

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2972/05-06

(These minutes have been  
seen by the Administration)

Ref : CB2/BC/11/04

**Bills Committee on  
Smoking (Public Health) (Amendment) Bill 2005**

**Minutes of the 40<sup>th</sup> meeting  
held on Monday, 19 June 2006 at 5:30 pm  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Andrew CHENG Kar-foo (Chairman)  
Hon James TIEN Pei-chun, GBS, JP  
Hon Martin LEE Chu-ming, SC, JP  
Hon Fred LI Wah-ming, JP  
Hon Howard YOUNG, SBS, JP  
Dr Hon YEUNG Sum  
Hon LI Fung-ying, BBS, JP  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Vincent FANG Kang, JP  
Hon LI Kwok-ying, MH  
Hon Alan LEONG Kah-kit, SC  
Dr Hon KWOK Ka-ki  
Hon WONG Ting-kwong, BBS
- Members absent** : Hon Albert CHAN Wai-yip (Deputy Chairman)  
Hon LEE Cheuk-yan  
Hon Emily LAU Wai-hing, JP  
Hon Abraham SHEK Lai-him, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Dr Hon Joseph LEE Kok-long  
Hon LEUNG Kwok-hung  
Hon Albert Jinghan CHENG  
Hon KWONG Chi-kin
- Public Officers attending** : Mrs Ingrid YEUNG  
Deputy Secretary for Health, Welfare and Food (Health)  
Ms Julina CHAN

Principal Assistant Secretary for Health, Welfare and Food  
(Health)

Dr Cindy LAI  
Acting Deputy Director of Health

Mr MUI Kei-fat, Llewellyn  
Senior Government Counsel  
Department of Justice

Mr WONG Hing-hong, Peter  
Senior Assistant Solicitor General  
Department of Justice

Mr CHEUNG Kam-fai, Peter, JP  
Deputy Director of Intellectual Property  
Intellectual Property Department

Ms PANG Shuk-fan, Fanny  
Assistant Director of Intellectual Property (Registration) (Ag.)  
Intellectual Property Department

**Clerk in attendance** : Ms Doris CHAN  
Chief Council Secretary (2) 4

**Staff in attendance** : Miss Monna LAI  
Assistant Legal Adviser 7

Miss Mary SO  
Senior Council Secretary (2) 8

Miss Maggie CHIU  
Legislative Assistant (2) 4

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**I. Meeting with the Administration**

(LC Paper Nos. CB(2)901/05-06(03), CB(2)1726/05-06(01) to (02), CB(2)1897/05-06(01), CB(2)1976/05-06(01), CB(2)2406/05-06(01) to (02), CB(2)2434/05-06(04), CB(2)2456/05-06(01), CB(2)2467/05-06(01) to (03))

The Bills Committee deliberated (Index of proceedings at **Annex**).

2. The Administration was requested to provide a response in writing to the following issues raised by members at the meeting -

- (a) to consider providing a cooling off or transitional period during which the offence under section 10(3) of the Smoking (Public Health) Ordinance (as amended by clause 11 without the proposed “grandfathering and notation” provision) would not be enforced so that the owners of the affected trademarks might take legal proceedings to test the constitutionality of the amended section 10(3); and
  - (b) to provide information on the meaning of “徵用” in Article 105 of the Basic Law with reference to the expression of “deprivation” in the English text of the same Article.
3. The Administration was also requested to -
  - (a) reply by 10:00 am on 20 June 2006 whether the Secretary for Health, Welfare and Food and the Secretary for Justice could attend the meeting of the Bills Committee scheduled for 22 June 2006 from 2:30 pm to 6:30 pm; and
  - (b) provide a full set of the Committee Stage amendments at least one before the meeting scheduled for 22 June 2006 at 8:30 am.

## **II. Dates of next meetings**

4. The Bills Committee would next meet on the following dates -
  - (a) 22 June 2006 at 8:30 am; and
  - (b) 22 June 2006 from 2:30 pm to 6:30 pm.
5. There being no other business, the meeting ended at 8:25 pm.

**Proceedings of the 40<sup>th</sup> meeting of the  
Bills Committee on  
Smoking (Public Health) (Amendment) Bill 2005  
on Monday, 19 June 2006 at 5:30 pm  
in Conference Room A of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject</b>	<b>Action required</b>
000000 - 000748	Chairman	Opening remarks	
000749 - 002028	Admin	Briefing on the Administration's supplementary reply to the Assistant Legal Adviser's letter of 6 June 2006 (LC Paper No. CB(2)2456/05-06(01))	
002029 - 003247	ALA7	Responding to the Administration's supplementary reply (LC Paper No. CB(2)2469/05-06(02))	
003248 - 004027	Mr Martin LEE	Prohibition of the use of the existing trademarks containing the prohibited words did not amount to “徵用” under Article 105 of the Basic Law and the Paris Convention did not allow the use of a trademark which had the nature of deceiving the public	
004028 - 004354	Admin	Referred members to paragraphs 6-7 of LC Paper No. CB(2)2456/05-06(01) on deprivation of property  There were provisions under the existing Trade Marks Ordinance (Cap. 559) to revoke trademarks having the nature of deceiving the public  Article 11 of the WHO Framework Convention on Tobacco Control (FCTC) did not impose an absolute ban on the use of words such as “light” and “mild” so long as they did not have the effect of misleading the public. The proposal of requiring the “grandfathered” brands to bear a notation, in a prescribed form on the packet or retail container, that they were not less harmful to health than other tobacco products should address the concern about them misleading the public	
004355 - 004903	Dr KWOK Ka-ki	If the notation approach could address the issue of misleading the public, then there was no need for adopting the “grandfathering” approach to exiting trademarks containing the prohibited words  Suggested writing to the WHO to seek its view on whether the adoption of the “grandfathering and notation” was in compliance with the FCTC	
004904 - 005035	Admin	There were provisions under section 52 of the Trade Marks Ordinance to revoke trademarks having the nature of deceiving the public	
005036 - 005458	Dr YEUNG Sum	Expressed concern about tobacco companies taking advantage of the time period before the enactment of the Bill to register brand names containing the prohibited words  Requested the Administration to conduct a survey to find out whether the public perceived “Mild Seven” as less harmful to health than other tobacco products or otherwise	

Time marker	Speaker	Subject	Action required
005459 - 010034	Admin	<p>The adoption of the “grandfathering” approach would not preempt the “grandfathered” brands from being revoked under the Trade Marks Ordinance if these brands were proven to have the effect of misleading the public</p> <p>The Intellectual Property Department had refused all applications for registration of trademarks containing the prohibited words in respect of tobacco products since the gazettal of the Bill</p> <p>The Administration considered the “grandfathering and notation” approach” the best solution to deal with existing trademarks containing the prohibited words. as it was uncertain how the court would rule if the affected owners of the trademarks took legal action against the Government for prohibiting them to continue to use the trademarks. Second, it would be very time-consuming and costly to find out each and every existing trademark containing the prohibited words whether it had the effect of misleading the public.</p>	
010035 - 010311	Mr Vincent FANG	Trademarks should be protected, but considered that only those trademarks which had existed for a period of time before the gazettal of the Bill should be grandfathered	
010312 - 010948	Chairman Admin	Suggested taking away the word “Mild” from “Mild Seven”	
010949 - 011852	Mr Alan LEONG Admin	Reasons for choosing the “grandfathering and notation” approach for existing trademarks containing the prohibited words	
011853 - 011930	Mr Alan LEONG Admin	Queried how the “grandfathered” brands with notation could be revoked under the Trade Marks Ordinance	
011931 - 013437	Mr Martin LEE Admin Dr KWOK Ka-ki	Urged the Administration to drop the proposal of adopting the “grandfathering and notation” approach to safeguard public health	
013438 - 013748	Mr Tommy CHEUNG	Considered the “grandfathering and notation” approach could prevent the public from being misled. If the approach was proven to be ineffective in practice, steps could be taken in the next phase of tobacco control to address such	
013749 - 014546	Dr YEUNG Sum Admin	Queried whether prohibiting the use of the trademarks containing the prohibited words would amount to “徵用” under Article 105 of the Basic Law	
014547 - 015154	Mr Alan LEONG Admin	The Administration was requested to consider providing a cooling off or transitional period during which the offence under section 10(3) of the Smoking (Public Health) Ordinance (as amended by clause 11 without the proposed “grandfathering and notation” provision) would not be enforced so that the owners of the affected trademarks might take legal proceedings to test the constitutionality of the amended section 10(3)	<p>✓ (Admin to provide a written response)</p>

Time marker	Speaker	Subject	Action required
015155 - 015712	Mr Martin LEE Admin	Expressed concern about the Administration's belated advice of its stance on allowing existing trademarks containing the prohibited to continue to be used after the enactment of the Bill	
015713 - 020307	Dr KWOK Ka-ki Admin	Implications of prohibiting the use of prohibited words on the packaging of all tobacco products  Whether the Administration would take action to collect evidence that trademarks containing the prohibited words were misleading	
020308 - 021143	Mr Martin LEE Admin	Application of “徵用” under Article 105 of the Basic Law  Why the risk of successful legal challenge against the Government had changed from arguable to serious in the Administration's replies from April to June 2006 should clause 11 be passed in the present form	
021144 - 021722	Dr KWOK Ka-ki Admin	Allowing existing trademarks containing the prohibited words to continue to be used posed a more serious risk of successful legal challenge against the Government than allowing clause 11 to pass in the present form	
021723 - 022141	Mr Martin LEE	The Administration should face up the legal challenge from the tobacco companies arising from the passing of clause 11, rather than surrender without putting up a fight by adopting the “grandfathering and notation” approach	
022142 - 022505	Admin	Reiterated the serious risk should clause 11 be passed in the present form	
022506 - 023244	Dr YEUNG Sum Admin	Expressed regret at the Administration's intention to adopt the “grandfathering and notation” approach  Not convinced that not allowing existing trademarks containing the prohibited words to continue to be used amounted to “徵用”	
023245 - 023443	Mr Martin LEE	Suggested to invite Secretary for Health, Welfare and Food (SHWF) and Secretary for Justice (SJ) to come to answer questions from members at the next meeting	
023444 - 023551	Admin	Not appropriate to release the legal opinions obtained by the Department of Justice from outside the Department	
023552 - 023832	Mr Martin LEE Admin	Disagreed about the serious risk posed to the Government if clause 11 was passed in the present form	
023833 - 024553	Chairman Mr Tommy CHEUNG Dr KWOK Ka-ki Dr YEUNG Sum	Needed to hold additional meetings on 22 June from 2:30 pm to 6:30 pm  The Administration was requested to provide information on the meaning of “徵用” in Article 105 of the Basic Law with reference to the expression of “deprivation” in the English text of the Article	✓ (Admin to provide a written response)

<b>Time marker</b>	<b>Speaker</b>	<b>Subject</b>	<b>Action required</b>
024554 - 024642	Mr Martin LEE Admin	The Administration was requested to reply by 10:00 am on 20 June 2006 whether SHWF and SJ could attend the meeting on 22 June 2006	
024643 - 025408	Chairman Mr Tommy CHEUNG Dr YEUNG Sum Admin	Agreed to discuss the revised and new Committee Stage amendments (CSAs) at the meeting scheduled for 22 June 2006 at 8:30 am first  The Administration was requested to provide a full set of the CSAs at least one day before the meeting on 22 June 2006 at 8:30 am	✓ (Admin to provide the CSAs)

Council Business Division 2  
Legislative Council Secretariat  
30 August 2006