SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 2005

COMMITTEE STAGE

Amendments to be moved by the Secretary for Health, Welfare and Food

Clause

Amendment Proposed

- By deleting paragraph (b) and substituting -
 - "(b) by repealing subsection (3) and substituting -
 - "(3) Any manufacturer of tobacco
 products or his agent, or any wholesale
 distributor of tobacco products, who
 sells, offers for sale or possesses for
 the purpose of sale any tobacco products
 to which section 8 or 9 applies which
 have on their packet or their retail
 container -
 - (a) the words "light",
 "lights", "mild", "milds",
 "low tar", "醇", "焦油含量
 低", "低焦油", "淡味" or "柔
 和"; or

(b) other words which imply or
 suggest that those
 products are less harmful
 than other tobacco
 products,

commits an offence and is liable on summary conviction to a fine at level 5.

- (4) Subsection (3) does not apply to a person who is exempt from that subsection under Schedule 5A.".".
- 19 By deleting the clause and substituting -

"19. Regulations and Orders

Section 18(2) is repealed and the following substituted -

- "(2) Subject to the regulations, the Secretary may by order in the Gazette prescribe all or any of the following matters -
 - (a) the form (including specifications) of -
 - (i) any health warning;
 - (ii) any indication of tar
 and nicotine yields;
 and

(iii) any notation;

(b) the manner in which any of the
 matters referred to in
 paragraph (a)(i) to (iii) is to
 be displayed.".".

New By adding after clause 22 -

"22B. Schedule added

The following is added -

"SCHEDULE 5A [s. 10(4)]

EXEMPTION FROM SECTION 10(3) OF THE ORDINANCE

1. Interpretation

(1) In this Schedule -

"appointed day" (指定日期) means the day on
which the Smoking (Public Health)

(Amendment) Ordinance 2006 (of 2006)
is published in the Gazette;

"cigarettes" (香煙) means any cigarettes to which section 8 of the Ordinance applies;

"proscribed term" (禁用字眼) means -

- (a) the words "light", "lights",
 "mild", "milds", "low tar",
 "醇", "焦油含量低", "低焦油", "淡
 味" or "柔和"; or
- (b) other words which imply or
 suggest that any tobacco
 products are less harmful than
 others;
- "specified person" (指明人士) means a
 manufacturer or his agent, or a wholesale
 distributor;
- "specified tobacco product" (指明煙草產品) means any cigar, pipe tobacco or cigarette tobacco to which section 9 of the Ordinance applies;
 - (2) In this Schedule -
 - (a) a reference to a specified
 person who sells any tobacco
 products includes a reference
 to a specified person who
 offers for sale, or possesses
 for the purpose of sale, any
 tobacco products; and

- (b) a reference to any tobacco
 products sold by a specified
 person shall be construed
 accordingly.
- (3) In this Schedule, the expressions listed in the left-hand column below shall have the same meaning as defined in, or shall be be construed in accordance with, the provisions of the Trade Marks Ordinance (Cap. 559) listed in the right-hand column in relation to those expressions.

Expression	Relevant Provision	
date of registration (註冊日期)	section	48
owner (in relation to a	section	2(1)
registered trade mark)(註冊		
商標的擁有人)		
owner of a well-known trade	section	4(3)
mark (馳名商標的擁有人)		
the register (註冊紀錄冊)	section	8(1)
registered trade mark (註冊商標)	section	2(1)
registration (註冊)	section	8(2)
trade mark (商標)	section	3

use (of trade mark) (使用(商標)) section 6
well-known trade mark (馳名商標) section 4

Exemption for certain trade marks and trade names on packet or retail container of cigarettes

For the purposes of section 10(4) of the Ordinance, a specified person who sells any cigarettes which have on their packet or retail container any proscribed term is exempt from section 10(3) of the Ordinance if he proves that -

- (a) the proscribed term is, or
 forms part of,
 - (i) a registered trade
 mark that complies
 with all the
 requirements
 specified in relation
 to such a trade mark
 in section 4;
 - (ii) an unregistered trade
 mark or trade name
 that complies with
 all the requirements
 specified in relation

to such a trade mark
or trade name in
section 5; or

- (iii) a well-known trade
 mark that complies
 with all the
 requirements
 specified in relation
 to such a trade mark
 in section 6;
- (b) the proscribed term is used on the packet or retail container only as, or as part of, that trade mark or trade name, and in the notation mentioned in paragraph (e), and is not used in connection with any other expression or description on the packet or retail container;
- (c) the specified person is the owner of that trade mark or trade name or his licensee, agent or authorized user;

- (d) the cigarettes have been determined under section 16 of the Ordinance and the regulations to have a tar yield of 9 milligrams or less; and
- (e) the packet of the cigarettes, and if the packet is within a retail container, the container also, bear a notation in the prescribed form and manner.

3. Exemption for certain trade marks and trade names on retail container of specified tobacco products

For the purposes of section 10(4) of the Ordinance, a specified person who sells any specified tobacco products which have on their retail container any proscribed term is exempt from section 10(3) of the Ordinance if he proves that -

- (a) the proscribed term is, or
 forms part of,
 - (i) a registered trade
 mark that complies
 with all the
 requirements
 specified in relation

- to such a trade mark
 in section 4;
- (ii) an unregistered trade
 mark or trade name
 that complies with
 all the requirements
 specified in relation
 to such a trade mark
 or trade name in
 section 5; or
- (iii) a well-known trade
 mark that complies
 with all the
 requirements
 specified in relation
 to such a trade mark
 in section 6;
- (b) the proscribed term is used on the retail container only as, or as part of, that trade mark or trade name, and in the notation mentioned in paragraph (d), and is not used in connection with any other expression or description on the retail container;

- (c) the specified person is the
 owner of that trade mark or
 trade name or his licensee,
 agent or authorized user; and
- (d) the retail container of the specified tobacco products bears a notation in the prescribed form and manner.

4. Requirements specified in relation to registered trade mark

For the purposes of sections 2(a)(i) and 3(a)(i), the following are the requirements specified in relation to a registered trade mark used on the packet or retail container of any tobacco products sold by a specified person -

- (a) the date of registration of that trade mark is before the appointed day;
- (b) that trade mark is registered in respect of tobacco products; and

(c) that trade mark remains registered in the register at the time when the tobacco products are sold by the specified person.

5. Requirements specified in relation to unregistered trade mark or trade name

For the purposes of sections 2(a)(ii) and 3(a)(ii), the following are the requirements specified in relation to an unregistered trade mark or trade name used on the packet or retail container of any tobacco products sold by a specified person -

- (a) the specified person has begun to use that trade mark or trade name in good faith continuously in the course of retail sale of tobacco products in Hong Kong before the appointed day;
- (b) that trade mark or trade name
 is capable of -
 - (i) distinguishing the
 tobacco products sold
 by the specified
 person from the
 tobacco products of

other undertakings; and

- (ii) in the case of a
 trade mark, being
 represented
 graphically;
- (c) that trade mark or trade name is not subject to a permanent injunction granted by the court against its use based on fraud or other similar grounds under the common law; and
- (d) that trade mark or trade name
 was not previously a registered
 trade mark the registration of
 which has been either -
 - (i) revoked on the ground
 for being liable to
 mislead the public
 under section
 52(2)(c) of the Trade
 Marks Ordinance (Cap.
 559); or
 - (ii) declared invalid
 under section 53(3)
 of that Ordinance on
 the ground that the

trade mark was
registered in
contravention of
section 11 of that
Ordinance for being
likely to deceive the
public.

Requirements specified in relation to well-known trade mark

For the purposes of sections 2(a)(iii) and 3(a)(iii), the following are the requirements specified in relation to a well-known trade mark used on the packet or retail container of any tobacco products sold by a specified person -

- (a) that trade mark has begun to be well known in Hong Kong in respect of tobacco products before the appointed day;
- (b) that trade mark is not subject to a permanent injunction granted by the court against its use based on fraud or other similar grounds under the common law; and
- (c) that trade mark was not

previously a registered trade

mark the registration of which

has been either -

- (i) revoked on the ground
 for being liable to
 mislead the public
 under section
 52(2)(c) of the Trade
 Marks Ordinance (Cap.
 559); or
- (ii) declared invalid
 under section 53(3)
 of that Ordinance on
 the ground that the
 trade mark was
 registered in
 contravention of
 section 11 of that
 Ordinance for being
 likely to deceive the
 public.

7. Effect of this Schedule

Nothing in this Schedule affects the operation of the Trade Marks Ordinance (Cap. 559) or any other enactment or rule of law.

8. Transitional provision

- (1) Despite section 2, a specified person who sells, before the first anniversary of the appointed day, any cigarettes which have on their packet or retail container any proscribed term is exempt from section 10(3) of the Ordinance so long as he proves that all the requirements in section 2(a) to (d) of this Schedule are complied with.
- (2) Despite section 3, a specified person who sells, before the first anniversary of the appointed day, any specified tobacco products which have on their retail container any proscribed term is exempt from section 10(3) of the Ordinance so long as he proves that all the requirements in section 3(a) to (c) of this Schedule are complied with.".".

New By adding after clause 34 -

"34A. Paragraphs added

The following is added -

- "4C. Notation on packet or retail container of tobacco products (other than retail container containing one cigar)
 - (1) For the purposes of sections 2(e) and 3(d) of Schedule 5A to the Ordinance, this paragraph applies to any packet or retail

container of tobacco products to which that Schedule applies (other than a retail container containing one cigar).

- (2) Each packet and each retail container shall bear a notation in the form set out in Part IIC of the Schedule to this Order.
- (3) Subject to subparagraphs (4) and (8) -
 - (a) the notation shall appear on the next 2 largest surfaces other than the 2 largest surfaces of the packet and of the retail container; and
 - (b) one of those surfaces shall bear the Chinese version of the notation and the other surface shall bear the English version of the notation.
- (4) If a packet or retail container is in the form of a drum, the Chinese version of the notation shall appear on the curved surface of the drum and the English version of the notation shall appear on the lid.
- (5) Subject to subparagraph (6), the Chinese or English version of the notation shall be of a size that covers at least 45% of

the area of the surface on which that version appears.

- (6) If a packet or retail container is in the form of a drum, the Chinese or English version of the notation shall be of a size that covers at least 25% of the area of the surface on which that version appears.
- (7) No notation shall appear in such a manner that it is obscured by any affixture to the packet or retail container, the wrapping of the packet or retail container or any affixture to the wrapping of the packet or retail container.
- (8) The notation may be printed on a label securely affixed to the packets or retail containers -
 - (a) if the packets or retail
 containers are made of metal or
 are plastic drums;
 - (b) with the approval of the
 Commissioner of Customs and
 Excise where he is satisfied
 that -
 - (i) the circumstances in which the packets or retail containers are in Hong Kong, or are

to be brought to Hong
Kong, are such that
they could not
reasonably be
expected to have had
printed on them a
notation at the time
of their manufacture;
and

(ii) the approval is
 required for a
 limited period of
 time or in relation
 to a particular
 consignment of
 tobacco products
 only.

4D. Notation on retail container containing one cigar

- (1) For the purposes of section 3(d) of Schedule 5A to the Ordinance, this paragraph applies to any retail container containing one cigar to which that Schedule applies.
- (2) Each retail container shall bear a notation in the form set out in Part IIC of the Schedule to this Order.

- (3) Subject to subparagraph (5), the Chinese and English versions of the notation shall appear on the largest surface of the retail container.
- (4) No notation shall appear in such a manner that it is obscured by any affixture to the retail container, the wrapping of the retail container or any affixture to the wrapping of the retail container.
- (5) The notation may be printed on a label securely affixed to the retail containers with the approval of the Commissioner of Customs and Excise where he is satisfied that the circumstances in which the retail containers are in Hong Kong, or are to be brought to Hong Kong, are such that they could not reasonably be expected to have had printed on them a notation at the time of their manufacture."."

36 By adding -

(da) by adding -

"PART IIC

Form of Notation on Packet or Retail Container of Tobacco Products

Chinese version

警告: " 並不表示本產品對健康的害處小於其他煙草產品

English version

WARNING: " " DO(ES) NOT MEAN
THAT THIS PRODUCT IS LESS
HARMFUL TO HEALTH THAN OTHER
TOBACCO PRODUCTS

Specifications:

- 1. The form is rectangular in shape and surrounded by a black line as demarcation. In the case of a retail container containing one cigar, the width and the length of the form are 7 cm and 3 cm respectively.
- 2. The notation contains the message in words as set out in the form and shall be completed by inserting between the quotation marks in the form each proscribed term as defined in section 1 of Schedule 5A to the Ordinance which

- appears on the packet or retail container.
- 3. The background colour is white.
- 4. For the Chinese version, the characters are printed in "中黑體" typeface. For the English version, the letters are printed in Univers Bold typeface.
- 5. All characters and letters are printed in black.".".
- In the proposed section 19, by deleting subsection (3).