

**Extracts of minutes of meeting of the
LegCo Panel on Commerce and Industry held on 11 November 2002**

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Action

V Commencement of new Trade Marks Ordinance
(LC Paper No. CB(1) 216/02-03(04))

11. The Deputy Secretary for Commerce, Industry and Technology (Commerce and Industry) (DS(CI)) briefed members on the progress of preparatory work for the commencement of the new Trade Marks Ordinance ("the new Ordinance") which was targeted for January 2003.

Fees for trademark registration

12. Since the new Ordinance would modernize the trade marks law and simplify the registration procedures, Mr Henry WU asked whether the registration fees for trademark would be reduced after the commencement of the new Ordinance. The Assistant Director of Intellectual Property (ADIP) replied in the affirmative and anticipated that the fees for trademark registration would be substantially reduced from the existing level of \$5,400 to \$1,300. As to Mr Henry WU's and the Chairman's enquiry about whether the reduction would be available to other fees items relating to application of trademark and specifically to extension fees, ADIP explained that fees in general would be reduced although not so substantially as the registration fee. Under the existing regime, an applicant could apply for an extension of three months to keep his application pending by paying a fee of \$270. She however pointed out as the extension fee involved only a small sum, it would not be reduced by much with the commencement of the new Ordinance.

Mandatory labelling requirement for trade mark goods

13. Mr Henry WU noticed that although authorized distributors had indicated their support in principle for liberalizing parallel import of trade mark goods, they continued to urge the Administration to impose a labelling requirement on parallel imported trade mark goods to help consumers in identifying parallel importers on the concerned goods. He asked whether the Administration had considered their views and addressed their concerns. DS(CI) said that the Administration had carefully reviewed labelling requirements for consumer goods and had fully

explained the Government's position to authorized distributors. Given the growing popularity of parallel imported trade mark goods in the market, the Administration was of the view that liberalizing parallel imported trade marked goods would benefit consumers. Recognizing the authorized distributors' concerns about the need to protect the interests of consumers, the Administration had requested the Consumer Council (CC) to step up its publicity programmes to educate consumers on how to differentiate parallel imported and mainstream trade mark goods, the differences in after-sales services available to consumers by authorized distributors and parallel importers; as well as to encourage retailers to improve their service to consumers. Appropriate resources had already been earmarked for this purpose.

14. Mrs Selina CHOW pointed out that according to the authorized distributors, a mandatory labeling requirement would provide a channel for the consumers to identify the parallel importers and hold them responsible for any problems with the concerned goods. The major concern of the authorized distributors was that without such a labelling requirement, consumers who had purchased defective parallel imported trade mark goods would lodge their complaints to the authorized distributors and it was unfair for the latter to bear the cost of handling such complaints. The authorized distributors also expressed concern that parallel importers could take advantage of their investment and efforts in advertising and marketing the trade marked products thus distorting the level playing field. Mrs Selina CHOW also asked in what ways CC could promote the interest of consumers who have purchased defective parallel imported trademark goods.

15. In response, DS(CI) reiterated that the labelling requirement on parallel importers would not offer real protection to consumers. Since contractual relationship only existed between consumers and retailers, even with a labelling system in place, consumers could not sue the importers concerned for unsatisfactory quality of parallel imported trade mark goods. As regards CC's work in safeguarding consumers' interests in relation to purchase of parallel imported goods, DS(CI) said that CC would strengthen its consumer education campaign with a view to enhancing consumers' awareness on the differences in after-sale services and protection available to parallel imported and mainstream trade mark goods. It would also follow up on consumers' complaints and render assistance where appropriate. However, as the contractual relationship only exist between the consumers and the retailer, CC could not seek compensation from the retailer on behalf of the consumers.

Rights of trade mark owners & retailers' liability

16. Mrs Selina CHOW enquired about protection available to trade mark owners when facing consumers' complaints on defective parallel imported trade mark goods. DS(CI) explained that while section 20(1) of the new Ordinance provided that a trade mark owner had no right to prevent parallel importation of goods bearing his mark if such goods had been put on the market, section 20(2) stipulated that section 20(1) would not apply to owners when the parallel imported trade mark goods had been impaired or changed with the result that the reputation of the mark was adversely affected. Under such circumstances, the trade mark owner could resort to civil remedies including claiming compensation from the concerned importers for loss.

Admin

17. On Selina CHOW's enquiry about the liability of retailers in relation to parallel imported goods, DS(CI) said that a retailer might be liable for misinforming the consumer if he deliberately withheld the fact that the goods were parallel imported when asked by the consumer. In this connection, Mrs Selina CHOW suggested that CC should educate consumers to ask questions, such as the availability of warranty and maintenance services for goods in order to safeguard their interests. The Chairman requested the Administration to provide the Panel with information on the liability of retailers owed to the consumers concerning the sale of parallel imported goods. DS(CI) undertook to provide the information in consultation with CC.

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18. Noting that tourists would also purchase trade mark goods, such as audio-visual products, Mr MA Fung-kwok asked how the Administration would protect interests of tourists. DS(CI) said that as these goods were usually bought by tourists for use in their home countries, tourists would rarely call for after-sale services provided by local retailers or authorized distributors. As such, the proposed labelling requirement was of limited value to tourists. DS(CI) reiterated that the Administration had already requested CC to assist in developing publicity programmes to educate consumer in relation to parallel importation. He understood that the publicity programmes were largely ready and would be launched close to the commencement of the new Ordinance. The Chairman urged that the Administration should commence the concerned consumer education programmes as soon as possible. He requested the Administration to provide the Panel with information on publicity programmes to be launched by CC. DS(CI) took note of the request. Mrs Selina CHOW further suggested that consideration should be given to launch the publicity programme through the mass media.

Cost implication of mandatory labelling requirement for trade mark goods

19. Mr HUI Cheung-ching supported to impose a mandatory labelling requirement on parallel imported trade mark goods. He had reservation over the Administration's argument that the requirement would increase the business cost of parallel importers and asked the Administration to provide statistics to substantiate this point. DS(CI) replied that it was difficult to estimate the increase in cost since this would vary among products. For example, the cost increase in relation to expensive items such as cars would be low, whereas the cost increase in relation to small items such as a ruler could be relatively high. He said that although the labelling requirement would provide additional information about the goods, it might not necessarily enhance protection for consumers. After balancing the cost involved and the limited benefits to consumers, the Administration did not support the proposal. On Mr HUI's enquiry about the possibility of applying the labelling requirement to certain categories of parallel imported trade mark goods, such as those involving after-sale service, e.g. audio-visual products, DS(CI) remarked that the suggestion would not be feasible given the wide-ranging nature of such products in the market.

20. Dr LUI Ming-wah supported the mandatory labelling requirement on parallel imported trade mark goods. He considered this would provide more information for consumers to make an informed choice between purchasing parallel imported and mainstream trade mark goods. DS(CI) said that some consumers preferred parallel imported goods because of their lower prices and they were less concerned about the availability of after-sale services. In addition, some retailers for parallel imported trade mark goods did provide after-sale services for consumers. Since consumers might not be able to differentiate between a parallel importer and an authorised importer from the name of the company alone, consumers could not effectively distinguish between parallel imported and mainstream trade mark goods. The Administration considered that the labelling requirement showing the particulars of parallel importers would be of limited value to consumers.

Labelling requirements for other products

21. The Chairman enquired about the need for implementing additional labelling requirement on beers. DS(CI) replied that the Administration had asked relevant bureaux and departments to review the need for additional labelling requirements for products under their purview. The outcome of the review was summarised in the paper before the Panel. The result indicated that introducing additional labelling requirement on beers would be in line with international practice and would enhance food safety. DS(CI) stressed that the trade had been consulted and accepted the proposal.

22. Mr SIN Chung-kai enquired on details regarding existing labeling requirements for other products. In respect of pharmaceutical products, the Principal Assistant Secretary for Health, Welfare and Food (Health) advised that these products were subject to a stringent control and registration system which required all products to be registered before sale in the market. If a pharmaceutical product was imported into Hong Kong by more than one importer, each importer would need to apply for registration and different registration number would be assigned to the product. Pharmaceutical products must contain all relevant information on their packing, including the name, the active ingredients, the registration number and the name and address of the manufacturer. Information on all pharmaceutical products registered in Hong Kong was also available at the web-site of the Pharmaceutical Service of the Department of Health. As for food and beverages, the Chief Health Inspector (Import/Export) of Food and Environmental Hygiene Department said that there were adequate labelling requirements under the Food and Drugs (Composition and Labelling) Regulations (Cap.132W) for prepackaged foods to enhance food safety. Information provided on the product labels included: (a) name or designation of the food product; (b) durability; (c) special condition for storage or instruction for use; (d) name and address of manufacturer or packer; and (e) count, weight or volume.

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