

Bills Committee on Trade Marks Bill

Parallel Importation of Trade Mark Goods and Labelling Requirements

Introduction

This paper outlines the existing safety and labelling requirements governing various consumer goods, and considers whether the liberalization of parallel importation of trade mark goods should necessarily be accompanied by increased labelling requirements.

Background

2. At the meeting of the Bills Committee on the Trade Marks Bill held on 28 December 1999, Members requested the Administration to set out the existing laws governing the safety and labelling of various consumer goods. Members also requested the Administration to assess the need to amend any of these laws in anticipation of the passage of Clause 19 of the Trade Marks Bill, which deals with the international exhaustion of rights.

Statutory Safety and Labelling Requirements in Hong Kong

Pharmaceutical Products

3. Under the Pharmacy and Poisons Ordinance (Cap.138), no person shall sell, offer for sale or distribute or possess for the purposes of sale, distribution or other use any pharmaceutical product unless it is registered with the Pharmacy and Poisons Board. This ensures that all pharmaceutical products, whether imported or locally manufactured, comply with the safety, efficacy and potency requirements. If a pharmaceutical product is imported into Hong Kong by more than one importer, each of them is required to apply for registration separately and will be assigned different registration numbers.

4. All pharmaceutical products are required to be properly labelled under the Pharmacy and Poisons Ordinance. The name of the product, the name and quantity of each active ingredient, the name and address of the manufacturer, the Hong Kong registration number, batch number and expiry

date are required to be shown on the container. Additional labelling requirements, such as specific safety precautions, may also apply to some types of pharmaceutical product. Failure to comply with the labelling requirements is an offence which may result in de-registration of the pharmaceutical products in question. In addition, the offender is liable to a maximum fine of \$100,000 and to imprisonment of 2 years.

Foodstuff and Tobacco

5. All pre-packed food sold in Hong Kong are 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 will 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. Contravention of these labelling requirements is an offence, and the maximum penalty is a fine of \$50,000 and an imprisonment of 6 months. The safety of food is also monitored through a food surveillance system whereby samples are taken at the import, wholesale and retail levels for microbiological, chemical and toxicological testing.

6. Under the Smoking (Public Health) Ordinance (Cap.371), no person shall sell, offer for sale or possess for the purpose of sale any cigar, pipe tobacco or cigarette tobacco unless the container thereof bears a prescribed health warning. The maximum penalty for contravening this requirement is a fine at level 4 (\$25,000).

Electrical and Gas Appliances

7. Under the Electrical Products (Safety) Regulation of the Electricity Ordinance (Cap. 406), there are specific safety and labelling requirements governing electrical products. For instance, the labelling requirements of electrical products that are designed for household use and supplied in Hong Kong shall include rated voltage and frequency, rated input, model or type reference number and the manufacturer's name or trade mark. The maximum penalty for contravening such statutory labelling requirements is a fine of \$500,000 and an imprisonment of 2 years.

8. The Gas Safety Ordinance governs the safety of gas appliances. There are no specific labelling requirements as such under the ordinance.

However, there are non-statutory arrangements for the voluntary labelling of gas appliances in accordance with the Gas Standards Office's code of practice.

Other Consumer Goods

9. The Consumer Goods Safety Ordinance (Cap. 456) imposes a statutory duty on manufacturers, importers and suppliers of consumer goods to ensure that the goods they supply for local consumption are safe. The Toys and Children's Products Safety Ordinance (Cap. 424) stipulates similar safety requirements for toys and children products. There is no standard labelling requirement under these two ordinances. However, the Commissioner of Customs and Excise may require that a warning notice be published, in a form and manner to be specified by him (which may therefore include labels), that a particular consumer good, toy or children's product may be unsafe unless the steps set out in the notice are taken. In addition, where a labelling requirement forms part of the safety standards specified for a particular product, compliance with the safety standards requires, inter alia, compliance with the relevant labelling requirements. It is an offence for contravening any of these requirements. The maximum penalty is a fine of \$500,000 and an imprisonment of 2 years.

10. The Trade Descriptions Ordinance (Cap. 362) also prohibits, amongst other things, false trade descriptions, forged trade marks and mis-statements in respect of goods provided in the course of trade, including false labels of origin for products. It is an offence to contravene the prohibitions and the maximum penalty is a fine of \$500,000 and an imprisonment of 5 years.

Consideration

11. There are already controls under separate statutes to ensure the safety of various consumer goods in Hong Kong. Specific legislation is in place for certain products such as food, pharmaceutical products and electrical appliances to take into account their characteristics and hence safety requirements. All consumer goods not covered by specific legislation is covered by the Consumer Goods Safety Ordinance. The statutory safety requirements apply to **all** goods supplied for local consumption. Thus parallel imported products are covered already. We accept the need to ensure that the various statutory safety and labelling requirements are up to date and appropriate to take into account, for example, technological developments.

However, we see no compelling reason for additional statutory requirements concerning safety and labelling to be introduced solely because of the liberalization of parallel importation.

12. It has been pointed out that some goods available from exclusive licensees and sole distributors are specifically developed for the local market, and that licensees offer aftercare and other services that parallel importers may not provide. If these are indeed selling points in terms of value added, arguably exclusive licensees and sole distributors should have every incentive to advertise them through voluntary labelling or other forms of promotion in a manner most suitable for their products or sectors. No mandatory labelling requirement is needed for the purpose.

13. Statutory labelling requirements on goods carry a cost of compliance, which the consumer has to bear ultimately. Requirements **in addition to** the existing ones will therefore have to be fully justified. Given the myriad of consumer goods available on the market, the question of effective enforcement will also have to be thoroughly addressed. More fundamentally, it will be difficult to define the information to be included in labels for application across the board irrespective of the nature of the goods involved. Even the seemingly innocuous issue of country of origin of goods has been a major topic of discussion for years in international trade arenas. We should also guard against excessive labelling, which is more likely to confuse than help the consumer. All this points to the need to consider the question of labelling in the proper context, i.e., the relevant legislation on consumer goods safety, as appropriate, and not in the context of the Trade Marks Bill.

Conclusion

14. The question of statutory labelling for consumer products is a major issue which requires very careful study. In view of existing requirements and the foregoing arguments, the Government does not see the need to link the issue of labelling with Clause 19 of the Trade Marks Bill.

Trade and Industry Bureau
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