the Pharmacy and Poisons Ordinance, the Food and Drugs (Composition and Labelling) Regulations under the Public Health and Municipal Services Ordinance, as well as the Electrical Products (Safety) Regulation under the Electricity Ordinance. However, the present labelling requirement did not demand the provision of importers' information. While the Consumer Goods Safety Ordinance and the Toys and Children's Products Safety Ordinance did not impose particular requirement on labelling, the Commissioner of Customs and Excise had the power to demand the affixation of labels on such products. The importers' failure to do so could be regarded as noncompliance with safety standards. He pointed out that although the Administration had not made any assessment regarding the increase in product cost and the reduction in the volume of parallel imports because of the proposed labelling requirements, it considered the proposal undesirable as it could not provide greater protection to the consumers effectively.

14. Mr Kenneth TING opined that consumers had the right to obtain information on the importers of goods. Besides, he pointed out that trade mark owners and their authorized distributors had invested a lot of money in areas such as advertisements and after-sale services in order to build up reputations for their goods. It was indeed unfair that parallel importers were allowed to take unfair advantage of these investments.

15. Mr HUI Cheung-ching agreed that upon the liberalization of parallel importation, the requirement of labelling imported goods with importers' information should be imposed. Otherwise, businessmen who ignored the interests of consumers might seize the opportunity to profiteer by importing goods of short guarantee period, unreliable quality or even counterfeit products. He pointed out that the Government should strike a balance between the interests of authorized distributors and parallel importers. Though implementing the additional labelling requirements would increase the cost of goods, he did not think that the increase would reduce the profit margin of parallel importers to an extent of driving them out of the market, and thus reducing consumers' choice.

16. In response, STI said that the expenses on advertising and the costs of other value added services paid by the authorized distributors would eventually be shifted onto consumers. The services provided by authorized distributors were based on business decisions and not merely for the sake of safeguarding the interests of consumers. Therefore, the issue of fairness did not exist. He was surprised that the authorized distributors suddenly attached importance to social conscience and endeavoured to stress on safeguarding the interests of consumers. He reiterated that the Government's stance was that no additional labelling requirements should be imposed when parallel importation was liberalized. Authorized distributors could help consumers make judicious choices through

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enhancing their promotion of the various value added services they provided or of the merits of their products.

17. Mrs Selina CHOW expressed dissatisfaction with the remarks made by STI on the agents' social conscience. She pointed out that the personal integrity of businessmen might differ from individual to individual, but STI should not lump things together and satirize that the distributors had always ignored the interests of consumers just for the sake of profits. She opined that the interests of consumers lay not only with maintaining low prices for goods, the quality and other value added services of goods were of equal importance. She inquired whether clause 19 had changed the existing legislation to give parallel importers new rights; if so, why additional conditions should not be imposed to demand them to comply with additional labelling requirements.

18. Director of Intellectual Property (DIP) said that the present provisions on parallel importation in the Trade Marks Ordinance were rather vague. Clause 19 sought to clarify the existing legislation. The wording in the draft clause 19 was similar to that of the relevant provisions in the United Kingdom's legislation concerning parallel importation in the European Common Market. STI added that the Administration had always adopted a free trade policy and supported the free flow of goods in the market. It had never objected to the activities of parallel importation. Clause 19 aimed at clarifying the ambiguities in the existing legislation without changing Government policy.

19. Mrs Selina CHOW did not agree that clause 19 served only to clarify the existing legislation. She pointed out that under section 27(3) of the existing Trade Marks Ordinance, if the proprietor of a trade mark could prove that he had not explicitly or implicitly given any consent to a parallel importer who used the trade mark, he could sue the latter for infringement of the registered trade mark. Since clause 19 legitimized parallel importation, the provision in fact changed the existing legislation. She was of the view that the Government had already changed its policy on parallel importation before introducing this amendment.

20. The Chairman shared the view of Mrs Selina CHOW. She pointed out that the Bills Committee had already made a decision on clause 19 at its meeting on 17 April. Most members agreed that the interests of consumers had to be fully protected upon the liberalization of parallel importation. Hence an amendment to clause 19 was proposed to stipulate that imported goods had to be labelled with the information of their importers. The Bills Committee expected the Administration to respond to this decision and provide further information. Unfortunately, the Government did not provide any new information for members' reference and neither did it make any assessment on the possible increase in product costs due to the additional labelling requirements. All it did was to insist its position of opposing the additional labelling requirements. The Chairman regretted that the Government dealt with the issue in such a manner.

21. PAS/TI said that the information paper provided by the Administration was a response to the Bills Committee's request for the Government to make

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amendment to clause 19 for inclusion of additional labelling requirement. The Government held that the proposed amendment was unfair to parallel importers because it was only directed at parallel imports instead of all imported goods. STI reiterated that the Government's stance was against the imposition of any additional labelling requirements when parallel importation was liberalized. He stressed that the Government did not object to the putting in place of statutory labelling requirements which would enable consumers to obtain more useful information. However, any labelling requirements should be applicable to all goods instead of parallel imports only. The Government did not consider it appropriate to discuss the proposal of additional labelling requirements in the context of the Bill. The proposal could well be deliberated in other forums such as under the ordinances concerning product safety and labelling requirements. The Chairman said that the objective of the Bills Committee's proposal was to provide consumers with information on importers. The proposal was not directed at any particular importers and actually all importers were treated equally without discrimination. DIP explained that since trade mark owners and their authorized distributors would not be involved in charges against infringement of registered trade marks, the incorporation of additional labelling requirements in clause 19 would only be binding on parallel importers. Therefore, he did not think that the proposal should be considered in the context of the Bill.

22. Mr MA Fung-kwok disagreed with the Government's argument. He pointed out that while clause 19 liberalized parallel importation, it was absurd for the Government not to draw up corresponding measures to protect consumers and maintain a level playing field in the market. He further queried why the Government was so sure that the proposal would raise product costs and render the parallel importers profitless even before making any analyses or assessments of the influence of additional labelling requirement on the cost of parallel imports.

23. STI reiterated that the Government recognized members' concern about the interests of consumers. However, he did not concur with the members' view that the goal of protecting consumers could be achieved by incorporating labelling requirements in clause 19. PAS/TI said that mere provision of importers' information by labels did not confer any legal power on consumers to institute proceedings against or claim compensation from importers with regard to the safety or specifications of products. He pointed out that the proposed bill on civil liability for unsafe product actually aimed at providing a legal basis for consumers, in case of damages or injuries caused by the use of unsatisfactory products, to take civil action against the relevant manufacturers, producers, trade mark proprietors and importers who had to shoulder the major responsibilities. The proposed bill would set up an effective mechanism under which retailers would voluntarily provide importers' information in order to avoid civil liability. STI recalled that, at the meeting of the Panel on Trade and Industry on 6 December 1999, many queries were raised about the bill proposed by the Government concerning the civil liability for unsafe products and the need to enact the bill. Therefore, the Government had to further examine the bill and

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resubmit the relevant proposals to the Legislative Council for consideration at a later date.

24. Mrs Selina CHOW said that the proposed bill only dealt with the safety issues of products and had nothing to do with other problems such as the quality and after-sale services of products. For that reason, the bill would not be able to allay members' concern about the quality of products after the liberalization of parallel importation.

25. Mr James TO opined that if the proposal on additional labelling would increase the cost, the Government and the parties concerned could consider adopting other methods to provide consumers with importers' information. For example, the Government could establish a register for public inspection.

26. STI responded that while Mr James TO's proposal could be considered in further detail, it was, however, inappropriate to incorporate the provisions requiring importers' information in the Trade Marks Bill and doing so was actually against the intent of the Bill. He proposed that the authorized distributors could jointly design a special label which would help consumers distinguish between mainstream imports and parallel imports.

27. Mr James TO opined that the authorized distributors could consider STI's proposal. He pointed out that an effective mechanism should be set up to help consumers obtain the information on the importers of products. The provision of such information through labels was only one of the means. He suggested that the Bills Committee might seek the assistance of the Consumer Council and asked it to give more detailed advice on how to safeguard the interests of consumers.

28. The Bills Committee agreed to write to the Consumer Council, inviting it to provide information on the proposed requirement for adding importers' information on the labels of imported goods, the implications of the proposal on the costs of different products and whether there were other convenient, efficient and low-cost means, other than labelling, to let consumers know the information on importers.

(Post-meeting note: In connection with above matter, the Clerk to the Bills Committee wrote to the Consumer Council on 2 May 2000, whose reply was circulated to members vide LC Paper No. CB(1)1526/99-00(02).)

29. Mrs Selina CHOW opined that, apart from the proposed method of labelling, consideration could also be given to other lower-cost methods of providing consumers with importers' information. For example, the relevant information could be incorporated in the bar codes or posted on goods shelves. She asked the Government to consider other applicable methods which could provide importers' information to consumers. Mrs Sophie LEUNG added that the United States had already set up a comprehensive bar code system which

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provided the information on manufacturers, importers and even retailers. It would be worthwhile for Hong Kong to model on the system.

30. The Chairman said that it was relatively difficult to implement the proposal on the bar code system because the present application of bar code was not only limited to imported goods. Besides, consumers were unable to read the information directly from the bar code. However, she agreed that flexibility could be allowed for providing information on importers through different means despite that labelling the relevant information on the products was the most direct and common method used at present.

31. In response, STI said that the Government could further study feasible means to provide consumers with importers' information, but it was impossible to find a solution within a short period of time. He reiterated that it was inappropriate to discuss this issue in the context of the Bill. He called on members not to procrastinate the legislative process of the Bill because of this issue.

32. Mr CHAN Kam-lam shared the Government's view. He opined that the adequacy of the labelling requirements under the existing legislation for consumer protection should be studied in detail, exploring various feasible means to provide information to consumers. In his capacity as the Chairman of the Panel on Trade and Industry, he proposed to refer the issue to the Panel for further consideration. He suggested and members agreed that the issue could be discussed at its regular meeting on 9 May.

33. Since the labelling requirements under the existing legislation involved different policy bureaux, PAS/TI suggested that the Panel invite all relevant policy bureaux to provide information and attend the meeting.

(Post-meeting note: The Panel on Trade and Industry held a special meeting on 18 May 2000 to discuss the labelling requirements for consumer goods. All Legislative Council Members were invited to attend the meeting.)

34. The Chairman said that since the Government had expressly stated its disagreement with the Bills Committee's proposed amendment to clause 19, she would, in her capacity as the Chairman of the Bills Committee, move the relevant amendment herself. She asked the Assistant Legal Adviser to draft the amendment for members' consideration. Concluding the discussion, the Chairman said that although the Bills Committee and the Administration had different views on clause 19, the legislative process would not be procrastinated. The Second Reading debate of the Bill was expected to be resumed in the 1999/2000 legislative session.

(Post-meeting note: The draft Committee Stage Amendment to clause 19 prepared by the Legal Service Division was circulated to members vide LC Paper No. CB(1)1540/99-00(04).)

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Date of next meeting

35. Members noted that the next meeting was scheduled for 4 May 2000 at 4:30 pm.

36. The meeting ended at 12:40 pm.

Legislative Council Secretariat

19 September 2000