

立法會
Legislative Council

LC Paper No. CB(1)949/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/07

Bills Committee on Trade Descriptions (Amendment) Bill 2007

**Minutes of second meeting on
Monday, 18 February 2008, at 10:45 am
in the Chamber 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
- Mr CHEUNG Sai-yan
Head of Trade Controls
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

Attendance by invitation

: Agenda item II

Civic Party

Mr Tommy WONG Wai-ming
District Developer

Hong Kong Jade Wholesalers & Retailers Association Limited

Ms Winnie SO Wing-kam
Chairman

Mr Peter CHAN Wing-yun
Vice-Chairman

The Hong Kong Institute of Trade Mark Practitioners

Mr Barry YEN
President

Ms Sandra GIBBONS
Councilor

The Hong Kong Chinese Importers' & Exporters' Association

Mr CHAN Fung-ping
Vice President

Hong Kong Jewellery & Jade Manufacturers Association

Mr Sunny CHAN
Director and Head of Jade & Stone Laboratory
Committee

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 Confirmation of minutes and matters arising

(LC Paper No. CB(1)789/07-08 -- Minutes of the meeting held on
24 January 2008)

The minutes of the meeting held on 24 January 2008 were confirmed.

II Meeting with deputations and the Administration

Submissions

LC Paper No. CB(1)808/07-08(03) -- Submission from The Hong Kong
Institute of Trade Mark
Practitioners (English version
only)

LC Paper No. CB(1)808/07-08(04) -- Submission from Hong Kong
General Chamber of Commerce
(English version only)

LC Paper No. CB(1)808/07-08(05) -- Submission from The Hong Kong
Electronic Industries Association
Ltd (English version only)

LC Paper No. CB(1)808/07-08(06) -- Submission from The Chinese
General Chamber of Commerce
(Chinese version only)

LC Paper No. CB(1)808/07-08(07) -- Submission from Sham Shui Po
District Council (Chinese version
only)

LC Paper No. CB(1)808/07-08(08) -- Submission from Hong Kong
Trade Services Council (Chinese
version only)

LC Paper No. CB(1)840/07-08(02) -- Submission from The Civic Party
(subsequently issued on 19 February
2008) (Chinese version only)

LC Paper No. CB(1)840/07-08(03) -- Submission from The Hong Kong
(subsequently issued on 19 February
2008) Chinese Importers' & Exporters'
Association (Chinese version
only)

LC Paper No. CB(1)840/07-08(04) Submission from The Hong Kong
(tabled and subsequently issued on Association of the

19 February 2008) Pharmaceutical industry (English version only)

Papers for this meeting

LC Paper No. CB(1)808/07-08(01) -- List of follow-up actions arising from the discussion on 24 January 2008 prepared by the Legislative Council Secretariat

LC Paper No. CB(1)808/07-08(02) -- Administration's response to item 1 of LC Paper No. CB(1)808/07-08(01))

LC Paper No. CB(1)840/07-08(01) Administration's letter dated 15 February 2008 (English version only)
(tabled and subsequently issued on 19 February 2008)

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

Follow-up actions to be taken by the Administration

3. The Administration was requested to consider and give written response to the views and suggestions made by members and deputations below.

(A) Proposed section 13A(2)

To facilitate compliance by traders in giving clear information regarding the price for goods on signs, consideration should be given to set out the relevant requirements, for example, the size of the price label, the font size of the characters, the distance between the words, letters and numerals, the size of the price indication or the weight unit in relation to other words and letters in the same sign etc;

(B) Proposed section 13C

(a) Concern had been raised about the wide scope of proposed section 13C(2) applicable to all circumstances in the course of any trade, business or profession so that all kinds of representations including verbal, written or visual given by the seller or his employees in relation to the sale of the goods would be caught. The Administration was requested to review the scope of proposed section 13C(2);

(b) Unlike proposed section 13C(1) where giving "false representations" was an offence and a defence was available under proposed section 13C(4), proposed section 13C(2) would impose an onerous burden on the sellers. If the sellers were

connected with or endorsed by any individual or body, they needed to take steps to clarify that their connection with or endorsement by the individual or body was not related to the individual or body who or which was widely known to be of good standing and reputation. The Administration was requested:

- (i) To consider including "intention of the seller" among the criteria in considering the offence under proposed section 13C(2) and the need to provide a defence provision for the offence; and
- (ii) To consider providing details of the reasonable steps to be taken by the seller under proposed section 13C(2)(c) to prevent the information recipient of the representation from believing that the seller was connected with or endorsed by the reputable individual or body;

(C) Comparison with overseas legislation

To facilitate members to have a better understanding on comparable overseas legislation on misleading price indication, connection with or endorsement by any individual or body, and misleading representation on after-sale services, the Administration was requested to provide a further paper comparing the scope of application of the Bill with comparable overseas legislation. The comparison should also cover enforcement experience and difficulties, if any, as well as the effectiveness of the provisions in prohibiting false trade descriptions and misleading representations.

Dates of future meetings

4. The Chairman reminded members that four other meetings had been scheduled as below:

<u>Date</u>	<u>Time</u>
Friday, 29 February 2008	10:45 am to 12:45 pm
Thursday, 6 March 2008	4:30 pm to 6:30 pm
Thursday, 10 April 2008	4:30 pm to 6:30 pm
Tuesday, 22 April 2008	4:30 pm to 6:30 pm

(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, the meeting scheduled for Friday, 29 February 2008 was cancelled. Members were duly informed vide

LC Paper No. Paper No. CB(1)853/07-08 issued on 19 February 2008.)

III Any other business

5. There being no other business, the meeting ended at 12:15 pm.

Council Business Division 1
Legislative Council Secretariat
3 March 2008

**Proceedings of the second meeting of
the Bills Committee on
Trade Descriptions (Amendment) Bill 2007
on Monday, 18 February 2008, at 10:45 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000200 – 000517	Chairman	(a) Welcoming remarks by the Chairman (b) Confirmation of minutes of the meeting held on 24 January 2008 (LC Paper No. CB(1)789/07-08)	
000518 – 001333	Chairman The Civic Party (CP)	<u>Meeting with deputations</u> <i>Presentation of views by The Civic Party (CP)</i> (LC Paper No. CB(1)840/07-08(02)) (a) While CP supported the Government's initiative in introducing amendments to existing legislation to protect consumers, care should be taken to avoid over-legislation and imposing compliance burden on honest traders; (b) The Administration should expedite the introduction of legislative amendments covered under the comprehensive review (the Stage Two Review) currently being undertaken by the Consumer Council (CC) with a view to regulating sales malpractices including those in the service sectors; (c) As the proposed section 13A only sought to regulate price signs set by reference to weight unit, unscrupulous retailers might circumvent the regulation by using other units of measurement, such as length or number of counts, in displaying the price of the goods. The Administration should consider extending the scope of the proposed section to cover other units of measurement; (d) While the Administration had no intention to require mandatory display of price signs by retailers or prohibit price bargaining, the Bill made detailed provisions for display of price sign and on the need to inform potential customers whether the price of the goods included any basic accessories of the goods. There was concern that the provisions might discourage retailers from displaying price signs in order to avoid contravention of the new requirement. The Administration should ensure that consumers would be provided with sufficient information on price to make informed decision on purchases; (e) The lack of clarity of the phrases "substantially less conspicuous" and "unreasonably far apart" under the	

Time marker	Speaker	Subject(s)	Action required
		<p>proposed section 13A(2)(b) might adversely affect retailers' creativity and honest retailers might unwittingly fall foul of the law. The said phrases should be clearly defined;</p> <p>(f) Software like CD-Rom that was associated with electronic products should be included as "basic accessories" in the proposed section 13B(2)(a). Amendments should be considered to clearly spell out the inclusion in the provision;</p> <p>(g) The proposed section 13B might have impact on the sale of parallel imported goods as the "basic accessories" connected with these goods were usually not usable in the local environment. The Administration should clarify whether "basic accessories" referred to in the proposed section 13B(2)(a) was applicable to parallel imported goods; and</p> <p>(h) Sellers might adopt sales strategy to offer goods at reduced prices by excluding basic accessories of or after-sale services for the concerned goods. The proposed section 13B(3)(e), which provided that "the price of the goods at which they were supplied to the seller included the accessories" would be one of the factors for determining whether any basic accessories of any goods were reasonably expected to be included in the price of the goods, might have impact on the above mentioned sales strategy. The Administration should ensure that the Bill could safeguard the interest of consumers in making informed purchase decisions while allowing room for price bargaining</p>	
001334 – 002001	Chairman Hong Kong Jade Wholesalers & Retailers Association Ltd	<p><i>Presentation of views by Hong Kong Jade Wholesalers & Retailers Association Ltd</i></p> <p>(a) The Association proposed to introduce three definitions for Fei Cui to reflect their different qualities:</p> <p>(i) jadeite jade not having been artificially coloured;</p> <p>(ii) jadeite jade not having been artificially coloured but impregnated with resin; and</p> <p>(iii) jadeite jade having been artificially coloured</p> <p>(b) There was concern about whether a seller who described an artificially coloured jadeite jade as natural Fei Cui would commit an offence of making a false representation under the proposed section</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>13C(1); and</p> <p>(c) There was concern about how retailers should record the descriptions of the articles bearing Fei Cui in the invoice or sales receipt</p>	
002002 – 003404	Chairman The Hong Kong Institute of Trade Mark Practitioners (HKITMP)	<p><i>Presentation of views by The Hong Kong Institute of Trade Mark Practitioners (HKITMP)</i> (LC Paper No. CB(1)808/07-08(03))</p> <p>(a) Query about the reason for criminalizing under the Bill certain conduct of retailers which had traditionally been a civil concern. Moreover, the scope of the criminal offences was uncertain and vague since they were expressed in terms unfamiliar to the courts and for which there was no history of case law and jurisprudence;</p> <p>(b) HKITMP was concerned about the impact of the proposed section 13C as misrepresentations were normally disputed by the celebrities themselves or competitors and making out a case in passing off could be difficult. It queried about the appropriateness to impose criminal liability in such an area where certainty was highly in issue;</p> <p>(c) Concern that there was no requirement that the individual or body referred to in the proposed section 13C(1) was reputable. A criminal offence could be committed even if the individual or body actually had no protectable goodwill under the common law;</p> <p>(d) Concern that there was no need to establish confusion and damage to the plaintiff for the purpose of an offence under the proposed section 13C(1) and (2);</p> <p>(e) The terms "false" and "representation" in the proposed section 13C(1) should be clearly defined;</p> <p>(f) Enquiry about whether the proposed section 13C(2) only applied to misunderstanding arising from the use of names and not other indications of a connection such as the use of a photograph or get-up, and whether the use of names meant legitimate identical or similar names;</p> <p>(g) Suggestion to use "confusion" under passing off instead of "likely to mistake" in the proposed section 13C(2) if they were intended to be equivalent;</p> <p>(h) The test of "widely known to be of good standing and reputation" under the proposed section 13C(2)</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>was not the same as "goodwill" under passing off;</p> <p>(i) The phrase "prove that he had reasonable cause to believe that the representation was true" under the proposed section 13C(4) appeared to be vague. It was more appropriate to have a positive requirement for knowledge since it was a defence for a criminal offence;</p> <p>(j) Query about why the provisions in the Trade Descriptions Ordinance (Cap. 362) only applied to goods but not services; and</p> <p>(k) Concern about the enforceability of the proposed amendments since they required many subjective assessments. The Bill coupled with vague and untested language needed to be considered seriously</p>	
003405 – 003837	Chairman The Hong Kong Chinese Importers' & Exporters' Association (HKCIEA)	<p><i>Presentation of views by The Hong Kong Chinese Importers' & Exporters' Association (HKCIEA)</i> (LC Paper No. CB(1)840/07-08(03))</p> <p>(a) Welcomed the proposed amendments to strengthen protection for consumers and tourists, boost business of the retail and tourism industries, and reinforce Hong Kong's reputation as a "Shoppers' paradise";</p> <p>(b) The definition of "trade description" should be expanded to cover the service sectors so as to combat malpractices of the service providers; and</p> <p>(c) Regarding the requirement on price signs for goods, consideration should be given to set out the relevant requirements, such as the size and colour of the price sign, the font size of the characters, the size of the price indication in relation to the weight unit or other units of measurement and the distance between the two</p>	
003838 – 005204	Chairman Administration	<p><u>Preliminary response by the Administration</u></p> <p>(a) The Administration agreed with the suggestion and would consider amendments to extend the scope of the proposed section 13A to cover other units of measurement in addition to "weight unit";</p> <p>(b) The proposed section 13B required sellers of five types of electronic products to, where the price did not include any basic accessories of the goods that were reasonably expected to be included in the price, inform potential customers accordingly. Goods offered in reduced prices made available by excluding basic accessories or after-sale services was</p>	

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		<p>a case in point;</p> <p>(c) The Bill sought to strengthen the protection of consumers, regardless whether the goods involved in the transaction were parallel imported goods;</p> <p>(d) The proposed section 13A made provision for display, in the course of any trade or business, of signs which indicated the price of any goods exposed for sale. As long as the price signs met the criteria set out in the proposed section 13A(2)(b) and gave clear information on the price of the goods, the Administration considered that flexibility should be given to retailers in designing the price signs. The Administration would consider HKCIEA's suggestion of setting requirement on the size of the price indication or the weight unit in relation to other words and letters in the same sign;</p> <p>(e) CC was conducting a comprehensive review to identify areas for improvement in consumer protection against unfair, misleading and deceptive trade practices, including those in the service sectors;</p> <p>(f) Proposed legislative amendments in relation to misrepresentations of natural Fei Cui would be subsidiary legislation to be introduced at a later stage. Under the proposal, "natural" Fei Cui referred to Fei Cui not having been chemically treated;</p> <p>(g) Common law actions like passing off were available for trade marks owners or celebrities to protect their rights. The Bill sought to strengthen the protection for consumers. The proposed section 13C was to prohibit traders from making false or misleading representations regarding their connection with or endorsement by individuals or bodies of good standing and reputation with a view to inducing consumers to enter into transactions;</p> <p>(h) Similar to other legislative proposals, case law concerned might emerge after the enactment of the Bill;</p> <p>(i) The proposed section 13C(3) had set out the circumstances under which the representation made by the seller or his employees would be regarded as connected with an individual or body or endorsed by an individual or body for the purposes of the proposed section 13C(1) and (2); and</p> <p>(j) The proposed section 13C(2) would apply to</p>	<p>The Administration to consider and give written response as per paragraph 3(A) of the minutes</p>

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		<p>situations where the name of an individual or body referred to by the retailer was similar to or identical with the name of another individual or body of "good standing and reputation". Hence, representation in the form of photo or other indication might not be covered</p>	
005205 – 005405	<p>Chairman Hong Kong Jewellery & Jade Manufacturers Association</p>	<p><i>Presentation of views by Hong Kong Jewellery & Jade Manufacturers Association</i></p> <p>The Association was worried that the enforcement of the proposed amendments might affect the operation of the retail industry and cause unnecessary disputes between the retailers and consumers</p>	
005406 – 010840	<p>Chairman Ms Audrey EU Clerk Administration</p>	<p>(a) Ms Audrey EU's concerns and views as follows:</p> <ul style="list-style-type: none"> (i) The Administration should take on board the recommendations of CC made in 2002 to make reference to overseas legislation in regulating unscrupulous sales malpractices; (ii) CC's views on the Bill should be sought; and (iii) Concern about the wide scope of the proposed section 13C(2), covering representations made in the course of any trade, business or profession, and enquiry about the concrete steps to be taken by sellers who had no criminal intent at all in meeting the requirement under the proposed section <p>(b) The Administration's responses as follows:</p> <ul style="list-style-type: none"> (i) CC was a member of the Task Force and it had provided inputs to the present legislative proposals; (ii) The legislative approaches generally adopted overseas in dealing with misleading price indication, connection with or endorsement by any individual or body, and misleading representation on after-sale services had been set out briefly in the Administration's response (LC Paper No CB(1)808/07-08(02)); and (iii) The proposed section 13C(2) was an anti-avoidance provision. It required that if the maker of a representation (the maker) represented that the seller of goods was connected with or endorsed by an individual or body and the name of that individual or body was identical or very similar to that of a reputable individual or body, the maker had to take steps to prevent the information recipient from misbelieving that the seller was 	

Time marker	Speaker	Subject(s)	Action required
		connected with or endorsed by the reputable individual or body. In view of the concern expressed, the Administration would review the scope of the proposed section 13C(2)	The Administration to consider and provide written response as per paragraph 3(B)(a) and 3(B)(b)(ii) of the minutes
010841 – 011122	Chairman HKITMP Administration	<p>(a) HKITMP's concern that there was no requirement that the individual or body must be reputable under the proposed section 13C(1)</p> <p>(b) The Administration's advice that false representation could be made with reference to "any" individual, such as a customer currently shopping at the retail premises who might not be famous</p>	
011123 – 011459	Chairman Mr Alan LEONG Administration	<p>(a) Mr Alan LEONG's concerns as follows:</p> <p>(i) Unlike proposed section 13C(1) which involved a criminal intent, persons committing an offence under proposed section 13C(2) might not have an intent to mislead the information recipient and this should be spelt out clearly in the provision;</p> <p>(ii) Details of reasonable steps to be taken under the proposed section 13C(2)(c) should be provided to facilitate compliance by sellers; and</p> <p>(iii) The Administration should undertake research on overseas experience in implementing similar provisions</p> <p>(b) The Administration's undertaking to study the matters in (a) above</p>	The Administration to consider and provide written response as per paragraph 3(B)(b)(i) and (ii) of the minutes
011500 – 011739	Chairman Administration	<p>(a) The Chairman's concern about the regulation of undesirable trade practices in relation to provision of services such as sale of residential properties, car-parking services, and catering services etc.</p> <p>(b) The Administration's advice that the Stage Two Review had already covered trade malpractices in the service sectors</p>	
011740 – 011959	Chairman Ms Audrey EU Administration	<p>(a) Ms Audrey EU's request and enquiry as follows:</p> <p>(i) The Administration or the Assistant Legal Adviser should compare the scope of application of the Bill with comparable overseas legislation; and</p>	The Administration to provide written response as per paragraph 3(C) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>(ii) Whether the Stage Two Review would include the delegation of authority for CC to initiate litigation collectively on behalf of the consumers concerned against unscrupulous traders</p> <p>(b) The Administration's understanding that the Stage Two Review would include the matters in (a)(ii) above</p>	
012000 – 012348	Chairman CP Administration	<p>(a) CP's concern that the phrase "basic accessories of the goods that are reasonably expected to be included in the price (of goods)" in the proposed section 13B(1)(a) was unclear and the court might have different interpretation of consumers' expectations</p> <p>(b) The Administration's response that after consulting the trades, five criteria such as the prevailing trade practice, the way of packaging the goods etc. for determining whether it was reasonable to expect that the accessories were included in the price of goods were set out in the proposed section 13B(3)</p>	
012349 – 012527	Chairman HKITMP	<p>(a) HKTMP's request for further information in relation to the scrutiny of the Bill</p> <p>(b) The Chairman's advice that</p> <p>(i) All papers received or prepared by the Bills Committee would be uploaded to the website of the Legislative Council on the Internet; and</p> <p>(ii) Deputations were invited to provide further submissions and information to the Bills Committee</p>	
012528 – 012637	Chairman	Dates of next four meetings	