

立法會
Legislative Council

LC Paper No. CB(1)789/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/07

Bills Committee on Trade Descriptions (Amendment) Bill 2007

**Minutes of first meeting on
Thursday, 24 January 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Fred LI Wah-ming, JP (Chairman)
Hon Margaret NG
Hon SIN Chung-kai, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Ting-kwong, BBS

**Public officers
attending** : Agenda item II

Ms Annie CHOI Suk-han, JP
Deputy Secretary for Commerce and Economic Development
(Commerce and Industry)³

Mr Luke AU YEUNG Ho-lok
Principal Assistant Secretary for Commerce and Economic
Development (Commerce and Industry)⁶

Ms Winnie CHAN Chor-wing
Assistant Secretary for Commerce and Economic
Development (Commerce and Industry) Special Duties 1B

Ms PAK Suet-yee
Assistant Secretary for Commerce and Economic
Development (Commerce and Industry) Special Duties 4

Mr CHEUNG Sai-yan
Head of Trade Controls
Customs and Excise Department

Mr WONG Shiu-ming
Head of Consumer Protection and Prosecution Bureau,
Customs and Excise Department

Mr Gilbert MO Sik-keung
Deputy Law Draftsman
Department of Justice

Ms Karmen KWOK Man-yi
Government Counsel
Department of Justice

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)6

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Council Secretary (1)1

Action

I Election of Chairman

Mr Fred LI Wah-ming, the member who had the highest precedence in the Council among all members of the Bills Committee present, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr Fred LI Wah-ming was nominated by Mr SIN Chung-kai and the nomination was seconded by Ms Audrey EU, Ms Margaret NG and Mr WONG Ting-kwong. Mr LI accepted the nomination. As there was no other nomination, Mr Fred LI was elected Chairman of the Bills Committee.

3. Members present agreed that there was no need to elect a Deputy Chairman for the Bills Committee.

II. Meeting with the Administration

- (LC Paper No. CB(3)250/07-08 -- The Bill
- Ref: EDB CR2/3310/01(2) -- The Legislative Council Brief on "Trade Descriptions (Amendment) Bill 2007" issued by the Commerce and Economic Development Bureau
- LC Paper No. LS34/07-08 -- The Legal Service Division Report
- LC Paper No. CB(1)649/07-08(02) -- Marked-up copy of the Bill prepared by the Legal Service Division
- LC Paper No. CB(1)649/07-08(03) -- Paper on Trade Descriptions (Amendment) Bill 2007 prepared by the Legislative Council Secretariat (Background brief)
- LC Paper No. CB(1)649/07-08(04) and (05) -- Assistant Legal Adviser's letter dated 9 January 2008 and the Administration's reply dated 21 January 2008)

4. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

5. To facilitate members' understanding of overseas' practice in tackling trade malpractices, the Administration was requested to provide a paper comparing the Amendment Bill with comparable overseas legislation on false trade descriptions and misleading representations regarding price indication, after-sale services, and connection with sponsorship of celebrities or prestigious organizations. The comparison should cover aspects including the purpose and scope of the legislation, the specific trade malpractices targeted at, effectiveness of the provisions in prohibiting the trade malpractices, and enforcement difficulties, if any.

6. In order to address members' concern about the restrictive scope of the Amendment Bill, the Administration was requested to consider and give written responses to members' views and suggestions, as follows:

- (a) Extending the scope of the proposed section 13A to cover "計量單位" (unit of measurement) and other situations of misleading price indications by making suitable reference to relevant provisions of the

Weights and Measures Ordinance (Cap. 68); and

- (b) Reflecting to the Consumer Council on the need to regulate false or misleading representations on sale of goods or services conducted through mail, telephone or Internet orders, and to regulate false or misleading information or representations provided in advertisements on products or services.

Public consultation

7. The Bills Committee agreed to invite the public to give views on the Amendment Bill by announcing an invitation for views on the LegCo website, and writing to the 18 District Councils. The Bills Committee also agreed to invite submissions from the organizations which had been invited by the Administration to give views on the legislative proposals.

(Post-meeting note: The Bills Committee posted a notice on the LegCo website on 25 January 2008 and wrote to the 18 District Councils and the organizations concerned to invite submissions by 6 February 2008. Members were informed of the arrangements and invited to propose other invitees, if any, vide LC Paper No. CB(1)689/07-08 issued on 28 January 2008.)

Meeting with deputations

8. The Bills Committee further agreed to meet with deputations and the Administration on Monday, 18 February 2008, from 10:45 am to 12:45 pm.

Schedule of meetings

9. Members also agreed to schedule further meetings in March and April 2008 for the Bills Committee to scrutinize the Amendment Bill.

(Post-meeting note: With the concurrence of the Chairman, a list of meeting dates had been worked out. Members were invited to indicate their availability on the proposed dates vide LC Paper No. CB(1)703/07-08 issued on 28 January 2008.)

III. Any other business

10. There being no other business, the meeting ended at 6:30 pm.

**Proceedings of the first meeting of
the Bills Committee on
Trade Descriptions (Amendment) Bill 2007
on Thursday, 24 January 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000127 – 000416	Mr Fred LI Mr SIN Chung-kai Ms Audrey EU Ms Margaret NG Mr WONG Ting-kwong	Election of Chairman	
000417 – 001049	Chairman Administration	<p>(a) Briefing by the Administration on the Trade Descriptions (Amendment) Bill 2007 (the Amendment Bill) (File ref.: EDB CR2/3310/01(2)) which sought to expand the definition of "trade description" to cover certain matters relating to warranty and after-sale repair and maintenance services for goods, to prohibit retailers from giving misleading price indications and making false or misleading representations to deceive consumers</p> <p>(b) The Administration's advice that it would also amend and make eight sets of subsidiary legislation under the Trade Descriptions Ordinance (Cap. 362) (TDO) to deal with misrepresentations regarding "natural Fei Cui", "diamond", "platinum", unclear/inadequate information provided in invoices for gold, platinum, and misrepresentations regarding the core features of electronic products</p>	
001050 – 001236	Chairman Mr WONG Ting-kwong Mr Vincent FANG Administration	<p>(a) Mr Vincent FANG's urge on the need to step up efforts to invite the public and the trades to give views on the Amendment Bill, as out of 132 trade associations consulted by the Administration only 17 had provided written comments</p> <p>(b) The Administration's advice that professional bodies, such as the Hong Kong Bar Association and the Law Society of Hong Kong, had expressed that they had no comments on the Amendment Bill</p> <p>(c) Mr WONG Ting-kwong's suggestion of inviting views from the Hong Kong and Kowloon General Merchandise Merchants' Association Limited, which was not on the list of organizations consulted by the Administration</p>	

Time marker	Speaker	Subject(s)	Action required
001237 – 001659	Chairman Ms Audrey EU Administration	<p>(a) Ms Audrey EU's concern that the proposed section 13C of the Amendment Bill, which aimed to prohibit false or misleading representations regarding seller's connection with another person, should also cover false or misleading representations by the sales persons on matters such as certain electronic product being the latest model. She recalled that there had been frequent complaints of this nature to the Consumer Council (CC) in recent years</p> <p>(b) The Administration's response as follows:</p> <p>(i) New subsidiary legislation would be made to discourage retailers from giving misrepresentations regarding the core features of five popular electronic products. The retailers would be required to include in the sales invoice information relating to matters such as the model number of the product, the core features and the availability or otherwise of after-sale inspection or repair services, and if such were available, the location and duration of such services; and</p> <p>(ii) The scope of the Amendment Bill was restricted as its aim was to tackle the more prevalent malpractices of dishonest retailers of inducing consumers to enter into transactions. A comprehensive review (the Stage Two Review) covering a wide range of issues was being conducted by CC to identify areas for improvement in consumer protection against unfair, misleading and deceptive trade practices</p> <p>(c) Ms Audrey EU's further enquiry about the timing for introducing further legislative proposals into the Legislative Council (LegCo)</p> <p>(d) The Administration's advice that it planned to table the concerned subsidiary legislation at LegCo by March/April 2008. CC would submit a report on the Stage Two Review in February 2008 and the Government would examine the recommendations in detail and map out the way forward as soon as possible</p>	
001952 – 003546	Chairman Mr Andrew LEUNG Administration	<p>(a) Mr Andrew LEUNG's concern about compliance burden on the retailers, in particular the small scale ones who did not have the required resources to upgrade their computer systems, and hence it was necessary for the Administration to strike a balance between protecting consumers' interests and avoiding imposing compliance burden on honest retailers</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) Mr LEUNG's request for the Administration to provide an information paper comparing the Amendment Bill and comparable overseas legislation</p> <p>(c) The Administration's response as follows:</p> <p>(i) In drafting the Amendment Bill, the Administration had already balanced the interests of consumers and the retail trade; and</p> <p>(ii) The retail trade was generally supportive of the legislative proposals. It was not envisaged that honest retailers would have difficulty in meeting the new requirements proposed in the Amendment Bill. In response to the concern about compliance burden expressed by some associations, the Administration would provide a grace period of, say, six months to enable retailers to make the necessary preparations, such as upgrading their computer systems</p>	<p>The Administration to provide an information paper as per paragraph 5 of the minutes</p>
<p>002402 – 003159</p>	<p>Chairman Mr WONG Ting-kwong Administration</p>	<p>(a) Mr WONG Ting-kwong's concerns as follows:</p> <p>(i) Whether it was necessary to introduce the Amendment Bill as the enforcement actions agencies, such as the Customs and Excise Department, could already take enforcement against false trade descriptions and misstatements under TDO; and</p> <p>(ii) The scope of the Amendment Bill was very restrictive as it failed to cover certain prevalent malpractices relating to provision of services and misuse of clients' personal information for other purposes</p> <p>(b) The Administration's responses as follows:</p> <p>(i) While the existing definition of "trade description" in TDO could already tackle some misleading information or misrepresentations on goods, the Amendment Bill sought to expand the definition to cover certain matters relating to warranty and after-sale repair and maintenance services for goods, and pinpoint a few areas where more prevalent malpractices were found in recent years. However, misrepresentations regarding a product model as the latest one was outside the scope of the Amendment Bill; and</p> <p>(ii) The Stage Two Review had already covered trade malpractices in the service sectors such as telecommunications and beauty services</p>	

Time marker	Speaker	Subject(s)	Action required
003547 – 003959	Chairman Assistant Legal Advisor (ALA) Administration	<p><u>ALA's concerns raised with the Administration and the latter's response</u> (LC Paper No. CB(1)649/07-08(04) and (05))</p> <p>(a) ALA's concern about the restrictive scope of the proposed section 13A which might limit the effect of the proposed section in protecting consumers against misleading price indication. For instance, the application of the section was confined to displaying a sign which indicated a price set by reference to any weight unit. Situations where the price of goods was set by other units such as "item" and "piece" etc and where the price and weight unit were indicated on more than one sign would not be covered; and</p> <p>(b) The Administration's explanation that according to the complaints received, the malpractice of displaying misleading price indication was mainly found in individual retailers of a few trades only such as Chinese medicine and dried seafood shops. It had no intention to extend the control to other units of measurement as similar malpractices were not prevalent in other trades</p>	
004000 – 005443	Chairman Mr WONG Ting-kwong Administration Ms Audrey EU Mr Andrew LEUNG ALA	<p>(a) Mr WONG Ting-kwong's suggestion to use "計量單位" (unit of measurement) instead to prevent dishonest retailers from using units other than "weight unit" in the price indication to circumvent the proposed section 13A</p> <p>(b) The Administration's concern about the unclear scope of "unit of measurement" which might carry different meaning to different people and the need to define the term clearly to ensure consistent interpretation</p> <p>(c) Members' view that the Administration should study the feasibility of making reference to the definition of "unit of measurement" in the Weights and Measures Ordinance (Cap. 68) and consider whether it would be used to replace "weight unit" in the proposed section 13A</p> <p>(d) Ms Audrey EU's reflection of other dishonest ways in displaying price indication and her concern that to facilitate enforcement, a general provision to prohibit misleading price indication should be added in the Amendment Bill before elaborating the requirements for indicating prices</p> <p>(e) ALA's advice that general provision as suggested by Ms Audrey EU was provided under the Australia's Trade Practices Act 1974</p>	The Administration to provide an information paper as per paragraph 6(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>(f) Mr Andrew LEUNG's view that the proposed section 13A should adopt a wider scope</p> <p>(g) The Administration's advice that the proposed section 13A was to target specifically at dishonest retailers of dried seafood and grocery, and Chinese medicine. It had thus consulted the relevant associations widely about the proposed requirement. The Administration might need to consult associations of other trades further if the control was to be extended. Nevertheless, it would consider members' suggestions and views</p>	<p>The Administration to provide an information paper as per paragraph 6(a) of the minutes</p>
<p>005444 – 010436</p>	<p>Chairman Ms Audrey EU Administration Mr WONG Ting-kwong</p>	<p>(a) Ms Audrey EU's concerns and views as follows:</p> <p>(i) Whether the Amendment Bill would cover misleading price indication on products shown in electronic and print media. For example, there were cases where customers were attracted to shops with products offered in extremely low prices in the TV commercials or newspaper advertisements; however, when the customers went to the retail shops, they were told that the products concerned were sold out and were persuaded to purchase other products in normal or higher prices;</p> <p>(ii) Whether advertisements on products would be considered as displaying signs indicating the price of goods "in the course of any trade or business" under the proposed section 13A(1); and</p> <p>(iii) The need to regulate false or misleading representations of goods or services sold through mail or electronic orders to ensure that law making would tie in with advancement in the modes of shopping</p> <p>(b) The Administration's responses as follows:</p> <p>(i) The Amendment Bill only covered questionable trade descriptions found at the time of transaction. The legislative proposals involved relatively simple amendments that could be enacted in a fairly short time with a view to eradicating the more prevalent sales malpractices quickly; and</p> <p>(ii) Sales of products or services conducted through mail or electronic media were different from the traditional way of selling products at retail shops. The issue would require longer time to examine. The Administration would reflect members' view to CC for it to cover the subject in the Stage</p>	<p>The Administration to provide an information paper as per paragraph 6(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		Two Review	
010437 – 011950	Chairman ALA Ms Audrey EU Mr WONG Ting-kwong Administration	<p>(a) ALA's concerns as follows:</p> <ul style="list-style-type: none"> (i) The rationale for confining the offence under the proposed section 13C(1) to false representations and excluding misleading representations; (ii) The difficulties in enforcing the proposed section 13C(2) because it was necessary to prove that the seller had failed to take reasonable steps to prevent the information recipient, who had mistaken that the seller was connected with or endorsed by a reputable individual or body, from believing that the seller was so connected; (iii) The present drafting of the proposed section 13C(1), which made it an offence for a person to make false representations regarding a seller's connection with any individual or body, appeared to be wider in scope than the legislative intent of the section as stated in the LegCo Brief and Explanatory Memorandum of the Amendment Bill that the individual or body concerned must be of good standing or reputation; and (iv) Whether the Amendment Bill sought to prohibit false or misleading representations that the product concerned was sponsored or endorsed by an individual or body of good standing and reputation <p>(b) The Administration's clarification as follows:</p> <ul style="list-style-type: none"> (i) The representation to other persons made by a seller intentionally could only be true or false. Misleading representations could be less direct whereby the name of the subject individual or body represented was identical with, or very similar to, that of the reputable individual or body; (ii) The proposed section 13C(2) was a technical provision drafted to plug the possible loophole and prevent the person, who gave false representations deliberately, from arguing that the information recipient had mistaken and mixed up the identities of the reputable individual or body with another ordinary individual bearing identical or similar names; (iii) False representations under the proposed section 13C(1) could be made with reference 	

Time marker	Speaker	Subject(s)	Action required
		<p>to any individual, such as a customer currently shopping at the retail premises or a friend of the information recipient, who might not be famous; and</p> <p>(iv) False or misleading representations relating to the endorsement of the product concerned had already been covered under existing provisions in TDO</p>	
011951 – 012944	Chairman ALA Ms Audrey EU Administration	<p>(a) ALA's enquiries on whether the offences under the proposed sections 13A, 13B and 13C were strict liability offences and whether an employee of a retailer acting in the course of his employment would be charged for such offences</p> <p>(b) Ms Audrey EU's concerns as follows:</p> <p>(i) Whether the seller would be held liable for the false representations made by an employee; and</p> <p>(ii) The wide scope of the proposed section 13C(3)(c)(i) and whether it would be regarded as a representation that a seller was endorsed by an individual or body if the representation concerned was related to positive evaluation specifically of the product rather than the seller</p> <p>(c) The Administration's responses as follows:</p> <p>(i) Offences under the proposed sections 13A, 13B and 13C were strict liability offences and were applicable to employees of the retailers. Apart from a general defence available under section 26 of TDO, the proposed section 13C(4) provided a defence for the employee charged under the proposed section 13C(1) if he could prove that he had reasonable cause to believe that the representation was true. Moreover, the seller, i.e. the employer, was accountable for the conduct of his employees when they were acting for and on behalf of the employer in conducting business; and</p> <p>(ii) Offences in respect of false trade descriptions of any goods were provided under section 7 of TDO and the proposed section 13C only applied to false and misleading representations in respect of sellers</p> <p>(d) ALA's advice that under section 7 of TDO, any person, who in the course of any trade or business, applied a false trade description to any goods committed an offence, and by virtue of</p>	

Time marker	Speaker	Subject(s)	Action required
		section 6 of TDO, making an oral statement regarding a product would amount to applying a trade description to the product	
012945 – 013217	Chairman	(a) Members' agreement to meet with deputations and the Administration at the next meeting to be held on Monday, 18 February 2008 at 10:45 am (b) Arrangement for further meetings	

Council Business Division 1
Legislative Council Secretariat
11 February 2008