

立法會
Legislative Council

LC Paper No. CB(1)1203/99-00

(These minutes have been
seen by the Administration)

Ref: CB1/BC/17/98/2

Bills Committee on Trade Marks Bill

**Minutes of ninth meeting held on
Tuesday, 28 December 1999, at 10:45 am
in Conference Room A 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 HUI Cheung-ching
Hon CHAN Kam-lam
Hon Mrs Sophie LEUNG LAU Yau-fun, JP
Hon SIN Chung-kai

Members absent : Hon Albert HO Chun-yan
Hon MA Fung-kwok
Hon James TO Kun-sun
Hon FUNG Chi-kin

Public officers attending : Mr Stephen SELBY
Director of Intellectual Property

Miss CHEUNG Siu-hing
Deputy Secretary for Trade and Industry

Mr Philip CHAN
Principal Assistant Secretary for
Trade and Industry

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

Miss Finnie QUEK
Senior Solicitor
Intellectual Property Department

Ms Phyllis POON
Government Counsel

Mr Johann WONG
Assistant Secretary for Trade and Industry

Attendance by invitation : Consumer Council

Mrs CHAN WONG Shui
Chief Executive

Mr Ron CAMERON
Head of Trade Practices Division

Liquor and Provision Industries Association (LPIA)

Mr Claes RYDBERG
Chairman, LPIA
Managing Director, Riche Monde Ltd - HK

Mr Dennis HEIJN
Executive Committee Member, LPIA
General Manager
Heineken Hong Kong Ltd

Mr Ben WONG
Member, LPIA
General Manager - Corporate Development
San Miguel Brewery HK Ltd

Hong Kong Retail Management Association

Mr Logan TAYLOR
Regional Managing Director
Park'n shop

Ms Amanda YU
Solicitor
A.S. Watson & Co Ltd

Mr Andrew VAGG
Executive Director
The Dairy Farm Co Ltd - Wellcome

Mr Charlie WOOD
Legal Counsel
The Dairy Farm Co Ltd

Ms Anita BAGAMAN
Executive Director

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

I. Meeting with deputations

The Chairman said that the meeting was dedicated to discussing the issue of parallel importation. She invited each of the attending deputations to present their views.

(i) Consumer Council (CC)
(LC Paper No. CB(1) 660/99-00(01))

2. Mrs CHAN WONG Shui, the Chief Executive of CC, went through the submission. She highlighted that CC supported international exhaustion of rights as stipulated in clause 19 of the Trade Marks Bill (the Bill). To maintain the free trade policy of Hong Kong, there should not be any barriers to access to Hong Kong markets. Allowing parallel importation of trade mark goods was beneficial to consumers in terms of wider choices and cheaper prices. CC did not agree that consumers might find it confusing if goods sold under the same trade mark were manufactured for different markets. Nor did CC consider that consumers lacked the ability to differentiate between different types of goods. Mrs WONG stressed that parallel-imported goods were genuine goods and should not equate with goods of inferior quality. It was the responsibility of retailers to ensure that the goods sold met the safety and technical standards and that the labels on the goods were correct regardless of whether the goods were mainstream products or parallel-imports. CC recognized the concern about undesirable market practices and the adequacy of consumer safeguards. However, these issues should not be addressed in the context of a trade marks law or confused with the issue of parallel importation.

(ii) Liquor and Provision Industries Association (LPIA)
(LC Paper No. CB(1) 660/99-00(02))

3. LPIA's further submission was tabled at the meeting (circulated to members after the meeting vide LC Paper No. CB(1)686/99-00).

4. Mr Claes RYDBERG, Chairman of LPIA said that LPIA had about 30 member companies which were leading trade mark owners or represented trade mark owners of alcoholic beverages, food, drinks and other consumer goods. Its members sold these products through wholesalers, retailers or directly to consumers. While they were firm supporters of the principle of free trade, they felt that uncontrolled parallel importation would not bring ultimate benefits to local consumers. Trade mark owners and their authorized distributors had invested considerable sum of money in advertising and marketing to build up the reputation of the goods. It would be unfair to them if parallel importers were allowed to take unfair advantage of their massive overheads. He disagreed with the Administration's view that parallel importation would encourage investment. On the contrary, trade mark owners and their authorized distributors would be reluctant to invest in Hong Kong or would even withdraw from the Hong Kong market altogether if they were unable to control the quality of their trade mark goods put on sale in the local market. LPIA suggested that stricter measures should be introduced to prevent rather than liberalize parallel importation of perishable goods.

5. Mr Dennis HEIJN, Executive Committee member of LPIA, explained that it was important to distinguish between perishable and non-perishable goods in examining the issue of parallel importation. Proper measures had to be taken in preserving the quality of perishable goods during transportation. Comparing with authorized distributors, parallel importers would be less able and less willing to take the same precautionary measures and this might result in deterioration of the quality of the trade mark goods. While it might be true that parallel importation of electronic products would widen consumers' choices, it was not the case for mass consumer goods. Local consumers had ample choices for these goods at a wide variety of prices. Moreover, he was worried about Hong Kong becoming the dumping ground of Asia if parallel importers were allowed to import leftover cheap products or expired goods for sale in Hong Kong.

(iii) Hong Kong Retail Management Association (HKRMA)
(LC Paper No CB(1) 676/99-00(01))

6. Mr Logan TAYLOR said that HKRMA, founded in 1983, was the major association for retailers in Hong Kong. It had a membership of over 500 major retail chains covering over 5,000 outlets and employing about 150,000 staff in the territory. HKRMA supported clause 19 of the Bill as it served to clarify the grey areas in the existing legislation by making clear that parallel importation would not constitute infringement of trade marks. He said that parallel importation mainly existed where the goods were not imported by the authorized local distributors or where there was a significant price difference between the parallel-imported goods and those provided by the distributors. Certain products might not be imported because of a perceived low local demand. Parallel importation would enable retailers to source goods world-wide to cater for different segments of the market and provide consumers with wider choices. For illustration purpose, Mr TAYLOR said that about 10% of the total ranges of goods sold by his company

were imported to meet consumers' unique demand. Another benefit of parallel importation was that it made available trade mark goods to consumers at cheaper prices. Since parallel imported goods were genuine goods, the trade mark right was preserved. If there was any difference at all between goods manufactured locally and overseas, the difference would be subtle and immaterial. Consumers in Hong Kong were sufficiently sophisticated to make reasonable choices of goods suitable for them. If the overseas licensee breached any contract for selling the goods to local importers, it was up to the trade mark owner to pursue the remedy under the contract. HKRMA considered that there were already legislation to address the issues relating to safety, quality and labelling requirements in respect of various types of consumer goods.

Discussion with deputations

7. Referring to LPIA's concern about Hong Kong becoming the dumping ground of expired goods or goods with a short expiry period should parallel importation be liberalized, Mrs Selina CHOW sought advice from CC on how consumers could be protected in this regard. Mrs CHAN WONG Shui responded that it was in the commercial interest of retailers not to sell expired goods to maintain their own reputations. In fact, the existing legislation prohibited the sale of expired products. Consumers were always advised to take note of the label on goods, in particular of the expiry date for perishable goods.

8. Mrs Selina CHOW pointed out that there were dishonest shops which paid scanty attention to reputations. Moreover, not each and every kind of consumer goods was properly labelled. Consumers could make an informed choice only if they got hold of the relevant information about the goods. The crux of the issue was not that the quality of parallel-imported goods must necessarily be inferior but that goods bearing the same trade mark might be different to suit different markets. Consumers might not readily know these differences among goods manufactured for different markets. Mrs CHAN WONG Shui agreed that consumers should be provided with as much information on goods as possible. There were laws governing labelling requirements for various types of goods. CC had always been advocating for the introduction of proper consumer safeguards. Nevertheless, CC did not consider that the question of consumer safeguards should be addressed in the context of parallel importation. As regards the concern about variation of goods tailor-made for different markets, Mrs WONG said that importers would exercise commercial judgement and would import goods which suited local tastes. Market force would drive out goods which did not meet the local need.

9. Mr Dennis HEIJN of LPIA opined that Hong Kong would be making great strides in consumer protection if the legislative requirement for the provision of information could be extended to a wider range of products. He clarified that despite the fact that beer was susceptible to an expiry period after production, there was no legislative requirement for stipulation of the expiry date on the product. To assist consumers to differentiate between mainstream imports and parallel imports, authorized distributors had started to stamp the expiry date on mainstream imports of beers. However, local consumers were not very attentive to the labelling of products. He therefore disagreed with CC's view that consumers were aware of the differences between mainstream imports and parallel imports.

10. Mr HUI Cheung-ching agreed that consumers might not be fully aware of the differences between mainstream imports and parallel imports. He pointed out that there were often no after-sale or maintenance services for parallel-imported durable goods, for example, vehicles. In some cases, the warranty periods for mainstream products and parallel imports were different and this accounted for their price differences. He was concerned how consumers' interest could be protected. Mrs CHAN WONG Shui reiterated that consumers were always reminded to ask for information about the provision or otherwise of after-sale services of goods before purchase. In CC's view, the decision should rest with the consumers as to whether to buy a mainstream import or a parallel import. The society should not pre-empt their choices by restricting parallel imports.

11. The Chairman queried whether consumers should be exposed to goods of both good and bad quality and sought information on the role of CC on promotion of consumers interest in this regard. Mrs CHAN WONG Shui said that CC always stressed the importance of providing adequate information to consumers. It had been doing publicity and educational work to enhance the awareness of consumers on their rights, in particular on the right to return expired or damaged goods. CC was discussing with the Administration on ways to improve regulation of misleading advertisements. It was also liaising with trade associations on the making of codes of practice for the relevant trades.

12. Mr CHAN Kam-lam opined that where authorized distributors were not ready to import a particular product, parallel importation would fill the gap and provide consumers with wider choices. Since the product features of mainstream imports and parallel imports might vary, it would be beneficial to provide consumers with different choices. The important thing was to provide sufficient and correct information to consumers and strengthen consumer education on the need to differentiate between products of different quality under the same trade mark.

13. Mr SIN Chung-kai commented that with the growing popularity of electronic commerce, it might not be feasible to impose any legislative restrictions on parallel importation. Consumers might source products world-wide through the internet. This trend of globalization of trade could not be stopped by legislative measures. He was doubtful whether the removal of clause 19 of the Bill could help limit parallel importation.

14. Mr Dennis HEIJN said that LPIA had no objection to parallel importation of products which were not available in the local market. He also agreed that electronic commerce would make it difficult to limit parallel importation. Notwithstanding, it was a separate question on whether parallel importation should be legitimized.

15. Mrs Selina CHOW was concerned whether liberalization of parallel importation would discourage investment in the long run if the parallel importers could reap the fruits while trade mark owners and authorized distributors paid the costs for marketing and building up the reputation of the trade marks. Mrs CHAN WONG Shui responded that this was a commercial matter which should be sorted out by the parties concerned. In her view, retailers or distributors should liaise with their suppliers to work out acceptable solutions through market operations.

16. The Chairman and Mrs Selina CHOW enquired whether trade mark owners and authorized distributors were concerned about the maintenance of a level playing field for commerce if parallel importation was to be liberalized. Mr Dennis HEIJN acknowledged that this was the concern of trade mark owners. He said that if parallel importers were permitted to be back-riders, trade mark owners and authorized distributors would lose the incentive to invest in Hong Kong. This would not be beneficial to consumers or the Hong Kong economy in the long run. Apart from the maintenance of a level playing field, trade mark owners were equally concerned about the quality of trade mark goods as the quality of parallel imports could not be guaranteed.

17. Noting that some deputations were organizing themselves to submit views on the Bill, the Chairman suggested and members agreed to consider requests made before the Chinese New Year for oral presentation before the Bills Committee.

(Post-meeting notes: the meeting for receiving the last round of deputations was scheduled for Saturday, 26 February 2000 at 9:30 am.)

II Meeting with the Administration (LC Paper No CB(1) 660/99-00(03))

18. Referring to the information paper, the Deputy Secretary for Trade and Industry (DS/TI) highlighted the main following points -

- (i) Parallel imports were products that were legitimately produced and marketed abroad with the consent of the owner of the intellectual property right. They were not pirated or counterfeit products;
- (ii) The Administration noted members' concern over the quality of parallel-imported goods and considered that clause 19(2) of the Bill had provided sufficient safeguards as trade mark owners could prevent parallel importation where the condition of the parallel-imported goods had changed or been impaired after they had been put on the market;
- (iii) The Administration acknowledged the importance of ensuring safety and health standards of consumer goods and of protecting consumer interest. However, the Administration considered it inappropriate to deal with these issues in the context of a trade mark law;
- (iv) Free trade was the bedrock of Hong Kong's success. A free market with minimal barriers would encourage investment. With the proposed liberalization, it was expected that there would be an increase of businesses specializing in parallel imports, thereby boosting employment and the economy; and
- (v) Globalization of trade was an irreversible trend, in particular with the development of electronic commerce. The trade mark law of Hong Kong

had to keep pace with the modern environment. Liberalization of parallel importation would increase market competition on the one hand and benefit individual consumers in terms of wider choices and more attractive prices on the other.

19. Mr CHAN Kam-lam expressed concern over the adequacy of legislative controls on labelling requirements in respect of parallel-imported goods, in particular, pre-packed food and over the effectiveness of enforcement. His concern was echoed by the Chairman. DS/TI said that all consumer goods sold in Hong Kong were required to comply with statutory safety requirements. There were different laws providing for safety and labelling requirements in respect of certain consumer goods such as pharmaceutical products, electrical appliances, children's products, foodstuff, etc. These provisions applied to the relevant goods sold in Hong Kong, regardless of whether they were mainstream products or parallel imports. Non-compliance with the statutory requirements was an offence, attracting the penalty of fines or imprisonment. As far as foodstuff was concerned, all pre-packed food sold in Hong Kong were subject to specific requirements, including labelling, set out in the Food and Drugs (Composition and Labelling) Regulations under the Public Health and Municipal Services Ordinance (Cap.132). Food labels would need to include the name of the food, a list of the ingredients, an indication of the minimum durability, any special conditions for storage, the name and address of the manufacturer and the physical quantity of the food. At the invitation of the Chairman, Mrs CHAN WONG Shui said that under the existing laws, the retailers would also be responsible if the goods sold were damaged or the conditions of the goods had been impaired.

20. Mr SIN Chung-kai said that he agreed with the Administration's proposal to liberalize parallel importation to maintain the free trade policy of Hong Kong and to tie in with the rapid development of electronic commerce. He however considered it necessary to strengthen consumer protection by ensuring compliance of products with the safety standards and by tightening labelling requirements. He called on the Administration to examine if any laws concerning protection of consumer interest need to be amended in anticipation of the liberalization of parallel imports.

21. DS/TI reiterated that there were already controls under separate statutes to ensure the safety of various consumer goods. The Administration accepted that the statutory safety and labelling requirements need to be reviewed from time to time to ensure that they were up to date. However, the Administration did not see the need to amend ordinances solely because of the proposal to liberalize parallel importation.

22. Mr HUI Cheung-ching remained concerned about the confusion of parallel imports with counterfeit goods. He opined that the quality of parallel imports could not be guaranteed and that there was often no after-sale service for parallel imports. DS/TI said that consumers should ask for information concerning the provision or otherwise of after-sale or maintenance services before making a purchase. The proposal to liberalize parallel importation aimed at achieving a balance between the right of trade mark owners and the interest of consumers.

23. Mrs Sophie LEUNG said that the rights of trade mark owners to control the

distribution of trade mark goods would be taken away if an express provision was made to allow parallel importation. In her view, where trade mark goods should be manufactured and where they were intended to be sold should be left to the trade mark owners and the licensees or authorized distributors. The Director of Intellectual Property (DIP) explained that trade mark owners could exercise control over the distribution of their goods through contractual arrangements with distributors. Even in countries where parallel importation was allowed, there was still the option of exercising contractual control. If local trade mark laws prohibited parallel importation, that stacked all the cards in favour of the importer and sole distributor, without giving sufficient regard to consumers' interests. Thus, if the local law permitted parallel importation, a balance between the owner's right and the consumers' interest could be achieved.

24. Mrs LEUNG enquired whether the trade mark owner could take legal action against parallel importers if the local trade mark law allowed parallel importation. DIP said that the owner could only take action if the parallel importation breached contract. For example, if a party to a contract breached the terms of the contract by exporting the goods to countries where sale was not authorized under the contract, the owner could seek legal remedy. In other words, the local trade mark law on parallel importation would not change the contractual rights between the relevant parties.

25. Mrs Selina CHOW said that in considering the issue of parallel importation, the price of goods was not the sole factor at stake. The quality of goods should also be a cause for concern. To start with, consumers might not be aware of whether the goods were mainstream products or parallel imports. When the parallel-imported goods were found to be defective, consumers often did not know where to seek redress. There were cases in which consumers lodged their complaint with the authorized distributors. She enquired about the means to address these problems.

26. DS/TL replied that consumers who had grievances would normally approach the retailers for change of goods or refund. It was rather unlikely that they would lodge their complaints with the distributors or licensees right at the beginning. There were statutory labelling requirements in respect of certain categories of goods. In the Administration's view, if certain features or services of a mainstream product is value-added or could enhance its competitiveness, suppliers or retailers would be more than ready to make it known to consumers.

27. At the Chairman's invitation, Mrs CHAN WONG Shui said that consumers who had bought defective goods normally approached retailers first for remedy. They would seek help from CC if the problem could not be solved to their satisfaction. Upon receipt of a complaint, CC would liaise with the relevant parties and trace the source of the goods with a view to settling the problem.

28. Summing up the discussion, the Chairman said that whether the existing legislation were adequate on safety and labelling requirements in respect of various consumer goods and whether and how consumers were informed of the source of the goods and the channel for complaint were questions relevant to the consideration of the issue of parallel importation. She requested the Administration to provide a

paper to explain how these concerns could be addressed.

(Post-meeting note : the paper was provided by the Administration and circulated to members vide LC paper No. CB(1)859/99-00)

III Any other business

29. Members noted that the Administration would deal with the issue of "extension of time" under clause 40(3) of the Bill in the Trade Marks Rules.

30. Members agreed that the next two meetings would be held on 13 January 2000 at 2:30 pm and 27 January 2000 at 8:30 am.

(Post-meeting note: the meeting scheduled for 13 January 2000 was rescheduled for 18 January 2000 at 10:45 am to avoid clash with the Chief Executive's Question-and-Answer Session.)

31. The meeting ended at 12:45 pm.

Legislative Council Secretariat
20 March 2000