

Legislative Council Panel on Commerce and Industry

Information Note on

Consumer Education on Parallel Imported Goods and Liability of Retailers Concerning the Sale of Parallel Imported Goods

Purpose

At the meeting on 11 November 2002, Members requested information on the activities planned by the Consumer Council ("the Council") to educate consumers on parallel imported goods. Members also requested information on the legal liability of retailers concerning the sale of parallel imported goods. This paper provides the information requested.

Consumer education

2. We have earmarked resources for the Council to launch publicity activities to educate consumers on how to differentiate between goods supplied by parallel importers and those by authorized distributors, and on the differences in after-sales services offered by authorized distributors and by parallel importers.

3. The publicity activities will be launched shortly before the commencement of the new Trade Marks Ordinance, currently scheduled for the first quarter of this year. The programme will mainly include-

- (i) Announcement of Public Interest - to be broadcast through television and radio stations to educate consumers on the importance of asking questions before purchase on features of goods and the availability of maintenance services; and
- (ii) pamphlet - to explain to consumers the common differences between parallel imported goods and those supplied by authorized distributors in terms of product quality, feature, price and maintenance arrangement, and to provide "points to note" for consumers' reference when purchasing parallel imported goods.

4. In addition, the Council will publish articles about parallel imported goods in its "Choice" magazine from time to time. The Council is also preparing a Model Code of Competition and Consumer Protection that will include, among other things, suggested ways for retailers to disclose information of goods (e.g. features and maintenance arrangement) to

consumers before sale. The Council will promote the Code to various trade bodies with a view to assisting them to formulate code of conducts relevant to their trade.

Legal liability of retailers of parallel imported goods

5. We believe that Members' concerns are about the liability of retailers who sell defective parallel imported goods to consumers, or who withhold from or misrepresent to consumers about information such as maintenance arrangement of parallel imported goods. Apart from the relevant provisions in the new Trade Marks Ordinance (see paragraph 6), there are no specific provisions on liability of retailers of parallel imported goods per se. However, if goods sold (parallel imported or not) do not meet requirements laid down in various legislation, there could be civil and/or criminal liabilities for the person who sells the goods in question. Examples of these requirements are listed in paragraphs 7 to 13. Consumers should seek independent legal advice if they wish to claim against relevant retailers.

New Trade Marks Ordinance (Cap. 559)

6. Under section 20(1) of the new Trade Marks Ordinance, a registered trade mark is not infringed by the use of the trade mark (which includes offering or exposing goods for sale) in relation to goods which have been put on the market anywhere in the world under that trade mark by the owner or with his consent. However, section 20(2) provides that section 20(1) does not apply where the condition of the goods has been changed or impaired after they have been put on the market, and the use of the trade mark in question in relation to those goods is detrimental to the distinctive character or repute of the trade mark. If such altered or impaired goods are offered for sale by a retailer, the retailer will infringe the trade mark and the trade mark owner may take civil action against the retailer.

Sale of Goods Ordinance (Cap. 26)

7. Under sections 16(2) and (3) of the Sale of Goods Ordinance, where the seller sells goods (parallel imported or not) in the course of a business, there is an implied condition that the goods supplied under the contract (between the seller and the buyer) are of merchantable quality and fit for the particular purpose for which the goods are bought (save for exceptions under certain circumstances stipulated in the Ordinance). If the goods sold are not of merchantable quality or not fit for the specified purpose, consumers have the right to sue for damages.

Consumer Goods Safety Ordinance (Cap. 456)

8. Under section 6(a) of the Consumer Goods Safety Ordinance, a person shall not supply consumer goods (save for some exemptions) unless the goods comply with the general safety requirement or approved standard for the particular goods (if applicable). Under section 2 of the Ordinance, the meaning of "supply" includes "sell" or "offer for sale". A person who contravenes section 6(a) commits an offence but it would be a defence for him if he supplied the goods in the course of carrying on a retail business and at the time he supplied the consumer goods, he neither knew nor had reasonable grounds for believing that the consumer goods failed to comply with the general safety requirement. Hence, if a retailer knowingly supplies defective parallel imported consumer goods which fail to comply with the general safety requirement, he could be criminally liable.

Trade Descriptions Ordinance (Cap. 362)

9. Under section 7 of the Trade Descriptions Ordinance, a person commits an offence if he, in the course of any trade or business, supplies or has in his possession for sale any goods to which a false trade description is applied. As such, if a retailer sells counterfeit goods in disguise of parallel imports or goods from authorized distributors, he could be criminally liable.

Toys and Children's Products Safety Ordinance (Cap. 424)

10. Sections 3, 5 and 8 of the Toys and Children's Products Safety Ordinance provide that no person shall supply a toy or a children's product specified in the Ordinance for local consumption unless it complies with the safety requirements contained in the Ordinance. Under section 2 of the Ordinance, the meaning of "supply" includes "sell" or "offer for sale". Any person who contravenes the provisions in respect of the safety requirements could be criminally liable.

Misrepresentation Ordinance (Cap. 284)

11. Under section 3(2) of the Misrepresentation Ordinance, if a person enters into a contract after an innocent misrepresentation (i.e. a misrepresentation not made fraudulently) has been made to him, and the misrepresentation has become a term of the contract or the contract, then this person has a right to rescind the contract.

12. Where a misrepresentation is made fraudulently, under the common law and depending on the actual circumstances of each case, a person who has suffered loss as a result of reliance upon a misrepresentation which has been fraudulently made to him, has the right to institute civil proceedings to recover his loss.

13. The withholding of information by a retailer may amount to misrepresentation if it is so material that the consumer would not have entered into the contract had he been given such information. Thus, if a retailer withholds from the customer information that no maintenance service will be available to the parallel imported product; and if such information is so material that the consumer would not have purchased the product had he known it, then the consumer may rescind the contract or even sue for damages.

Assistance from the Council

14. Apart from legal remedies, consumers can seek assistance from the Council. The Council, as established by statute, is empowered to, among other things, handle consumer complaint by giving advice to aggrieved consumers, arrange mediation between consumers and relevant retailers, and publicize information of retailers with unfair trade practice. Besides, consumers may apply for assistance under the Consumer Legal Action Fund¹, which provides financial support and legal assistance for the benefit of, particularly, groups of consumers with similar grievances in cases involving significant public interest and injustice. Since the establishment of the Fund in 1994 and up until October 2002, the Fund had considered 52 groups of cases and granted assistance to 20.

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¹ The Fund was set up on 30 November 1994 with a Government grant of \$10 million. Through supporting justifiable cases, the Fund also aims to deter business malpractice and educate members of the public as to their consumer rights.