LPIA The Liquor and Provision Industries Association GPO Box 8689, Hong Kong.
Tel: (852)29761138 Fax: (852)2976 1339

Bills Committee on Trade Marks Bill

Meeting on 28 December 1999

Discussion on Parallel Importation into Hong Kong

Introduction

The following remarks are comments on the short paper of the Bills Committee on liberalizing parallel importation of Trade Mark goods and as such are not legal arguments.

The LPIA membership represents many of the leading trademarks for alcoholic beverages, food, drinks and other consumer goods.

The LPIA is happy that it now has the opportunity to express its views, as we strongly believe that the liberalization of parallels is not in the interest of the Hong Kong consumer, nor in the interest of Hong Kong employment, the economy or local industries, contrary to the arguments presented in the above-mentioned paper.

Below we will follow the flow of the paper.

Background

2. We agree that there is a fundamental difference between “legitimate” imported parallel goods and counterfeited products. Although we should mention that parallel importers might be less susceptible to this distinction and are often the source of counterfeited imports.

3. It is important to make a distinction between perishable and non-perishable goods. The LPIA represents many companies which sell products like beer, wine and foods, which either deteriorate over time or deteriorate when not handled carefully or both. It is not as much a safety or health issue, but more a quality issue.
And to have a Trade Mark serve as “badge of control” in that case is very valid. When a consumer is buying certain Trade Marks, he buys a certain quality, which is guaranteed by the Trade Mark owner, and he should be able to count on that quality.

Assessment

4. The liberalization might lower prices, but this is not necessarily in the interest of the Hong Kong consumer:

First of all, to be able to guarantee the quality of above-mentioned goods, it costs money. Systems and procedures have to be set up, special transportation arrangements have to be made. A parallel importer often doesn’t do this, and can therefore offer it more cheaply.

Secondly, because of this lack of controls, Hong Kong can become the dumping place of expired or otherwise difficult to sell products. It now often happens that distributors over the world when they have leftover stock, sell their stock very cheap to Hong Kong parallel importers.

This is obviously not in the interest of the HK consumer nor in the interest of the Trade Mark owner, who sees his, painstakingly built up, consumer trust in the quality of his products, disappear. What happens in the case of a complaint? A parallel importer will not be able to help in many cases and will turn to the official importer or the Trade Mark owner, if he chooses to respond at all.

Taking low prices as the single parameter to measure consumer welfare can therefore produce counterproductive results.

The argument of choice is also ambiguous. It might be true for some new electronic gadgets, not yet available in Hong Kong. However, practice shows us today that parallel importers can not guarantee a steady supply of the goods, because of the opportunistic nature of their business. If left to the parallel importers, the HK consumer can not always count on being able to buy the product to which he has grown accustomed.

Furthermore, the consumer has more than one choice in the food and beverage industry. If he or she doesn't want to pay a particular price for a particular brand, he or she can simply choose among tens of other brands. That's what a free market means, nobody is forced to buy anything. Certain brands are more expensive because of better quality or better image and it is not contrary to the free market principle to charge for these products a higher price.

5. The argument that the liberalization of parallel imports will encourage investments in Hong Kong is grossly misrepresenting the reality.

Who are the people investing in Hong Kong? The Trade Mark owners and the official distributors! When a Trade Mark owner can't be guaranteed that his product will be sold in a proper way; when he can't control the quality of his product and therefore can't control the future of his product in the Hong Kong market, than he will stop investing. The (sometimes huge) amounts spent in marketing (advertising and promotions) will stop; the offices with many qualified Hong Kong employees will be shut down, or even local factories might have to be shut.

It is really absurd to suggest that the loss of investments by these Trade Mark owners will be more than compensated by the parallel importers. These importers will just opportunistically trade what sells easily at a particular moment, to drop it immediately when the going gets tough (while a Trade Mark owner or official importer might keep investing due to his belief and convictions; and then when the product is on the rise again, the parallel importer steps in again for the easy sell).

Parallel importers are taking away business from existing official importers; to suggest that this will increase employment, holds only true if the total volume would increase. This can only happen in the very short term, if at all. As outlined above, the parallel importers will not invest in the brand, which will then eventually decline.

6. A free trade policy should not mean that the Hong Kong consumer should not be able get the quality products he wants, nor should it mean that the companies who try to give the best to these consumers and who invest heavily in the Hong Kong market get punished.

Actually, if it is the intention of Hong Kong to encourage choice among its residents and wants to make quality products available at lower prices, why - in the case of alcoholic beverages - does it choose to put up such high entry barriers in the form of taxes based on an ad valorem system? The fact is that if the taxation was lower, and instead based on alcoholic content as opposed to product value, brand owners could better compete since duty would not be unfairly assessed in favor of parallel importers claiming lower FOB prices (as discussed and pointed out earlier this week in a meeting with the Finance Branch and Customs & Excise).

Conclusion

The LPIA has the strong feeling that in the discussion about the liberalization of Trade Mark Goods many of the goods that it represents are overlooked.

Globalization of trade is indeed a trend, but it is not a trend that brings only good. An economy should be aware and take measures that its consumers are safeguarded against unsafe, unhealthy and below quality products. And the economies should take care of the companies that invest in their marketplace and invest in making sure the products arrive in the right quality at the consumer or take proper action in the case a consumer has a complaint.

In Hong Kong the consumer has many alternatives in choosing his products, with a wide variety in prices. That is very important, that is in his interest; if he doesn't want to pay a certain price for a product, he can choose another one.
But he is always entitled to the quality of the product he expects to buy. And a Trade Mark owner or official distributor is entitled to be able to sell his products at the intended quality, because it takes a lot of effort and money to keep it that way.

Leaving the Trade Marks in the hands of parallel importers means the end of these Trade Marks, as the parallel importers will not invest in the brand. The Hong Kong economy will definitely be hurt when the Trade Mark owners decide not to invest anymore in Hong Kong due to the uncertainty of the future of their brands.

It is therefore the LPIA's strong recommendation that instead of liberalizing the parallel imports for beverages or other perishable or delicate products, to put in place even stricter measures to prevent these parallel imports from taking place.

LPIA, 28 December 1999

* * * * *