

立法會
Legislative Council

LC Paper No. CB(1)1944/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/11/2

**Bills Committee on
Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012**

**Minutes of the second meeting
held on Thursday, 12 April 2012, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon Fred LI Wah-ming, SBS, JP (Chairman)
Hon James TO Kun-sun
Hon Vincent FANG Kang, SBS, JP
Hon Starry LEE Wai-king, JP
Hon Paul TSE Wai-chun, JP
- Members absent** : Hon WONG Kwok-hing, MH
Hon WONG Ting-kwong, BBS, JP
Dr Hon LEUNG Ka-lau
Hon Tanya CHAN
- Public officers attending** : Agenda Item I

Mrs Alice CHEUNG
Deputy Secretary for Commerce and Economic
Development (Commerce & Industry)³

Mr YAU Kin-chung
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)
Special Duties

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

Mr LAM Po-chuen
Head of Consumer Protection Bureau 2
Customs and Excise Department

Mr Eamonn MORAN
Law Draftsman
Department of Justice

Ms Angie LI Sau-lee
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Mr Joey LO
Senior Council Secretary (1)3

Action

I. Meeting with the Administration

- | | |
|----------------------------------|--|
| (LC Paper No. CB(3)511/11-12 | -- The Bill |
| File Ref: CITBCR 05/08/1 | -- Legislative Council Brief issued by the Commerce and Economic Development Bureau |
| LC Paper No. CB(1)1321/11-12(01) | -- Marked-up copy of the Telecommunications Ordinance prepared by the Legal Service Division |
| LC Paper No. LS37/11-12 | -- Legal Service Division Report |

- LC Paper No. CB(1)1321/11-12(02) -- Paper on Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 prepared by the Legislative Council Secretariat (background brief)
- LC Paper No. CB(1)1321/11-12(03) -- Letter from Assistant Legal Adviser to the Administration dated 15 March 2012
- LC Paper No. CB(1)1510/11-12(01) -- Latest marked-up version showing the proposed amendments to the Trade Descriptions Ordinance and the Telecommunications Ordinance prepared by the Administration)

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

- Admin 2. The Administration was requested to:
- (a) consider amending the phrase "purposes that are outside the person's trade or business" to "non-trade or non-business purposes" in the definition of "consumer" in clause 3(9) of the Bill to avoid ambiguity;
 - (b) consider amending paragraph (c) under the definition of "trade description" in relation to a service in clause 3(9) of the Bill to avoid any possible overlapping of matters covered in paragraphs (d) to (k); and
 - (c) consider, in relation to the definition of "commercial practice" in clause 3(9) of the Bill:
 - (i) whether there was adequate protection for consumers against unfair trade practices under the Bill such that no traders who claimed to engage solely in business to business or wholesale trading would be able to circumvent the measure to prohibit them from applying such practices for the reason that their commercial communication was

not "directly connected with the promotion of a product to consumers or the sale or supply of a product to or from consumers";

- (ii) amending the definition by adding "or indirectly" after "directly" to cover indirect communication/promotion (e.g. product placement in movies or TV shows) ; and
- (iii) provide relevant case law (if any) to illustrate whether mere opinions or trade puff (as opposed to factual statements) about goods or services would amount to "trade descriptions", and advise whether negative advertising (e.g. "Don't buy this product if you want to be miserable for the rest of your life") would constitute "promotion" under the Bill.

3. The Administration was also requested to:

- (a) provide information on the overseas experience in implementing the mandatory cooling-off period arrangement;
- (b) consider including in the speech to be delivered by the Secretary for Commerce and Economic Development (SCED) during the resumption of the Second Reading debate on the Bill the Administration's commitment to further examine the mandatory cooling-off period arrangement to ensure satisfactory implementation of the measure after the passage of the Bill; and
- (c) update members on the proposed timing for commencement of the Bill in the speech to be delivered by SCED during the resumption of the Second Reading debate on the Bill.

(Post-meeting note: The information provided by the Administration on paragraphs 2(c) and 3 was issued to members vide LC Paper Nos. CB(1)1689/11-12(02) and CB(1)1824/11-12(02) on 25 April 2012 and 14 May 2012 respectively. As for paragraphs 2(a) and (b), the Administration's response was being awaited.)

II. Any other business

4. The Chairman reminded members that the third meeting would be held on 24 April 2012 at 8:30 am to receive views from deputations.

5. There being no other business, the meeting ended at 4:06 pm.

Council Business Division 1
Legislative Council Secretariat
22 May 2012

**Proceedings of the second meeting of
Bills Committee on
Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012
on Thursday, 12 April 2012, at 2:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 - 000555	Chairman Administration	Opening remarks by the Chairman	
000556 - 002243	Chairman Ms Starry LEE Administration Mr Vincent Fang	<p>Discussion on the mandatory cooling-off period arrangement.</p> <p>Ms Starry LEE expressed disappointment with the Administration's decision to shelve the earlier planned mandatory cooling-off period proposal. Noting that the Administration would continue to study how to follow up the concerns about the proposal after enactment of the Bill, Ms LEE urged the Administration to address this issue and the way forward in the speech to be delivered by the Secretary for Commerce and Economic Development (SCED) during the resumption of the Second Reading debate on the Bill. Ms LEE also urged the Administration, with the aid of Consumer Council, to engage the trades, such as the beauty industry, in formulating voluntary codes of practice in the meantime. The Administration advised that the Consumer Council had been engaging the beauty industry to formulate voluntary guidelines on best practices for the beauty business.</p>	The Administration to follow up as stated in paragraphs 3 (a) and (b) of the minutes.
002244 - 002429	Chairman Administration	<p>Clause-by-clause examination of the Bill (Chinese version)</p> <p><u>Latest marked-up version (LC Paper No. CB(1)1510/11-12(01))</u></p> <p><u>Long title</u></p> <p><u>Clause 1 – Short title and commencement</u></p> <p>Noting that the Bill, if enacted, would be brought into operation possibly in 2013, the Chairman urged the Administration to expedite the commencement of the Bill and update the Council on the proposed timing for commencement in the speech to be delivered by SCED during the resumption of the Second Reading debate on the Bill.</p>	The Administration to follow up as stated in paragraph 3(c) of the minutes.

Time marker	Speaker	Subject(s)	Action required
002430 - 002522	Chairman Administration	<p><u>Clause 2 - Enactments amended</u></p> <p>Members raised no query.</p>	
002523 - 003348	Chairman Administration Assistant Legal Adviser (ALA)	<p><u>Clause 3 - Section 2 amended (interpretation)</u></p> <p>Discussion on discrepancies between the matters listed under the two definitions of "trade description" in relation to goods and services respectively.</p> <p>The Administration advised that the items provided under the two lists were examples only and not meant to be exhaustive. The Administration would provide a written response to the issues raised in ALA's letter dated 15 March 2012.</p>	
003349 - 004400	Chairman Administration Mr James TO ALA	<p><u>Clause 3(9) – definition of "consumer"</u></p> <p>Mr James TO considered the meaning of the phrase "purposes that are outside the person's trade or business" unclear. He suggested amending it to "non-trade or non-business purposes" for easier understanding.</p> <p>The Administration advised that the wordings of the provision were modeled on the Consumer Protection from Unfair Trading Regulations 2008 of the United Kingdom.</p> <p>ALA suggested that reference be made to local legislation containing definition of "consumer" such as the Unconscionable Contracts Ordinance (UCO) (Cap 458). Section 3 of UCO dealt with the meaning of "dealing as consumer".</p>	The Administration to follow up as stated in paragraph 2(a) of the minutes.
004401 - 004729	Chairman Mr James TO Administration ALA	<p><u>Clause 3(9) – definition of "commercial practice"</u></p> <p>Mr James TO pointed out that traders who claimed to engage solely in business to business or wholesale trading might be able to circumvent the measure to prohibit them from applying unfair trade practices for the reason that their commercial communication was not "directly connected with the promotion of a product to consumers". He expressed concern whether consumers would be protected from such practices if the promotion of product under such circumstances was held to fall outside the definition of "commercial practice" as currently drafted.</p>	The Administration to follow up as stated in paragraph 2(c) of the minutes.
004730 - 012255	Chairman Administration Mr James TO Mr Paul TSE	<p><u>Clause 3(9) – definition of "trade description" in relation to service</u></p> <p>Discussion on whether paragraphs (a) to (k) under the</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>definition of "trade description" in relation to a service constituted an exhaustive list, having regard to overseas legislation.</p> <p>The Administration advised that the definition of "trade description" in relation to a service was not an exhaustive list. The Bill sought to extend the prohibition of false trade description to cover false indications of any matters with respect to goods or services, so as to provide as great protection to consumers as possible. Reference had been made to similar legislation in the United Kingdom, Australia and other common law jurisdictions.</p> <p>Mr Paul TSE opined that it would be too ambitious to compile an all-inclusive list under the definition of "trade description" in relation to a service.</p> <p>Noting the wide coverage of matters in paragraph (c) under the definition of "trade description" in relation to a service, Mr Paul TSE expressed concern whether there was any overlapping of matters covered in paragraphs (d) to (k).</p> <p>Discussion on whether trade puff would be considered "false trade description" under the Bill.</p>	<p>The Administration to follow up as stated in paragraph 2(b) of the minutes.</p>
012256-012646	Chairman Administration ALA	<p>ALA enquired about the use of notes in the Bill (e.g. under proposed definitions of "product" and "trader" in proposed section 2, and in proposed sections 7A, 15(1) and 19) and whether it would be necessary to clarify their status and legislative effect (if any) by adding a provision similar to clause 2(6) of the Companies Bill.</p> <p>Discussion on the use of note in proposed section 15(1).</p> <p>The Administration explained that the notes served as signposts to the relevant provisions and would not affect the interpretation of the legislation. The Administration would provide a written response to the issue raised in ALA's letter dated 15 March 2012.</p>	
012647 - 013647	Chairman Administration Mr James TO	<p>Mr James TO suggested amending the definition of "commercial practice" in clause 3(9) of the Bill by adding "or indirectly" after "directly" to cover indirect communication/promotion (e.g. product placement in movies and TV shows) in addition to direct communication/promotion.</p> <p>The Administration advised that the wordings of the provision were modeled on the Consumer Protection from</p>	<p>The Administration to follow up as stated in paragraph 2(c)(ii) of the minutes.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>Unfair Trading Regulations 2008 of the United Kingdom. Under the Bill, the commercial communication had to be directly connected with the promotion of a product. An indirect connection would be too loose or wide for the purpose of the Bill. Nevertheless, the Administration agreed to consider the suggestion.</p> <p>Discussion on whether an advertisement couched in negative terms (e.g. "Don't buy this product if you wish to be miserable for the rest of your life") would amount to "promotion" under the Bill.</p>	
013648 - 013742	Chairman Administration	Meeting arrangement	

Council Business Division 1
Legislative Council Secretariat
22 May 2012