

## **PCCW submission to the Bills Committee on the proposed amendments to the Trade Descriptions Ordinance**

The members of the PCCW Group support and endorse consumer protection measures. However, the current bill is poorly drafted making it extremely difficult to interpret and apply (and guidelines will not be issued until after the ordinance is in force). The lack of clarity must be rectified to allow business certainty when planning its marketing and sales processes. Uncertainty should not be permitted when strict liability and criminal sanctions are proposed. If amendments are not made the bill will impose unnecessarily high compliance costs and risks on companies and their employees.

Consumer protection issues are better served by clearly drafted provisions which allow both consumers and businesses to identify where the boundaries of acceptable conduct are, and to assess whether the conduct in question may be an offence. This should not require reference to vague provisions or multiple sections to determine whether or not there is a breach. By way of example, in our count a cross – referral to six different sections is required in order to establish whether the offence of applying a false description has been committed under section 7A (s.8, s.6A and 4 definitions in s.2).

In light of this uncertainty PCCW believes more time needs to be given to examine and provisions and consider a more appropriate framework. In particular, the following provisions/issues needs to be examined and resolved:

- Telecommunications licensees should be exempt from the provisions as it fulfills the requirements for exemption extended to other industries (they are subject to existing regulation under the Telecommunications Ordinance and self regulation). The CA should have jurisdiction over these entities (rather than shared jurisdiction with the Commissioner for Customs and Excise) due to the substantial industry-specific and specialized knowledge required for proper enforcement of trade description related matters.
- The drafting of the offence provisions needs to be much clearer and to remove “subjective” elements as much as possible so that businesses can clearly determine what conduct is prohibited. The concepts need to be clearly defined so the frontline staff engaging in conduct with consumers clearly understand what constitutes an offence.
- Given the gravity of the penalties imposed, including criminal and strict liability, the new offences should require proof that an actual consumer has been impacted by the conduct the existing draft in section 13E (misleading omissions) and 13F (Aggressive commercial practices) imposes liability if it “is likely” to affect or have that impact upon the customer.
- The legislation should explicitly state the undertaking mechanism is the preferred option of the enforcement agency and in particular imprisonment should only be considered for the most serious and persistent cases.

- The scope of individuals who are caught under section 20 needs to be more clearly defined (and in particular the meaning of “manager” needs to be defined).
- The right to claim compensation should be linked to the amount of damage suffered, rather than an amount the court thinks fit which may encourage inflammatory awards and vexatious litigation in the hope of achieving windfall damages.

PCCW looks forward to discussing the bill and the matters raised herein with the Bills Committee.

Submitted by  
PCCW  
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