



Richmond Wong

2010/10/24 00:09

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cc

bcc

Subject Study by CUHK law students attached

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Dear sirs,

We are senior postgraduate law students studying at the University of Hong Kong and Chinese University of Hong Kong (CUHK). We are well aware of the Hong Kong government's commendable efforts to improve trade practice standards to better protect local consumers and tourists and we would therefore like to submit a report we completed this past summer for the Faculty of Law at CUHK which we hope will prove useful to your internal discussions.

Our report studied predatory trade practices which we found to be alarmingly widespread within Hong Kong's health and beauty industries, but currently inadequately regulated. According to our surveys, over half (55.7%) of the respondents who purchased health or beauty services have been subjected to common unfair trade practices, including bait-and-switch strategy, oppressive or high pressure tactics, and misleading omissions. Eighty percent of male respondents and 86% of female respondents want consumer protection legislation to be extended to services. Only half of our respondents felt that current consumer protection laws provide adequate security.

We also conducted undercover operations at several prominent Hong Kong health clubs and gyms. Some of the unfair sales tactics by these merchants that we uncovered included the following:

- Subjecting consumers to high pressure sales tactics for up to two and a half hours
- Making disingenuous – and potentially dangerous – claims about the scientific/medical efficacy and veracity of their services, such as the use of electrical tissue stimulation to lose body fat
- Aggressively bullying the consumer to use credit card pre-payment
- Preventing the consumer from leaving vendor premises

Our group interviewed individuals who had lost their prepaid subscription fees to Planet Yoga's bankruptcy earlier this year, academics, lawmakers and the Chief Executive of the Consumer Council, Connie Lau. Their views are included in summary form for your reading convenience on pages 10 to 12 of our report.

Our research shows that there urgently needs to be strengthened protection for Hong Kong consumers of health and beauty services. We hope that you will find our research findings of some value to aid your discussion.

Respectfully yours,

Jenny Chow Ching Yi

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Jacqueline Lam Wai-Shan
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Strengthening Sales Practices in the Health and Beauty Industries.pdf

October 23, 2010

Special Duties Division
Commerce, Industry and Tourism Branch
Commerce and Economic Development Bureau
Level 29, One Pacific Place
88 Queensway
Admiralty
Hong Kong

Dear sirs,

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Our report studied predatory trade practices which we found to be alarmingly widespread within Hong Kong's health and beauty industries, but currently inadequately regulated. We conducted surveys with 226 Hong Kong residents in seven districts including Central, Tsim Sha Tsui, Causeway Bay and Shatin. Respondents represented a wide variety of educational backgrounds, occupations and income levels.

According to our surveys, over half (55.7%) of the respondents who purchased health or beauty services have been subjected to common unfair trade practices, including bait-and-switch strategy, oppressive or high pressure tactics, and misleading omissions. Eighty percent of male respondents and 86% of female respondents want consumer protection legislation to be extended to services. Only half of our respondents felt that current consumer protection laws provide adequate security. To a proposed cooling-off period during which consumers can opt-out of a contract they have just signed, 69% of survey takers agreed.

We also conducted undercover operations at several prominent Hong Kong health clubs and gyms. Some of the unfair sales tactics by these merchants that we uncovered included the following:

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- Making disingenuous – and potentially dangerous – claims about the scientific/medical efficacy and veracity of their services, such as the use of electrical tissue stimulation to lose body fat
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Statistics readily available from the Consumer Council website indicate a rising trend in the number of complaints made by consumers against businesses in the "health and recreation" category. There were 469 such complaints in 2008; then, 514 complaints in 2009; and finally, these two figures have already been surpassed by 696 similar reports as of 1 August 2010.¹ For those in the "beauty services" sector, Council statistics show that there were 1353 complaints; 1480 in 2009 and 551 as of the beginning of August this year.²

¹ Complaint Statistics, Consumer Council. Accessed October 3, 2010.

http://www.consumer.org.hk/website/ws_chi/news/complaintstatistics/monthlyupdate.pdf

² Ibid.

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**“What should be done to better protect consumers in
Hong Kong for the sale of services in the
health and beauty industries?”**

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Course Title:

The Individual, the Community and the Law

SLW5003ABC Summer Term

Chinese University of Hong Kong, Faculty of Law

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INTRODUCTION AND BACKGROUND

RESEARCH QUESTION

“What should be done to better protect consumers in Hong Kong for the sale of services in the health and beauty industries?”

RESEARCH BACKGROUND AND PROBLEM IDENTIFICATION

Hong Kong's shops are well known among local and overseas shoppers for offering a smorgasbord of goods and services guaranteed to fit every taste and need. Befitting Hong Kong's international reputation as a shopper's dream, the recently amended Trade Descriptions Ordinance (“TDO”, Cap 362) finally gives consumers protection from misrepresentations of goods (“either applied directly or indirectly, verbal or written, to the goods, during the sale process or in advertisements”).³ However, it crucially excludes protection for unfair sales practices with regards to services. This provides insufficient protection to consumers of services.

The recent closure of yoga centres such as Planet Yoga and Yoga Yoga have only increased public scrutiny on sales practices, particularly in the health and beauty industry. A recent South China Morning Post article reported allegations of misrepresentations made by the club's staff to now-former members regarding the firm's financial health vis-à-vis the renewal of the lease for its facilities.⁴

Accusations of unscrupulous sales conduct in Hong Kong's health and beauty industry are not new however. For over a decade, CHOICE, the Consumer Council's consumer awareness magazine has tracked allegations of commercial impropriety with regards to sales practices in the industry, though there can be little doubt that such tactics were employed for many years even before they were first reported by the council. The October 15, 1996 issue reported that a total of 30 complaints made in the first half of that year against beauty salons specifically. These include an allegation that salon staff withheld the complainant's clothes during one session until she signed an expensive contract worth several thousand dollars.⁵ The November 15, 2005 issue contained a collection of medically unsubstantiated claims regarding the efficacy of health and beauty center weight loss programs including: eliminating fat via electrical stimulation; heat treatment to remove body fat and toxins; guarantees that 10 pounds of body weight could be lost in five hours.⁶

From 2002 to 2007, the Consumer Council revealed that there had been about a 50% increase in complaints of unfair trade tactics.⁷ Recently released statistics compiled by the Council indicate that there were a total of 3,191 such complaints (excluding structured financial products) in 2008, and 4,195 complaints in 2009.

³ Pg. 3. Economic Development Panel. “Strengthening Consumer Protection Legislation to Tackle Unfair Trade Practices: Broad Policy Directions.”

⁴ Tanna Chong and Amy Nip. “Another yoga firm crashes owing customers thousands,” South China Morning Post, May 15, 2010.

⁵ Press Release, “CHOICE # 240 (15 October 1996)”, http://www.consumer.org.hk/website/ws_en/news/press_releases/p240.html

⁶ Press Release, “Survey uncovers abundance of myths in slimming treatment products and programmes - CHOICE # 349 (November 15, 2005)”, http://www.consumer.org.hk/website/ws_en/news/press_releases/p34901.html

⁷ Pg. 1. Lo, Stefan. “Limitations in the Regulation of Unfair Marketing Practices in Hong Kong.” *Journal of International Business & Law*.

**Complaints Received by the Consumer Council
Relating to Unfair Trade Practices ⁸
(excluding complaints relating to structured financial products)**

Type	2008	2009
Misrepresentation	834	1,740
High-pressure tactics	145	109
Bait-and-switch	76	72
Misleading price indications	83	45
Unfair contract terms	2	23
Others	2,051	2,206
Total	3,191	4,195

A 2006 set of voluntary “good sales practices” guidelines for self-policing by participating industry associations appears to have had little effect on curtailing use of unfair sales practices. The largely unregulated and unenforced state of Hong Kong’s health and beauty industries, and the attendant adverse consequences on the city’s consumers have not escaped the attention of politicians, however. During the Legislative Council’s (“LegCo”) December 16, 2009 meeting, the legislator Fred Li proposed a cooling-off period and legislation to govern specifically advertisements by the health and slimming industry.⁹ The current position by LegCo is that health and beauty centers should be excluded from giving customers a cooling-off period during which they may be refunded their money.¹⁰

As it stands currently, legal recourse for Hong Kong consumers affected by unfair sales practices in the service industries is limited to instruments such as the Misrepresentation Ordinance and Unconscionable Contracts Ordinance that, though originally drafted with well intentions, do not offer consumers the comprehensive protections offered by laws in other jurisdictions such as the United Kingdom and Australia. In Hong Kong, the general consumer protection laws such as the TDO are mainly enforced by the Customs and Excise Department.

How far traders and businesses go - The main sources of complaints show how far some businesses go in order to lock consumers into a service contract. These activities range from making unsubstantiated claims of the service’s benefits, unilateral variation of monthly charges, to inexpensive joining fees with special promotions (one-off offers or for a limited time period only) that the trader has no intention of honouring.¹¹ Slimming centres use exaggerated and dubious assertions to lure customers, such as the efficacy of “effortless” weight loss programs that proclaim 45 minutes of treatment can amount to 300 sit-ups or can burn 2,500 kcal in 20 minutes.¹² Furthermore, those health and beauty centres that often engage in high pressure or misrepresented sales tactics (among others) to pressure customers to sign contracts often contain unfair contract terms and staff may aggressively cajole consumers to pay upfront for the services using credit cards.

With such widespread unscrupulous sales tactics, it can be seen that current protection mechanisms for consumers are lacking. In the interests of consumers, the Consumer Council has recommended that there

⁸ Annex, Paper for Economic Development Panel. “Strengthening Consumer Protection Legislation to Tackle Unfair Trade Practices: Broad Policy Directions”

⁹ Paragraph 14, Panel on Economic Development Meeting on 24 May 2010, “Updated background brief on review of consumer protection legislation”

¹⁰ Nip, Amy. “Beauty centres to escape new sales laws,” South China Morning Post, May 25, 2010.

¹¹ Consumer Council. “Listen to the experts: Is yoga for you too” CHOICE magazine # 351 (November 13, 2006). www.consumer.org.hk/website/ws_en/news/press_releases/p35102.html

¹² Consumer Council. “Survey uncovers abundance of myths in slimming treatment products and programmes” CHOICE magazine #349 (November 15, 2005).

http://www.consumer.org.hk/website/ws_en/news/press_releases/p34901.html

should be a cooling-off period clause in such contracts so that consumers are buffered from pressure to sign credit cards for goods or services “on the spur of a moment or under duress.”¹³

Renewed Legislative and Government Interest - In response to the legislator James To’s enquiry on May 19, 2010 of amending the TDO, the Commerce and Economic Development Bureau (“CEDB”) submitted a paper to the Legislative Council’s Economic Development Panel on May 24, 2010 about possible policy directions to strengthen consumer protection legislation to tackle unfair trade practices.¹⁴ It proposed extending the TDO to cover services to give greater protection to consumers against unscrupulous trade practices so that there will be an enhancement of consumer confidence and a level-playing field for businesses. In addition to amending the TDO to cover trade descriptions in services, the CEDB also recommended the creation of a new offence on misleading omissions in consumer transactions together with a new strict liability offence against aggressive and high pressure sales tactics. A new offence was also mooted to prohibit to bait-and-switch tactics; a classic setup involves up-selling customers by first luring them to the business’ premises with the promise of a low-priced promotion valid ostensibly for a short period, but that the vendor in fact has no intention of supplying. According to the May 24 paper, the Customs and Excise Department should be the primary enforcement agency for the new offences created in the amended TDO. A voluntary cooling-off period was suggested for consumers to be able to cancel their contracts within a stipulated time to gain confidence of consumers. However, it is of the view that mandatory imposition of such cooling-off periods may adversely affect business operations and give rise to moral hazard as consumers may take greater risks than they normally would because they know they are protected. This would distort the reality of market conditions. Moreover, with such measures, the potentially increased costs for businesses to cover such risks may create the possibility that consumers will consequently face higher prices. Therefore, to examine the feasibility of these recommendations as well as to solicit public opinion on the matter, the CEDB is scheduled to begin public consultations on extending the TDO to cover services in July 2010.¹⁵

Research Methodology - The objective of our investigative research is to study what are the current laws for consumer protection of sales in health (including fitness and gym) and beauty (including slimming and facial cosmetics) industries in Hong Kong. We conducted four undercover operations, visiting one gym and three beauty salons to investigate the sales and marketing techniques used by health clubs and beauty services industries. These operations allowed us to experience firsthand the sales tactics used by the health and beauty industries in pre-contractual transactions. We also conducted 16 interviews with relevant bodies and individuals who helped us form a richer, more nuanced understanding of the issues at hand during our investigation of the effectiveness of enforcement bodies for consumer protection, and their powers of redress in post-contractual transactions. Our survey results from over 220 respondents helped us provide grassroots feedback for our recommendations for improving the consumer protection regime in Hong Kong for health and beauty services.

Recommendations by the Consumer Council - As there is currently no comprehensive statute for consumer protection, it has fallen to various legislations to deal with issues of protection from unfair sales practices. There are calls to enact a comprehensive statute. The Consumer Council issued a report in 2008 titled “Fairness in the Marketplace for Consumers and Business” which recommended a comprehensive ordinance to deal with unfair trade practices to be administered by a newly established public enforcement agency. There will be need for greater consumer advocacy so that consumers are aware of their rights and do not fall victim to the traps set by unscrupulous businesses. In addition, the Council recommended self-regulation in professional industries which require a high degree of specialized expertise, such as the sale of certain financial products, in order to ensure a better balancing of commercial interests and consumer rights.¹⁶ In light of the recent publicity for new consumer protection legislation, this report will investigate the current

¹³ Consumer Council. “Credit cards involved in many a complaint against undesirable sale practice”, CHOICE magazine # 394 (August 14, 2009) http://www.consumer.org.hk/website/ws_en/news/press_releases/p39403.html

¹⁴ Panel of Economic Development Meeting on 24 May 2010. Paper: “Strengthening Consumer Protection Legislation to Tackle Unfair Trade Practices: Broad Policy Directions”

¹⁵ Ibid.

¹⁶ Pg. 2. Consumer Council. “Executive Summary of Fairness in the Marketplace for Consumers and Business”

extent of unfair sales practices, and suggest updated remedies to best protect consumers in order to preserve – and further – Hong Kong’s reputation as a fair and safe commercial environment for locals and tourists alike.

SELECTED QUOTES

These quotes give a birds-eye-view of the debate about whether consumer protection legislation should cover services, and if a cooling-off period should be adopted by the health and beauty sectors.

Name	Position	Date of Interview	Quotes
Connie Lau	Chief Executive of the Consumer Council	18 th June 2010	"The Consumer Council hopes that in the event new legislation (the amended TDO) does not cure unfair trade practices by smart traders then the government needs to look at enacting a comprehensive statute."
Rita Lau Ng Wai-Lan	Secretary of Commerce and Economic Development	24 th June 2010 25 th May 2010 (The Standard article).	"Under our current thinking, we will group all criminal provisions against unfair trade practices under the TDO. Legislation on other aspects of the consumer protection regime, and the relevant common law, will remain as they are. While grouping all statutory provisions together will in theory, facilitate reference, we do not think the current arrangements [of a variety of consumer protection legislation] will fetter the exercise of rights by consumers." "If we set it out in the law that there must be a cooling off period for all prepayments, there will be cost implications, and then businesses may not provide such concessions."
Alice Tai	Former Ombudsman	17 th June 2010	"The Ombudsman recommended the Consumer Council ought to be subject to the Ombudsman's jurisdiction in order to ensure that the public organizations are properly administered [as the Council's] revenue comes from public money, has executive functions, [and] there is a public interface." "The Ombudsman should not be involved in overseeing the question of unfair trade practices but if the question of services comes under the Consumer Council which is subject to the Ombudsman's review, then the Ombudsman has a role to look at maladministration not the substantive matter of consumer protection or unfair trade practices."
James To Kun-Sun	LegCo Member - Democratic Party	18 th June 2010	"How to distribute the cost resulted from the cooling-off period? For the health and beauty industry, I suggest that the contract should include a cooling-off clause, such as 3%, meaning if you are willing to pay an extra 3%, you are entitled to enjoy the cooling-off protection."
Starry Lee Wai-King	LegCo Member - Democratic Alliance for	28 th June 2010	"The law is severely lacking in the regulation of services. Hong Kong lags behind other developed economies in consumer protection laws."

	the Betterment and Progress of Hong Kong		
Kam Nai-Wai	LegCo Member - Democratic Party	21 st June 2010	“In my opinion, the current law on consumer protection is insufficient... Sometimes, consumer protection is at expense of the higher price or limited types of product. However, in the context of current consumer protection, I believe such sacrifice is justified since there is bare protection especially on financial products. The Legislative Council so far is proposing to include financial products be subjected to the cooling-off period in some exceptional circumstances. But, I think such protection is still piecemeal.”
Fred Li Wah-Ming	LegCo Member – Democratic Party	28 th June 2010	“I think the expansion of the Customs and Excise Department will be the proper institution [for enforcement] after the amendment of the TDO. It is much feasible to expand the Customs and Excise Department than establishing a new one to be vested with investigative powers. This will take more time. As for the Consumer Council, I think it should co-operate with the Customs and Excise Department by continuing to exercise its power to test, educate consumers and refer infringements to the Customs and Excise Department. “
Lee Wing Tat	LegCo Member - Democratic Party	9 th June 2010	“Currently, some merchants are trying to escape the liability or make money from the legislative loophole; [and] there is an increasing amount of consumers’ complaints being filed. Therefore, I think the legislation right now needs to lean on the side of consumers to turn over the situation which is to restrain merchants.”
Eric Tan	Professor of Law at CUHK	15 th June 2010	“The Consumer Council is appropriate [as an enforcement body]. [It] should not be the Custom and Excise Department. The law should create a new institution to deal with consumer based criminal offences.” “The cooling-off period is to protect people [that] are easily influenced, but it cannot cure problem long term. The key to better consumer protection is not by regulating businesses, but should be by educating consumers.”
Mark Williams	Professor of Finance and Accounting at PolyU	15 th June 2010	“I think the details of how the law should be reformed were well set out in the Consumer Council report [<i>Fairness in the Marketplace for Consumers and Business</i>]. Essentially there needs to be a root-and-branch reform, and you have to look at protective measures for consumers; not overly protective, but brought up to modern, reasonable standards. We are

			now in the second decade of the 21 st century whereas Hong Kong consumer protection laws are stuck really in the 1960's. This is absurd.”
Arthur McInnis	Professor of Law at CUHK	9 th June 2010	“If we look at parallel jurisdictions such Canada, New Zealand or Australia, Hong Kong should look towards them as model for trade practice legislation. It needs to include consumers and services, not just goods.”
Orpheus Choy	Chairman of the Federation of Beauty Industry	25 th May 2010 “Beauty Centre to Escape New Sales Laws” (SCMP article)	“A cooling-off period may be a false assurance of quality service, and is far from a solution to malpractices. Bad businessmen could offer excellent services during the cooling-off period and return to their unscrupulous ways after it. Banking charges would be a headache for operators if customers asked for repayments after settling bills by credit cards and if people jokingly signed up for lots of deals and then demanded repayments, the operator would be killed by the banking charges.”
Chao Chen-kuo	President of Hair and Beauty Merchants Association	25 th May 2010 “Beauty Centre to Escape New Sales Laws” (SCMP article)	“The Association will have details of a cooling-off policy - such as how long the period is - ready at the end of this month. A few chains had agreed to join the plan. [Despite the lack of government backing for cooling-off periods in the beauty industry], a group of members would like to push for one, and a lawyer was drafting clauses. They would like to keep a distance from the bad examples in the beauty industry. [But] now that the [commerce] secretary has said it is not compulsory, I don't know if anyone will change their mind.”
Stefan H. C. Lo	Assistant Professor, School of Law, City University of Hong Kong	Article “Limitations in the Regulation of Unfair Marketing Practices in Hong Kong” (7 J. Int'l Bus. & L. 77) Spring 2008	“The existing regulatory regime does not adequately deal with all of the problems presently faced by consumers in Hong Kong. The scope of protection in Hong Kong is limited... What is needed is either the use of codes against a backdrop of minimum legal standards set out under legislation, or a type of co-regulation where public enforcement mechanisms are harnessed to provide teeth to industry codes.”
Siu Sai-wo	Chief-Editor of Sing Tao Daily	8 th June 2010 “Services cheats must pay price” (The Standard article)	“The prepayment mode of service is common among beauty parlors, fitness clubs, and yoga centers. But many such establishments have abruptly shut down in recent years, leaving customers who paid upfront holding the bag. This problem is worsening despite repeated warnings by the Consumer Council, as many people are unable to resist the attractive prepayment package offers, and keep signing up.”

RESEARCH METHODOLOGY

Our study took six weeks to complete. The purpose of our research was to investigate the views of the general public and Hong Kong's political and academic community vis-à-vis amended or new consumer protection legislation for services in the health and beauty industries.

QUALITATIVE VS. QUANTITATIVE RESEARCH

Quantitative data was obtained from our surveys, of which we completed 226.

Qualitative data was obtained through interviews and observational studies. Interviews were done with political leaders, a former Ombudsman, legislators, academics, and victims of Yoga Yoga and Planet Yoga. The goal was to get different viewpoints on important issues concerning consumer protection laws.

The observational study is divided into two parts: undercover operations and an in-depth case study of the Planet Yoga closure. The prior method was adopted to observe what kind of sales tactics approach was used by the beauty and health centers during customer solicitation. The latter method was used to obtain information and views from some victims who suffered losses as a result of the closure of the yoga centers.

QUANTITATIVE RESEARCH – SURVEYS

Independent Variables

There were five independent variables in our study:¹⁷

- 1) the age of the respondents
- 2) their sex
- 3) their monthly income
- 4) their education level
- 5) their occupation.

We picked these independent variables because we wanted to see whether people of different age groups, sexes and occupations had differing views regarding amended or new consumer legislation. Similarly, monthly income and education were included to see if increased income and education would make people more or less amendable to tightened consumer legislation.

Dependent Variables

Our survey had six dependent variables¹⁸:

- 1) the respondent's past experiences in buying health and beauty services
- 2) their views about current consumer protection laws
- 3) their views about extending legal protection to services
- 4) their views about including a cooling-off period for health and beauty services
- 5) their views about any existing or proposed enforcement bodies
- 6) their views about criminalizing consumer protection offences.

QUESTIONS THAT WE INCLUDED

As we would be conducting our surveys with busy people hurrying to and from work, or on their (often short) lunch breaks, it was imperative that we designed our questions to be short and succinct, without

¹⁷ Please refer to a copy of the survey in Appendix II.

¹⁸ Ibid.

sacrificing content. For the same reason, we limited the number of questions asked to be able to fit on a single sheet of A-4 paper when printed according to Microsoft Word's "2-in-1" feature. (Minimizing two pages onto one sheet). Many of our questions were closed-loop questions that required respondents to pick from a list of possibilities.

In Part One, respondents were required to share their experiences in buying beauty or health services. Questions included how respondents were solicited initially, the kind of sales practices that was used on them, the reasons that influenced respondents to purchase the service, the contract terms that they were subjected to, reasons the contract was terminated (if it was indeed so) and whether they ultimately sought redress. All of these questions were designed according to a closed-loop format with a choice of answers provided. However, some required a follow-up descriptive answer. These questions not only gave respondents chances to elaborate on their prior yes/no answer but also assisted us in analyzing what respondents actually encountered before and after buying the services. If respondents have never bought any of these services, they were asked to skip the above questions and move straight to Part Two (opinion questions) directly.

In Part Two, most of our questions were based on a scale of 1 ("strongly disagree") to 5 ("strongly agree"). This part solicited respondents about their opinions regarding consumer protection proposals for the following questions:

- 1) How much they agreed or disagreed that the government has done enough to protect consumers from unfair sales tactics
- 2) How much they agreed or disagreed that the service industry in general should be self-regulated
- 3) How much they agreed or disagreed that legal protection should be extended to the service industry as a whole
- 4) How much they agreed or disagreed with the idea that consumers can be refunded in the event that businesses can no longer supply prior purchased services
- 5) How much they agreed or disagreed with the idea of a cooling-off period for health and beauty services

The remainder of Part II asked respondents to state which body they thought should enforce consumer protection statutes, including the police, Consumer Council, Customs and Excise Department, a proposed new body (such as a Consumer Tribunal) or the current Small Claims Tribunal. The final two questions asked what powers they thought enforcement bodies should possess (mediation, levying fines, consumer advocacy, research and testing, and "others," which they were asked to specify) and whether they believed that consumer protection offences should be criminalized.

CONDUCTING SURVEYS

A grand total of 226 surveys were conducted. Surveying was conducted in 10 locations in seven districts within Hong Kong island and peninsula. They were:

- 1) Central
- 2) Admiralty
- 3) Tsim Sha Tsui
- 4) Causeway Bay
- 5) Ngau Tau Kok
- 6) Shatin
- 7) Happy Valley
- 8) Mong Kok
- 9) Hung Hom
- 10) Sai Wan

At Shatin district, questionnaires were conducted in the open area outside Shatin Town Hall, and at the Chinese University of Hong Kong library. In Yuen Long district, we decided to approach people at Sun Yuen Long Centre Plaza because the area is often densely populated with shoppers.

On Hong Kong island, we conducted surveys in Wan Chai, Central and Eastern districts. In Wan Chai district, respondents were found near the entrance of SOGO department store on a Saturday afternoon. This intersection is a popular waiting spot where many people stop for the traffic light, or where they stand to wait for friends or family. Surveyors also worked at Lan Kwai Fong on a Friday evening to conduct surveys with those having a drink or meal in the al-fresco dining areas. In Happy Valley, surveys were conducted in the vicinity of King Kwong Street, Shing Woo Road and Min Fat Street. In Eastern district, surveys were conducted at the entrance of Cityplaza in Taikoo Shing.

Lastly, surveys were conducted in three Kowloon districts. In Kwun Tong district, surveyors situated themselves around the exit of the Ngau Tau Kok MTR station. In Mong Kok district, we chose to do our surveys on Sai Yeung Choi Street South because it is one of the most heavily populated streets in the area. We waited at the bus stops outside Park Lane in Tsim Sha Tsui district, catching respondents while they were waiting for their buses. Surveys in Hung Hom were conducted in the Harbour Place housing estate.

QUALITATIVE RESEARCH - INTERVIEWS

A total of 15 interviews were conducted with legislators, government officials, yoga center closure victims, lawyers/academics. From these interviews, we gained different perspectives according to their respective interests and experiences. Each interview lasted anywhere from 20-45 minutes. The following is the list of interviewees that we successfully reached:

Name	Position	Date of Interview	Method
Connie Lau	Chief Executive of the Consumer Council	18 th June 2010	Face-to-face
Rita Lau Ng Wai-Lan	Secretary of Commerce and Economic Development	24 th June 2010	By email
Alice Tai	Former Ombudsman	17 th June 2010	Face-to-face
James To Kun-Sun	LegCo Member - Democratic Party	18 th June 2010	Face-to-face
Starry Lee Wai-King	LegCo Member - Democratic Alliance for the Betterment and Progress of Hong Kong	28 th June 2010	Face-to-face
Kam Nai-Wai	LegCo Member - Democratic Party	21 st June 2010	Face-to-face
Fred Li Wah-Ming	LegCo Member - Democratic Party	28 th June 2010	Face-to-face
Lee Wing Tat	LegCo Member - Democratic Party	9 th June 2010	Face-to-face
Eric Tan	Professor of Law at CUHK	15 th June 2010	Face-to-face
Mark Williams	Professor of Finance and Accounting at PolyU	15 th June 2010	Face-to-face
Arthur McInnis	Professor of Law at CUHK	9 th June 2010	Face-to-face
Adrienne Mak	Victim of Yoga Yoga	14 th June 2010	Face-to-face

Ms. A	Victim of Planet Yoga (ex-member)	14 th June 2010	Face-to-face
Ms. B	Victim of Planet Yoga (ex-member)	14 th June 2010	Face-to-face
Ms. C	Victim of Planet Yoga (ex-member)	14 th June 2010	Face-to-face

We were not successful in securing interviews with the following people we contacted, including Orpheus Choy, Chairman of the Federation of the Beauty Industry:

Name	Position	Date of Interview	Method
Jeffrey Lam	LegCo Member - Functional Constituency - Commercial (First)	/	Unsuccessful
Ronny Tong Ka-Wah	LegCo Member - Civic Party	/	Unsuccessful
Orpheus Choy	Chairman of the Federation of the Beauty Industry	/	Unsuccessful
Dr Leung Ka-Lau	Head of Hong Kong Medical Association	/	Unsuccessful
Brendan Clift	Editor of HK Lawyer	/	Unsuccessful
Paggie Leung	Reporter for SCMP	/	Unsuccessful

QUALITATIVE RESEARCH - OBSERVATIONAL STUDIES

Undercover operations

We also conducted undercover operations at Fitness Club A, Fitness Club B, Beauty Salon A and Beauty Salon B. The objective was to investigate firsthand the prevalence and extent of unscrupulous, high-pressure tactics within Hong Kong's health and beauty industries.

As some of these beauty clubs provided gender-specific services, our group was divided into two teams consisting of two males and three females. We conducted undercover operations as potential customers, making enquiries to sales staff about their services, prices, and if there were any ongoing special offers. Secret recordings of the conversation were made to assist our subsequent note-taking.

A full account of our undercover operations appear later in this paper.

Case Study of Planet Yoga

On 14th May, 2010, Planet Yoga, one of the largest yoga studio chains in Hong Kong, announced its sudden closure.¹⁹ The South China Morning Post reported that the club had been still accepting new members shortly before its closure.²⁰

According to rules of priority in bankruptcies, many members, being unsecured creditors, have limited hopes for getting back their paid fees from the company's pool of assets. Conducting a case study of this

¹⁹ Wan, Adrian. "Allegations fly after Planet Yoga meeting overwhelmed." South China Morning Post. June 1, 2010.

²⁰ Nip, Amy and Paggie Leung. "Trade protections may be extended to cover services." South China Morning Post. May 19, 2010.

incident helped us to take a close look at the risks associated with prepayment, and to interview face-to-face some of its victims to see if any unfair sales tactics were used on them to get them to sign their contracts.

We did research in newspapers, both print and online, as well as on a Planet Yoga victims' rights group on Facebook.²¹ In addition to attending the company's creditor's meeting on 1st June, 2010, a number of interviews were also conducted with several of its victims.

A full account of our case study appears later in this paper.

DIFFICULTIES AND LIMITATIONS WITH THE QUALITATIVE RESEARCH

One limitation of the individual face-to-face interviews in the qualitative research is that some of the interview questions contained keywords that could have caused bias in the interviewee's response. Therefore those questions were not sufficiently open-ended to allow the interviewee to answer without guidance.

The outcomes we achieved for two of the undercover operations to Beauty Salon A and Beauty Salon B were limited than what we had hoped for. First, some of our operatives were not sufficiently convincing posing as potential customers who looked like they could afford the companies' beauty services. Second, the purchasing of health and beauty services are usually personal matters. Customers will usually inquire about these services alone, instead of going as a group. This may have made sales staff suspicious that we were perhaps reporters for newspapers and/or TV stations doing undercover work for our employers.

LIMITATIONS WITH THE QUANTITATIVE RESEARCH

Survey Errors

After conducting the first round of surveys it was discovered that the Chinese and English versions were inconsistent with each other. In the English version, five opinion questions in Part II were posed with answers ranging from 1 as strongly disagree to 5 as strongly agree, whereas in the Chinese version the answers were reversed (i.e. 1 as strongly agree to 5 as strongly disagree). This discrepancy was immediately corrected and careful notice was taken during inputting data from the first round of completed surveys for quantitative analysis.

Sampling Error and Survey Bias

Since the aim of the quantitative research was to conduct the surveys without bias, areas of Hong Kong were randomly selected to find potential respondents. Furthermore, the researchers were careful to avoid conducting the surveys within a close proximity to fitness and beauty clubs to decrease the chance of bias that the respondents would have the experience of buying health or beauty services.

Initially, conducting an Internet survey was considered since its hyperlink could be quickly disseminated amongst a large sample population. However, if this had been done then two types of selection bias would have been introduced to our study: (i) an assumption that all survey respondents have Internet; and (ii) most of the survey respondents would be familiar with the researchers. The resulting sample population would therefore not be representative. An Internet survey could also give rise to response errors since the researchers would not be able to clarify any of the respondents' potential queries during completion of the Internet survey or some questions would be left unanswered. Therefore the survey was conducted by selecting people from the street via face-to-face communication to minimize the chances of the aforementioned biases occurring.

However, the following sampling error and survey bias could have been introduced to the collected data:

²¹ "Planet Yoga 苦主關注組>> 部份Citi苦主報告獲得退款 - 大家繼續密切留意", <http://www.facebook.com/#!/group.php?gid=126579404022755&ref=ts>

i. Selection bias

Undercoverage: A number of surveys were conducted with respondents familiar with the researcher. This type of self-selection could have caused some members of the Hong Kong population to be inadequately represented in the sample population.

Non-response: Some questions were unanswered in the surveys, either because the respondent mistakenly skipped the question or they did not want to answer it. This is noted in the statistics as "missing entry".

ii. Sample error

A large sample population makes the statistic unbiased and equivalent to the true population parameter, thereby reducing the sample error. However, due to time limitations the final sample population size was 226, which is insufficient to draw a representative figure that indicates the general view of the Hong Kong population.

Ethical Considerations

The aim to uphold a high standard of research and legal ethics while undertaking the research project was very important to the researchers. Potential issues of privacy, anonymity, confidentiality, and informed consent were taken into account during the research process. Prior to conducting the surveys and interviews the participants were informed that the researchers were postgraduate law students from The Chinese University of Hong Kong. Voluntary informed consent was obtained from the participants to conduct the surveys and interviews, and researchers complied with any express wishes from the participants to remain anonymous.

LITERATURE REVIEW: DESK RESEARCH ON PRIMARY AND SECONDARY RESOURCES

The primary resources that were used for the project included the Trade Descriptions Ordinance (Cap. 362), The Control of Exemption Clauses Ordinance (Cap. 71) and the Unconscionable Contracts Ordinance (Cap. 458) to examine the existing legislation offering protection for consumers of services. Secondary resources that were used to supplement the project's field work included various research reports, correspondence between the Government and the Legislative Council on the review of consumer protection legislation, legislation of foreign jurisdictions, publications of the Consumer Council, consumers' experiences posted on forums at discuss.com.hk and uwant.com, newspaper articles published in the *South China Morning Post*, *The Hong Kong Standard*, *Ming Pao*, *the Hong Kong Economic Journal*, *Hong Kong Legal Community*, legal journals, the Beauty Industry Code of Practice, and advertisements of health and beauty clubs.

QUANTITATIVE RESEARCH RESULTS

Please see Appendix I

QUANTITATIVE KEY STATISTICS

Personal Particulars Statistics

226 respondents were surveyed from 10 locations in 7 districts to garner a representative sample of the general population of Hong Kong. 41.6% of the respondents had never bought health or beauty services; 58.4% of the respondents had bought health or beauty services in the past.

Table 1. Consumers of health or beauty services

	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	132	58.4	58.4	58.4
No	94	41.6	41.6	100.0
Total	226			

Within the group of those who had bought health or beauty services in the past (132 respondents) 34.7% of the respondents subscribed to fitness service, 16.7% bought yoga service, 27.8% purchased beauty service including nails, facial or spa. 12 respondents have subscribed to both fitness and beauty services which gives a total of 144 respondents.

Table 2. Types of services purchased

	Frequency	Percent	Valid Percent	Cumulative Percent
Fitness	50	34.7	34.7	34.7
Yoga	24	16.7	16.7	51.4
Beauty	40	27.8	27.8	79.2
Unknown	30	20.8	20.8	100.0
Total	144			

The surveyed respondents were 16 years old and above. 36.3% of the respondents were within the age group of 16-25; 32.7% of the respondents were within the age group of 26-35; 14.2% of the respondents were within the age group of 36-45; 11.5% of the respondents were within the age group of 46-55, and 5.3% of the respondents were above 55 years old.

Table 3. Age of Respondents

	Frequency	Percent	Valid Percent	Cumulative Percent
16-25	82	36.3	36.3	36.3
26-35	74	32.7	32.7	69
36-45	32	14.2	14.2	83.2
46-55	26	11.5	11.5	94.7
Above 55	12	5.3	5.3	100.0
Total	226			

57.1% of the respondents were female, while 42.9% of the respondents were male.

Table 4. Respondent's Sex

	Frequency	Percent	Valid Percent	Cumulative Percent
Female	129	57.1	57.1	57.1
Male	97	42.9	42.9	100.0

Total	226			
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With regards to the surveyed respondents' monthly income, 53.1% of the respondents had a monthly income of less than \$15,000; 23.0% of the respondents had a monthly income of \$15,000-\$30,000; and 22.1% of the respondents had a monthly income of more than \$30,000. 1.8% of the respondents omitted to respond to the income question.

Table 5. Respondent's Monthly Income

	Frequency	Percent	Valid Percent	Cumulative Percent
<\$15,000	120	53.1	54.1	54.1
\$15,000-\$30,000	52	23.0	23.4	77.5
>\$30,000	50	22.1	22.5	100.0
Total	222	98.2	100.0	
Missing entry	4	1.8		
Total	226	100.0		

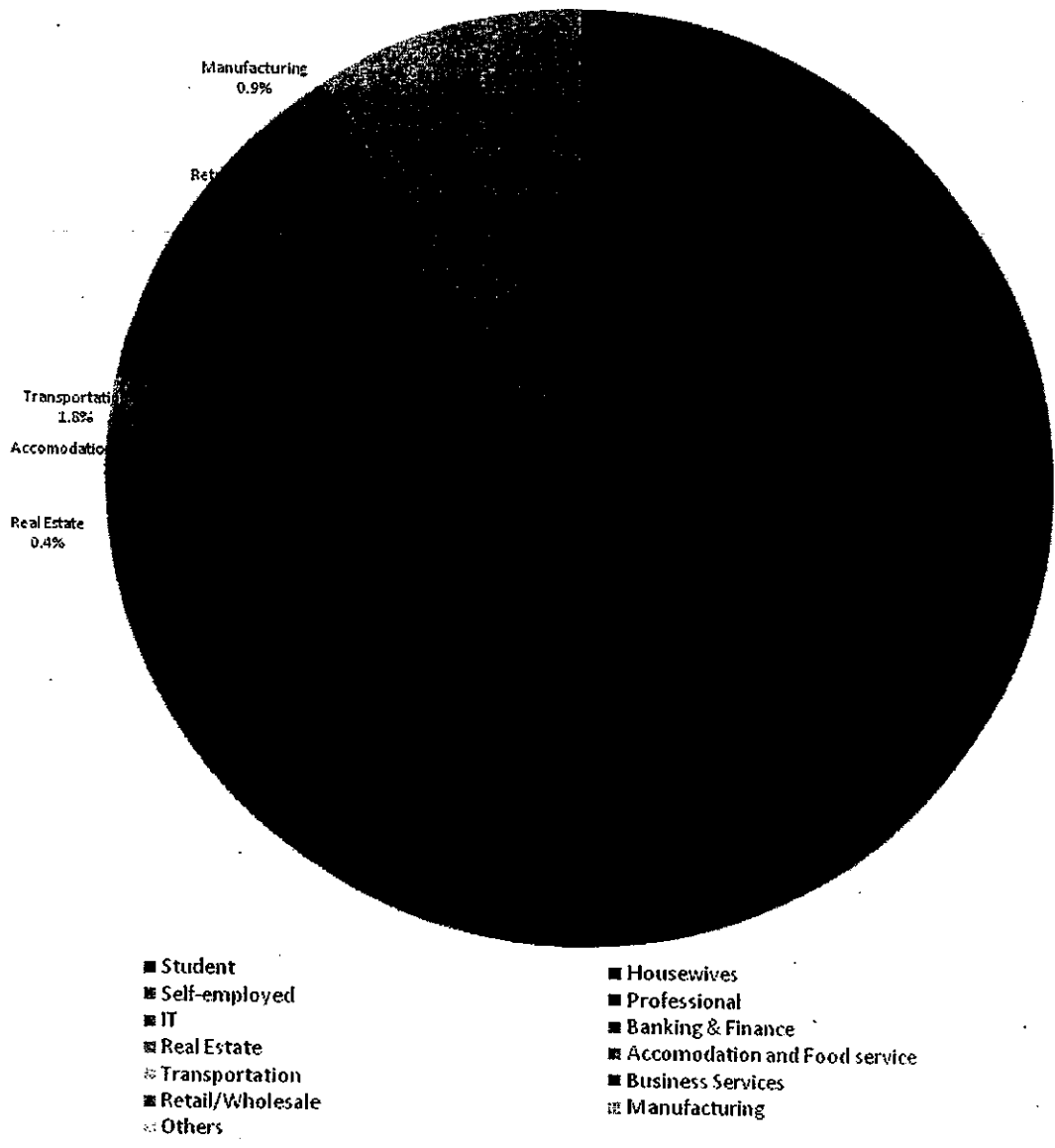
As for the surveyed respondents' education level, 36.3% of the respondents had at least a master's or postgraduate degree; 27.4% of the respondents were undergraduate degree holders; 13.7% of the respondents had a diploma or college qualification; 21.2% of the respondents had secondary school qualifications; and 1.3% of the respondents' had education at the primary school level.

Table 6. Respondent's Education Level

	Frequency	Percent	Valid Percent	Cumulative Percent
Primary	3	1.3	1.3	1.3
Secondary	48	21.2	21.2	22.5
Diploma/College	31	13.7	13.7	36.2
Undergraduate	62	27.4	27.4	63.6
Master/postgraduate or above	82	36.3	36.3	100.0
Total	226			

Regarding the respondent's occupation, 28.0% of the respondents were students; 17.0% of the respondents were employed in the Banking & Finance industry; 14.0% of the respondents were Professionals; 9.0% of the respondents were employed in other industries or retired; 8.0% of the respondents were employed in Business Services; 7.0% of the respondents were housewives; 5.0% of the respondents were self-employed; 4.0% of the respondents were employed in the IT industry; 2.0% of the respondents worked in the Accommodation and Service industry; 2.0% of the respondents were employed in the Transportation field; 4.0% of the respondents worked in Retail and Wholesale; and 1% of the respondents worked in Manufacturing. None of the surveyed respondents were employed in the Real Estate industry.

Figure 1. Respondents' Occupation



Questions in Part I: Personal Experiences of Being Subjected To Sales Practices

The following questions in Part I were answered by 132 respondents who had previously bought beauty and health services.

Respondents could choose more than one answer in the question about methods of solicitation. Out of the total 132 respondents who had previously bought beauty or health services, 104 of them selected 1 answer, 23 of them selected 2 answers, and 5 of them selected 3 answers or more. 43% of the respondents bought the service due to the encouragement of friends or family members; 15.1% of the respondents were solicited by advertisement in magazines or newspaper; 8.1% of the respondents were solicited by leaflets; 7.6% of the respondents being approached in person on street; 6.4% of the respondents were solicited by TV; 5.4% of the respondents walked-in the shop; 4.7% of the respondents were influenced by internet resources; 2.9% of the respondents were solicited by telephone; and 0.6% of the respondents were approached at home. 6.4% of the respondents were solicited by other methods such as radio.

Table 7. Methods of Solicitation

	Frequency	Percent	Valid Percent	Cumulative Percent
Magazines/Newspaper	26	15.1	15.1	15.1
TV	11	6.4	6.4	21.5
Leaflets	14	8.1	8.1	29.6
Telephone	5	2.9	2.9	32.5
Internet	8	4.7	4.7	37.2
Approached in person on street	13	7.6	7.6	44.8
Approached at home	1	0.6	0.6	45.4
Encouraged by friends or family	74	43.0	43.0	88.4
Walk-in	9	5.2	5.2	93.6
Others	11	6.4	6.4	100.0
Total	172			

Over half (55.7%) of the respondents had been subjected to one or more of the following sales practices when purchasing the health or beauty service: 17.9% of the respondents had been subjected to bait-and-switch strategy (i.e. seller advertises goods or services at a low price without having reasonable quantities available to meet the demand that would be reasonably expected); 13.5% of the respondents had been subjected to oppressive or high pressure tactics (i.e. coercion); 11.5% of the respondents were influenced by misleading omissions (i.e. extra charges that were not disclosed at the time of purchase); 9.0% of the respondents were induced by false representation or misleading advertising to sign the contract (i.e. untrue, dubious or exaggerated claims about the service benefits); 2.6% of the respondents were shamed or criticised; and finally 1.3% of the respondents had been subjected to other sales tactics. 44.3% of the respondents had never been subjected to the aforementioned sales tactics.

Table 8. Sales practice that influenced respondents in purchasing the health or beauty service

	Frequency	Percent	Valid Percent	Cumulative Percent
False representations/misleading advertising	14	9.0	16.1	16.1
Misleading omissions	18	11.5	20.7	36.8
Aggressive of high pressure tactics	21	13.5	24.1	60.9
Bait and Switch	28	17.9	28.7	89.6
Vendor accepting payment without intention to supply	3	1.9	3.5	93.1
Shaming/insults/criticisms	4	2.6	4.6	97.7
Others	2	1.3	2.3	100.0

	Total	87	55.7	100
Never subject to any of these sales practices	69	44.3		
	Total	156		100

The surveyed respondents described their main reasons for purchasing the health or beauty service. The question allowed the respondent to choose more than one answer. 35.9% of the respondents said they bought the service because they wanted to be healthy, while 25.0% of the respondents bought the service to improve their self-image. 19.8% of the respondents were attracted by the service's sales promotion; 11.5% of the respondents were encouraged to buy the service by friends or family members; and 5.2% of the respondents bought the services because of other reasons. Finally, a minority of the respondents (2.6%) bought the service due to the seller's sales practices.

Table 9. Reasons for buying the service

	Frequency	Percent	Valid Percent	Cumulative Percent
Seller's sales practices	5	2.6	2.6	2.6
Attractive Promotion	38	19.8	19.8	22.4
Improve self-image	48	25	25	47.4
To be healthy	69	35.9	35.9	83.3
Encouraged by friends/family	22	11.5	11.5	94.8
Others	10	5.2	5.2	100.0
Total	192			

Out of the 132 respondents who had previously bought beauty or health services, 34.1% of them were not satisfied during their use of the service. Amongst the respondents who had complaints, 37.8% of them experienced difficulty in booking an appointment to use the service; 9.1% of the respondents complained of an inadequate provision of equipment; 5.3% of the respondents were constantly subjected to sales harassment by the vendor's staff; and 4.5% of the respondents were subjected to extra-charges.

Table 10. Complaints during the use of health or beauty services

	Frequency	Percent	Valid Percent	Cumulative Percent
Inadequate provision of equipment	12	9.1	26.7	26.7
Difficulty in booking	17	12.9	37.8	40.5
Annoying Persuasion	7	5.3	15.6	56.1
Extra-charges	6	4.5	13.3	69.4
Poor quality of services	3	2.3	6.7	76.1
Total	45	34.1	100.0	100.0
No complaints	87	65.9		
Total	132	100.0		

The following questions were designed based on principles from contract law because the inclusion of unfair contract terms is usually one of the sales tactics adopted by health and/or beauty clubs to exclude themselves from legal liabilities²². Among the 132 respondents, 43.9% of them have been subjected to unfair contract terms: 25.9% of the contract terms imposed extra charges on the consumer; 24.1% were restrictions upon termination of the contract; 20.7% of the contract terms allowed an extension of the contract without the buyer's consent; and 13.8% of the contract terms stipulated that the quality of service would not be

²² Interview with Connie Lau. Conducted June 18, 2010.

guaranteed. 63.8% of these contract terms were not disclosed to the respondents when the contract was made.

Table 11. Contract terms that respondents were subjected to

	Frequency	Percent	Valid Percent	Cumulative Percent
Extra charges	15	11.4	25.9	25.9
Extension of contract without buyer's consent	12	9.1	20.7	46.6
Seller can unilaterally vary monthly fees	6	4.5	10.3	56.9
Restrictions on termination of contract	14	10.6	24.1	81.0
Quality of service not guaranteed	8	6.1	13.8	94.8
Others	3	2.3	5.2	100.0
Total	58	43.9	100.0	
Never subjected to any of the above terms	74	56.1		
Total	132	100.0		

Table 12. Whether the above terms were disclosed to respondents when the contract was made

	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	21	36.2	36.2	36.2
No	37	63.8	63.8	100.0
Total	58			

However, the majority of the respondents (31.1%) had not terminated their contract yet. Of the respondents whose contract had terminated, 28.8% of them had completed the contract; 20.5% of the respondents had terminated the contract due to the provision of unsatisfactory services; and 9.8% of the respondents had their contracts terminated because of the vendor's sudden closure.

Table 13. Reasons for terminating the contract

	Frequency	Percent	Valid Percent	Cumulative Percent
Completed Contract	38	28.8	29.9	29.9
Unsatisfactory service	27	20.5	21.2	51.1
Shop Closure	13	9.8	10.2	61.3
Other reasons	8	6.1	6.3	67.6
Contract not yet been terminated	41	31.1	32.4	100.0
Total	127	96.2	100.0	
Missing entry	5	3.8		
Total	132	100.0		

The results show that the frequency of the vendor making it difficult for the respondent to terminate the contract is quite high, as 69.8% of the respondents had such an experience.

Table 14. Did the vendor make it difficult for the respondent to terminate the contract?

	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	60	69.8	69.8	69.8
No	24	30.2	30.2	100.0
Total	86	100.0	100.0	

Only 10.3% of the respondents sought redress even if they had been subjected to unfair sales practices. Most of these respondents felt that it would be useless and time-consuming to do so.

Table 15. Did the respondent seek redress?

	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	4	10.3	10.3	10.3
No	35	90.7	90.7	100.0
Total	39	100.0	100.0	

Questions in Part II: Opinions on Consumer Protection

Part II consisted of seven opinion questions which were answered by all 226 respondents. Respondents were asked to give their views on the first five questions by choosing an answer that ranged between 1-Strongly Disagree to 5-Strongly Agree. Explanatory statements were given in the questionnaire to assist the respondents. Thus, all respondents were posed with adequate knowledge in commenting on the following issues.

Over 50.0% of the respondents felt that the current degree of protection is inadequate while 30.5% of the respondents felt neutral on the issue. Over 50.0% of the respondents agreed that the service industry should be self-regulated while 29.8% of the respondents disagreed or strongly disagreed because they lacked of confidence in relying on self-regulation to protect consumers against unfair sales tactics. A majority of 84.1% of the respondents felt that there is a need for extension of legal protection to services. 76.1% of the respondents supported the establishment of a refund system to compensate aggrieved customers who were victims of the vendor's sudden closure. 69.0% of the respondents agreed with the implementation of a cooling off period for health and beauty services.

Table 16. Whether the degree of legal protection from unfair sales practices is sufficient

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	58	25.7	25.7	25.7
Disagree	56	24.8	24.8	50.5
Neutral	69	30.5	30.5	81.0
Agree	22	9.7	9.7	90.7
Strongly Agree	21	9.3	9.3	100.0
Total	226	100.0	100.0	

Table 17. Whether the service industry should be self-regulated

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	36	15.9	15.9	15.9
Disagree	31	13.7	13.7	29.6
Neutral	38	16.8	16.8	46.4
Agree	54	23.9	23.9	70.3
Strongly Agree	67	29.7	29.7	100.0
Total	226	100.0	100.0	

Table 18. Whether there is a need for to extend legal protection to services

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	5	2.2	2.2	2.2
Disagree	9	4.0	4.0	6.2
Neutral	22	9.7	9.7	15.9
Agree	65	28.8	28.8	44.7
Strongly Agree	125	55.3	55.3	100.0
Total	226	100.0	100.0	

Table 19. Whether legal protection should be extended to refund aggrieved consumers when businesses can no longer supply the purchased services

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	9	4.0	4.0	4.0
Disagree	9	4.0	4.0	8.0
Neutral	36	15.9	15.9	23.9
Agree	40	17.7	17.7	41.6
Strongly Agree	132	58.4	58.4	100.0
Total	226	100.0	100.0	

Table 20. Setting up a cooling-off period for health & beauty services

	Frequency	Percent	Valid Percent	Cumulative Percent
Strongly Disagree	11	4.9	4.9	4.9
Disagree	15	6.6	6.6	11.5
Neutral	44	19.5	19.5	31
Agree	53	23.5	23.5	54.5
Strongly Agree	103	45.5	45.5	100.0
Total	226	100.0	100.0	

With regards to which party should be the responsible enforcement agent of consumer protection laws, the surveyed respondents could choose more than one answer from the following options: 45.1% of the respondents felt that the Consumer Council would be a suitable enforcement agency; 25.1% of them agreed on setting up a new enforcement body; 12.8% chose the Small Claims Tribunal; and 11.7% thought that the police should be responsible.

Table 21. Parties responsible for enforcement

	Frequency	Percent	Valid Percent	Cumulative Percent
Police	42	11.7	11.7	11.7
Consumer Council	162	45.1	45.1	56.8
Custom and Excise Department	16	4.5	4.5	61.3
Proposed new body (e.g. Consumer Tribunal)	90	25.1	25.1	86.4
Small Claims Tribunal	46	12.8	12.8	99.2
Others	3	0.8	0.8	100.0
Total	359	100.0	100.0	

34.4% of the respondents felt that imposing fines was the most effective measure in deterring unfair sales practices; 25.3% and 24% of the respondents thought that the enforcement bodies should be vested with the powers of customer advocacy and mediation, respectively. 13.9% of the respondents thought that the enforcement agent should also undertake the responsibility of doing research and testing on products.

Table 22. Powers the enforcement bodies should have

	Frequency	Percent	Valid Percent	Cumulative Percent
Mediation	118	24.0	24.0	24
Imposing Fines	169	34.4	34.4	58.4
Consumer advocacy	124	25.3	25.3	83.7
Research and Testing	68	13.9	13.9	97.6
Others	12	2.4	2.4	100.0
Total	491	100.0	100.0	

A majority of the respondents (72.6%) agreed that consumer protection offences should be criminalized while 27.4% of them felt that such offences should remain a civil liability.

Table 23. Should consumer protection offences be criminalized?

	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	164	72.6	72.6	72.6
No	62	27.4	27.4	100.0
Total	226	100.0	100.0	

ANALYSIS

Correlation

The buying of beauty and health services

(i) Relationship with gender

Over 72% of female respondents had subscribed to beauty and health services, while only 40.2% of male respondents had done so. This result suggests that females are more conscious with their outlook and health. Thus they are more willing to spend on appearance-related services in order to improve their image.

(ii) Relationship with age

Respondents aged between 36-45 were found to have the highest rate in purchasing the services, accounting for 81.3%. The age group of 16-25, 26-35, and 46-55 all consisted of over 50% of respondents buying the services. However, respondents of 56 or above had drastically low rate (16.7%) in purchases, we estimate that this is due to the fact that as the respondents reach retirement age, they feel less need in beautifying their appearance.

(iii) Relationship with income

Initially we forecasted that a higher income would result in greater willingness in purchasing the services, however when observing the responses with regards to the correlation between the two variables, we found that the numbers collected were similar across all 3 income groups with percentages ranging from 54-62%.

Inducement of sales practices

(i) Relationship with gender

With regards to the correlation between the gender of respondents and inducement of sales practices, we found that 75% of female was induced in purchasing the beauty or health services under the influence of inappropriate sales practices while 43% of male had the same experience. This may due to the variation of shopping patterns of different genders. It has been suggested that females have a tendency of random shopping while males usually shop for targeted items²³. Another possible reason may be that females are more sentimental and are thus more easily influenced by others, compared to males who may be more rational in consumption²⁴.

(ii) Relationship with education level

We made an assumption that respondents with higher education level would less likely be induced by sales tactics to buy health or beauty services. However, the results found in the correlation between education level and inducement of sales practices were very much consistent across the 5 groups, with approximately 50% of the respondents being subjected to the above mentioned sales practices.

Sufficiency of current legal protection

(i) Relationship with gender

More than 62% of female respondents felt there is currently insufficient legal protection against unscrupulous sales practices, while close to 34% of male respondents felt the same. The results suggest that female respondents feel a greater need for improving the current legal protection scheme. This may be due to the fact that females participate more in the purchasing of beauty and health services, and have experienced being subjected to inappropriate sales practices.

(ii) Relationship with age

In the correlation between the age of respondents and the sufficiency of consumer protection, we found that the numbers collected were similar across all 5 age groups, with the percentage ranging from 44-57%, disagreeing that the government has provided sufficient protection to consumers.

These results suggest that the Hong Kong population does not have a set view on whether the government has done enough to protect consumers from unfair sales practices. There is no significant correlation found

²³ Otnes, Cele and Mary Ann McGrath. "Perceptions and Realities of Male Shopping Behavior." Journal of Retailing, Babson College. <http://www3.babson.edu/Publications/JR/PastIssues/Volume77/Issue1/maleshoppingbehavior.cfm>

²⁴ Ibid.

between the sufficiency of legal protection with gender or age. The percentage distributions were less than 31% in the responses.

Reliance on self-regulation of service industry

(i) Relationship with gender

Close to 53% of both male and female respondents agreed that the service industries should regulate their behavior in accordance with the public's expectation.

(ii) Relationship with age

We found a negative correlation between the age of respondents and the need for self-regulation of service industry. Reliance on self-regulation of the health and beauty industry decreases as the age level increases. Respondents in older age groups were less likely to agree with self-regulation (25%). This may be due to the fact that elder people lack confidence in the effectiveness of self-regulation as little improvement can be seen after years of experience.

(iii) Relationship with education level

Majority of postgraduate, degree holder and college respondents indicated that there is a strong need for self-regulation of service industry, with 68%, 48% and 51% within each education level group respectively. Among them, the highest percentage of postgraduate qualification holders (43.9%) felt it is strongly necessary that the service industry should be self-regulated.

The results reveal that over 83% of the Hong Kong population feels that there is a need for self-regulation among services irrespective of their gender, while those aged over 45 appear to be less in favor of self-regulation against unfair sales practice. This could be because several trade unions have released a Code of Practice, serving as a guideline for sales practices each specific industry should adopt. An example of such is the Beauty Industry Code of Practice that was released in 2006.²⁵ It must be noted that such measures rely heavily on business providers acting honestly. However, according to the recent figures of complaints received by the Consumer Council, the Code seemed to have little effect on improving consumer protection²⁶. Check and balance measures should be adopted as well to ensure better regulation within the industry.

Extension of legal protection to services

(i) Relationship with gender

In examining the relationship between gender and extension of legal protection to services, close to 86% of female respondents either agreed or strongly agreed to the extension of legal protection to services. Close to 80% of male respondents agreed and 51.5% of those respondents strongly agreed. However, it is to be noted that 3% of the female respondents strongly disagreed and likewise 1% of male respondents.

²⁵ Consumer Council. "Voluntary Code of Practice to usher in new era of self-regulation in beauty industry." http://www.consumer.org.hk/website/ws_en/news/press_releases/2006060701.html

²⁶ From "Can Self-Regulation Provide an Answer?" in our Final Conclusion: "Consumer Council statistics show that there were 514 complaints in 2009 against recreation and health clubs, and 552 as of May, 2010. As for beauty services, there were 1,480 complaints in 2009 which put it among the top-five for categories that received the most complaints during that year and accounted for roughly over 4% of the total complaints in 2009. In contrast, food and entertainment services, sectors which arguably accumulate more overall transactions (after all, everyone has to eat) received 910 complaints, or 40% fewer than the beauty industry, in that same year. Not only that, but complaints, despite the code, actually rose 9% from just 12 months previous, when 1353 complaints were lodged in 2008. As of May, 2010, the council has noted 324 complaints about beauty services."

(ii) Relationship with age

The youngest respondents appear to be most supportive in the extension of legal protection to services, with over 78% of them in the 16-25 age range group indicating their strongly agreement. Interestingly, although there is a decreasing trend in terms of percentage of people who strongly agreed in the extension of legal protection within the next three age groups at 44.6%, 40.6% and 29.6% for the 26-35, 36-45, and 46-55 age groups respectively, the percentage of respondents who expressed strong agreement in the over 55 age group went up to 58.3% again.

These results suggest that in general, the public feels there is a great need to protect consumers against unfair sales tactics in services industry. This may have arisen from the fact that there are yet unsolved existent problems as evidenced from the criticisms of telecommunication services, bank and financial services, and beauty services from the public.

Establishment of refund system for aggrieved consumers

(i) Relationship with gender

Close to 76% of both male and female respondents agreed that there should be an establishment of a refund system for aggrieved consumers when businesses can no longer supply the purchased services.

(ii) Relationship with income

We found the majority of 72% respondents earning over \$30,000 disagreed with the establishment of a refund system for aggrieved consumers. In contrast, over 68% of respondents earning below \$15,000 either agreed or strongly agreed with the refund system. One possible reason for this may be that respondents with higher income are tax-payers who do not want to bear increased financial burden as such protection is most likely subsidized by the government fund.

These results show that there is a strong negative correlation between the amount of income and the supportiveness of the proposed refund system. Compared to 69% of respondents strongly agree or agree in establishing a cooling-off period and 11.5% of them strongly disagree or disagree, the general public seemed to have a more consistent view in supporting the establishment of refund system with 76.1% of them either strongly agree or agree and with only 8% that strongly disagree or disagree.

Establishment of cooling-off period for health & beauty industry

(i) Relationship with gender

Nearly 75% of female respondents agreed with the establishment of a cooling-off period for health and beauty industries, with 58.1% of those respondents strongly agreed. Close to 61% of male respondents agreed with a cooling-off period and 28.9% of those respondents strongly agreed. However, 9.2% of male respondents strongly disagreed and only 1.6% of female respondents felt the same. The finding of this statistic seems to be consistent with the reasoning suggested above; females may be more inclined to feel the need to subsequently reconsider the purchase of the services due to a tendency of impulsive shopping.

(ii) Relationship with age

There is over 44% of support from those in the 16-25, 36-45, and 46-55 age groups for the establishment of a cooling-off period, while only 25% of the respondents within the range of 26-35 age group held the same opinion. One possible explanation for this may be that those in the 26-35 age group have greater freedom to expend and thus become more alert to market conditions so as to avoid falling into sales traps. Another reason may be that those in this age group do not want to face the possible increased costs that businesses will transfer to consumers to off-set the price of greater protection.

(iii) Relationship with education level

Over 76% of postgraduate respondents agreed the establishment of cooling-off period, among which 47.6% indicated strongly agreement; 72% of undergraduate respondents agreed, among which 46.8% also strongly agreed. 100% of the respondents of primary education level supported the establishment of a cooling-off period. The results we obtained indicate that the degree of acceptance of a cooling-off period is varied among each education level group.

Criminalization of consumer protection offences

(i) Relationship with gender

The percentage of respondents indicating a strong need for criminalization of consumer protection offences is almost the same between the two genders, with 72.9% of female respondents and 72.2% male respondents in support of such view.

(ii) Relationship with age

Most support for the criminalization of consumer protection offences came from the 16-25 age group respondents (78.0%). Those over 55 years old gave the lowest supporting rate of 33.3%. There is a general negative correlation where an increase in age saw a decrease in the level of support for the criminalization of consumer protection offences. It must be noted, however, that the respondents of the 36-45 age group deviated from the trend. This could be that people of this age group have relatively strong financial position, as well as a greater understanding of business interests and survival, so they may have higher tolerance of unfair sales tactics and feel that criminal liability would be too serious a punishment.

The results indicate that a significant percentage (72.6%) of the Hong Kong population feels the need to criminalize consumer protection offences. This may be unsurprising given the recent spate of health and beauty centre closures where consumers felt there were no legal protection in place nor effective mechanisms of redress. As the status-quo remains as such, the majority took the view that perhaps more deterrent and effective measures need to be imposed to improve the consumer protection regime.

QUALITATIVE ANALYSIS

QUALITATIVE RESEARCH - INTERVIEWS

We conducted a total of 15 interviews over a period of one month. There were four major themes that ran through the set of questions we posed to each interviewee. For our analysis, we will examine each interest group's response to the following issues and point out any divergent views within the group. We classify the interviewees under government bureau, Legislative Council members, independent bodies, academics and victims of the health and beauty industries.

1. Whether current laws for consumer protection are sufficient in Hong Kong. If not, what should be done to improve it? E.g. enactment of comprehensive statute?

<u>Government bureau</u>	
CEDB (Rita Lau)	The TDO should be amended to include services in consumer transactions and prohibit unfair trade practices. The CEDB does not see the need for a comprehensive statute as the current arrangements do not fetter the exercise of rights by consumers.
<u>Legislative Council members</u>	
James To	Current laws for consumer protection are insufficient. There needs to be additional legislation to criminalize misleading sales tactics utilized at the time of signing the contract.
Kam Nai-Wai	As a directly elected LegCo member, he takes his stance on the side of consumers. Current legislation on consumer protection is insufficient as there is not enough protection for consumers. However, he agrees that consumer protection may come at the expense of higher prices for consumers.
Starry Lee	The current laws for consumers of services are insufficient in Hong Kong as it is severely lacking in the regulation of services. She proposes that the government should implement 3 things: i) the prohibition of false or misleading description for goods should be extended to services; ii) the Consumer Council should be vested with more powers; iii) there should be a cooling-off period to allow the consumer of services to terminate the contract and get their money back. In the long term, Hong Kong should aim to enact a comprehensive statute on consumer protection.
Lee Wing-Tat	The legislation needs to be amended to improve consumer protection in Hong Kong.
Fred Li	In the short term consumer protection can be improved by amending the TDO to expand its scope to services while in the long term a comprehensive statute on consumer protection should be enacted.
<u>Independent bodies</u>	
Former Ombudsman (Alice Tai)	<p>The TDO was amended a long time ago and the framework was designed when services were not really featured. Therefore, even with the rise of service industries, goods and services have not been on par with each other legalistically speaking. A single unified unfair sales practice ordinance has the danger that by the time a framework to cover a myriad of goods and services is agreed upon, it becomes so watered down that it cannot fulfill the primary objective that it set out to fulfill. It will be open to interpretation and open to loopholes being exploited. Each industry should be able to self regulate. If this is not possible, only then should the government step in.</p> <p>With regards to the role of the Ombudsman in relation to consumer protection, the Ombudsman should not be involved in overseeing the question of unfair trade practices. But if the question of services</p>

	<p>arises under the Consumer Council and if it is subject to the Ombudsman's review, then the Ombudsman has a role to look at maladministration. The Ombudsman does not look at the substantive matter of consumer protection of unfair trade practices.</p> <p>It would be an overkill to set up specialized ombudsman for the health and beauty industries because Hong Kong is a small place. It would be confusing for the public and there needs to be heavy investment of resources for the establishment of such bodies. So unless there is some major scandal, very often nothing will come out of it.</p>
<p>Consumer Council (Connie Lau)</p>	<p>The TDO only covers goods and not services, which is definitely not enough. When there is no legal regulation of services, providers will use the reason of "competition" as an excuse and it can become very messy. It is important to have legislative backing to protect consumers and to have a fair level playing field. If there is no legislation, it sacrifices the interest and safety of consumers. This will not be a fair level playing field such as when it is not illegal for manufacturers to issue unsafe products.</p> <p>In the 2008 report "Fairness in the Marketplace for Consumers and Business," the Council suggested that there should be one legislation covering these undesirable trade practices. There should be a measured approach from soft to hard, starting from mediation to ending up at court. There is a need to penalize unscrupulous traders so that the law would be more effective. The government so far only sees the need to amend the TDO to cover services but the Council hopes that in the event the new legislation does not cure unfair trade practices by smart traders, then the government needs to look at enacting a comprehensive statute.</p>
<p><u>Academics</u></p>	
<p>Eric Tan</p>	<p>Thinks that that there is no rational basis to distinguish between goods and services in the consultation paper put out by the Legislative Council that recommends provisions of the TDO to include services or to be extended to services as a whole.</p> <p>Although ideal, it would be difficult to enforce a single, unified unfair sales practices ordinance because the Hong Kong judicial system is developed on the basis of discrete legislation and judicial cases, and there is already existing legislation that deals with general contract principles and for specific industries. It would be very difficult to harmonize all interests and to address the features of specific industries. Hong Kong can look at the unfair trading regulations in the UK as an example; however, it is limited in scope as it deals nothing with redress between the trader and consumer. Consumers in the UK also have to rely on common principles and contract law to seek redress anyway.</p>
<p>Mark Williams</p>	<p>Hong Kong's consumer protection laws are out of date and not up to developed economy standards. They are also fragmented as a mixture of common law and outdated U.K. statutes. There are substantial problems with consumer protection in Hong Kong. One of the biggest areas is the fact that services are not included in the TDO. There's protection under the Supply of Services Ordinance</p>

	<p>(Implied Terms) which imports reasonable care standards into each contract. That only applies to the sale of services themselves, rather than advertising and description of services.</p> <p>There are other abusive tactics where first tranches are allocated to friends, relatives, staff, in order to give a false impression of market demand to encourage herd purchasing.</p> <p>There should be a consolidated consumer protection statute.</p>
Arthur McInnis	<p>Hong Kong is woefully under protected compared to other jurisdictions which have more protection. Current problems include no education for consumers explaining what their rights are, no trade practice legislation regulating sale of services, the standard of service is hard to prove and costly, and the legal costs incurred by taking a claim to the Small Claims Tribunal is more costly relative to the contract price. Unfair sales tactics should be criminalized (especially if they involve fraud), and in addition to one unified consumer protection statute there should be more consumer advocacy.</p>
<u>Victims</u>	
Adrienne Mak (Victim of Yoga Yoga)	<p>The law currently does not offer enough protection for consumers. More rules, regulations and guidelines should be implemented, for example, there should be a refund policy.</p>

2. Should there be a cooling-off period for consumers of prepaid and contractual services? Should this be applicable to the health and beauty industries as well?

<u>Government bureau</u>	
CEDB (Rita Lau)	<p>The CEDB does not recommend imposing a cooling-off period as it may give rise to moral hazard. Also, there may be increased cost of such a cooling-off period being transferred to consumers as businesses try to mitigate such risk. Instead, there should specific offences against malpractices from the services industries.</p>
<u>Legislative Council members</u>	
James To	<p>Cooling-off period will increase costs to the industry, which will increase prices for consumers. He believes that the beauty and health industry should have a cooling-off period. He suggests that there should be an option to opt into a cooling-off period in the contract, where the consumer who exercises the option would pay an extra 3% to enjoy their entitlement to the cooling-off period protection.</p>
Kam Nai-Wai	<p>This is a matter of balancing consumer protection and business efficacy. However, a cooling-off period protection would still be piecemeal though.</p>
Starry Lee	<p>There should only be a cooling-off period for certain industries and certain contracts. For example, she is a strong proponent of extending the cooling-off period for pre-paid services in the beauty industry. However the government must also look after the commercial interests of not only large and financially sound corporations but small-medium enterprises (SMEs) as well. She reasons that Hong Kong has many SMEs and if the government imposes too many regulations, not only will it be very burdensome</p>

	for them but it will also restrict a vibrant economy.
Lee Wing-Tat	The exclusion of the health and beauty industry from a mandatory cooling-off period is acceptable. However, other institutions should be subjected to the cooling-off period.
Fred Li	Supports the implementation of a cooling-off period, especially in the health and beauty industry. To Mr. Li, it is a serious problem that the health and beauty industry has no international professional standard for quality control. The advertisements used by the industry could be detrimental to peoples' health. If an international professional standard existed then the exclusion of the health and beauty industry from the cooling-off period would not cause harm to consumers.
<i>Independent bodies</i>	
Former Ombudsman (Alice Tai)	There should be a cooling-off period because very often consumers can get caught up in the excitement of the moment when they are making a purchase. With a cooling-off period, the salesperson will have to make sure that consumers understand fully what they are signing up for so that even after a period of reflection, the consumer would be aware that they had made the purchase knowing all of the contract's terms.
Consumer Council (Connie Lau)	There should be a cooling-off period to give sufficient time for consumers to exercise their rights. It is important for people to know their rights before signing their contracts, for example, the right to rescind the contract during cooling off period. The government said only two areas should be regulated to have cooling-off periods. The Council does not agree with this and suggests that there should be a cooling-off period for health and beauty sectors.
<i>Academics</i>	
Eric Tan	The cooling-off period should not be applied to any contracts. However, it may be possible to impose a cooling off period in specific situations, for example when people are not aware of the risks that are involved or when the consumer is not in the position to make a choice as they cannot compare the services available to them at that point in time. If it is the lack of awareness that is a problem then consumer advocacy would be a better solution. Professor Tan also suggests that there should be an industry specific Code of Conduct in place for businesses as it would be more practical.
Mark Williams	The government should implement the cooling-off period amongst all sectors/industries.
Arthur McInnis	There should be a cooling-off period so that consumers get a chance to rethink their purchases in case they are successfully persuaded to sign contracts under high pressure sales tactics.
<i>Victims</i>	
Adrienne Mak (Victim of Yoga Yoga)	Does not think that a cooling-off period will assist consumers in making their purchases.

3. What type of enforcement mechanism(s) should be available for consumers of services to seek redress?

<i>Government bureau</i>	
CEDB (Rita Lau)	The CEDB recommends the Customs and Excise Department ("C&ED") to carry out enforcement work of the amended TDO that includes services as the department is already responsible for enforcing the TDO.
<i>Legislative Council members</i>	
James To	There should be civil and criminal liabilities. Serious wrongs should be made into a criminal liability, for example, misleading sales practices where the seller knows he is unable to provide the service at the time of inducing the customer into signing a contract.
Kam Nai-Wai	The Consumer Council and the court. A Consumer Tribunal should be established to work in liaison with the Consumer Council. The Council should be vested with investigative powers and then the case can be delivered to the Tribunal for judgment.
Starry Lee	The government should increase the Consumer Council's powers.
Lee Wing-Tat	In pre-payment of services cases such as the Planet Yoga and Yoga Yoga closures consumers should be able to claim their money back. In the aforementioned cases Mr. Lee thinks that consumers should be able to get their money back from the banks.
Fred Li	The powers of the C&ED should be expanded as an enforcement agency of the amended TDO. The Consumer Council should co-operate with the C&ED and continue to use its powers of research and testing and consumer education to refer cases to the C&ED.
<i>Independent bodies</i>	
Former Ombudsman (Alice Tai)	Hong Kong prides itself for being a hub for tourists, local and mainland consumers. There should be a framework for speedy redress and not hide behind bureaucratic hurdles. There should be a mechanism of redress without having to go to court. The Consumer Council could have some sort of adjudication role.
Consumer Council (Connie Lau)	<p>The Council is a trustee of the Consumer Legal Action Fund. It will at times issue lawsuits for applicants who apply assistance for the fund. However, there is a long list of criteria to fulfill before filing lawsuit because public money is used on behalf of a consumer. The most important consideration is whether there is public interest at large, and whether the case will have public impact to determine the chances of winning the case.</p> <p>The Council has a right for information from traders. It currently only has the power to mediate. During mediation, traders can avoid multiple warnings until the Council publishes their names as bad traders. Avoidance of multiple warnings is not punishable at law but the success rate through mediation is over 80%. Many traders are cooperative but some are not and they are usually problems arising in an industry specific situation.</p> <p>The Council does not see the need for a new body to be established to respond to complaints. The Council is taking up all of consumers' complaints already so there is no need for overlap. However, for certain regulatory actions in the court, the Council hopes that court judgments will also facilitate the owners to have</p>

	redress. This may be remote in reality but it can still be an effective redress mechanism.
<u>Academics</u>	
Eric Tan	The Consumer Council instead of the C&ED would be the most appropriate body for enforcement of criminal sanctions imposed on businesses. A fund could be set up for consumers to get their money back and to take class action against traders. However the fund may be difficult to establish because it would cover all industries whereas some industries are known for using unscrupulous sales tactics while others are not.
Mark Williams	An enforcement agency should have jurisdiction over all consumer products in the service industry and should have the power to take civil and criminal action on behalf of consumers against businesses.
Arthur McInnis	There should be one enforcement agency for consumers to seek criminal and civil redress.
<u>Victims</u>	
Adrienne Mak (Victim of Yoga Yoga)	There should be a refund policy in place.

4. How should we balance consumers' right with the commercial interests of businesses?

<u>Government bureau</u>	
CEDB (Rita Lau)	The CEDB disagrees with the fact there is an inherent conflict between consumer rights and business commercial interests. The CEDB believes that only when honest businesses compete with each other on a level playing field will consumers have greater confidence and be more disposed to shop.
<u>Legislative Council members</u>	
James To	Each industry has their way of balancing their business interests with the costs in protecting consumer rights. For example, the insurance industry has a cooling-off period but because of the length of the contracts, the right is seldom exercised and so this is less likely to effect business efficacy.
Kam Nai-Wai	To better protect consumers, if the mode of payment is changed from prepayment to monthly payment, the businesses contend that there will be a thirty percent hike in prices to ensure cash flow on operation. This would be the cost passed on to consumers in order to balance consumers' rights with commercial interests of businesses.
Starry Lee	Government needs to look balance the interests of consumers, SMEs and large corporations. Too much regulation will restrict a vibrant economy.
Lee Wing-Tat	Need to balance trade efficiency and consumer protection. Right now the government should give consumers more rights as the legislative framework in Hong Kong is more supportive of merchants.
Fred Li	It is difficult to balance these interests but currently the law should give more rights to consumers who are vulnerable to business entities.
<u>Independent bodies</u>	
Former Ombudsman (Alice Tai)	Government's role should be to ensure that adequate information be made available to consumers. In an ideal world, there should be

	<p>equal standing between consumers and businesses but the reality is that in certain businesses, there is technical or professional knowledge that is not easily understood by the ordinary consumer. In that case, the government and public interest should step in. With this information, if the consumer still chooses to purchase the services then it is their free choice to do so. Also, there should be a complaints redress mechanism in place to protect consumers from unscrupulous traders.</p> <p>Consumer protection should be a public interest matter. This is because very often there is unequal standing between the consumers and traders. The government funds bodies such as the Consumer Council because it sees the need to provide consumer protection to individuals – otherwise, there is no need to do it.</p>
Consumer Council (Connie Lau)	The Consumer Council always aims for a balance between the consumer's rights and the commercial interests of businesses. It will not encourage consumers to abuse the system. The aim is to have consumer interest in a fair and unbiased situation. Also, the Consumer Council is a fair and unbiased organization, and it will not encourage consumers to abuse the system to sue traders. The Council will not give heightened awareness to consumers, otherwise this may harm society. The more businesses survive, the more competition will survive to avoid the emergence of a monopoly.
<i>Academics</i>	
Eric Tan	It is difficult to harmonize all interests. The consumer should bear at least some risk. Furthermore it would not be in line with the government's policy of a free economy if it were to fund aggrieved consumers using public funds. In summary, it needs to strike a balance between both parties that would give the optimal outcome.
Mark Williams	Currently the commercial interests of businesses have a preponderant influence on government policy both in terms of legislative and enforcement action – consumers' rights should be increased.
Arthur McInnis	Consumer protection should be a public interest matter and there should be more advocacy for consumers. More consumer rights should be made available in Hong Kong.
<i>Victims</i>	
Adrienne Mak (Victim of Yoga Yoga)	Should protect consumers' right but recognizes that it is difficult because business interests are involved as well.

ANALYSIS

The Commerce and Economic Development Bureau's proposal to amend the Trade Descriptions Ordinance (Cap. 362) to cover services and create specific offences has sparked debate between the different interest groups we interviewed. Below, we analyze the various views proffered by the different interest groups.

Issue 1: Whether current laws for consumer protection are sufficient in Hong Kong. If not, what should be done to improve it? E.g. enactment of comprehensive statute?

Ms. Adrienne Mak, a victim of the Yoga Yoga closure, emphasizes that there is not enough protection for consumers and that more rules, regulations and guidelines on consumer protection should be implemented. However, the CEDB is of the opinion that their proposed amendments to the TDO are sufficient and does not see the need for a comprehensive statute. All five members of the Legislative Council that we interviewed support this change in legislation; however, they also think that more of the legislative framework could be amended and expanded to protect consumers' rights and interests. For example, James To proposes additional legislation to criminalize misleading sales tactics, while Starry Lee and Fred Li both support the view that a comprehensive statute on consumer protection which regulates all industries should be enacted in the long-term. LegCo member Kam Nai-Wai, however, points out that an increase in regulation for consumer protection will only come at the expense of higher prices for the consumer. The former Ombudsman, Alice Tai, thinks that while goods and services are not on par with each other in the legal framework, the enactment of a comprehensive statute will be too broad and therefore would become unfeasible for implementation. She, along with Professor Eric Tan, concludes that each industry should self-regulate instead. However, from a beauty salon consumer's point of view, self-regulation may not be "useful because [the Code cannot] be legally enforced."²⁷

Another strong proponent of enacting a comprehensive statute is Connie Lau, the Chief Executive of the Consumer Council. She cites two reasons: i) to protect consumers and ii) to have a fair level playing field for businesses to compete in the market. In relation to this, the CEDB has stated that it also aims to protect consumer rights and interests and to achieve a "level-playing field [for businesses to compete] on the basis of their inherent strength, price and quality"²⁸ by maintaining free and open economic policies. We can see that the way in which these two parties seek to better protect consumer rights actually come from different perspectives and have inherent differences on the way to go about improving the protection. This may be why Hong Kong lags behind other jurisdictions in terms of consumer protection laws as business interests are at stake. The business community has vehemently refused to face further regulations and has always prided Hong Kong to be the world's freest economy. The different representative groups in the Legislative Council also pose a challenge for amending the TDO as lengthy debates usually ensue from the plethora of views offered. Professors Mark Williams and Arthur McInnis correctly observed that these are the reasons why Hong Kong consumers are still so vulnerable to the traders' actions. The professors advocate for greater consumer protection by enacting a consolidated consumer statute and consumer education. However, Professor Eric Tan points out that it would be difficult to harmonize the interests of different industries and consumers in one consolidated statute without upsetting the status quo.

To improve Hong Kong's consumer protection laws, Hong Kong needs to have a stronger and more vocal body to help disseminate information regarding the lack of protection currently provided by the government. This body should wield the power of public opinion to counter any pressure from business group lobbies and industry unions that are against greater regulatory controls. It is understandable that Hong Kong enjoys such wealth because there has been policies implemented to allow a free and open economy, but with the recent spate of health and beauty centre sudden closures, consumers should be able to seek redress and claim for refund for the unused parts of the services.

²⁷ Chow, Vivienne. "New beauty code fails to impress." South China Morning Post, June 8, 2006.

²⁸ Panel on Economic Development Meeting on 24 May 2010, "Updated background brief on review of consumer protection legislation"

Issue 2: Should there be a cooling-off period for consumers of prepaid and contractual services? Should this be applicable to the health and beauty industries as well?

All of the interviewed Legislative Council members support the implementation of a cooling-off period to pre-paid and contractual services to varying degrees. Legislator Kam Nai-Wai believes implementing a cooling-off period is a piecemeal step towards increasing consumer protection, while Starry Lee believes that it should only be applicable to certain industries and contracts (for example, in the health and beauty industry). Ms. Lee explains that imposing a cooling-off period on all businesses will increase the burden on small and medium enterprises and it could also restrict a vibrant economy. Mr. Fred Li sees the cooling-off period as an antidote for the lack of an international professional standard for quality control in the health and beauty industry. While James To points out that a cooling-off period will increase costs to businesses in the health and beauty industry, which will in turn increase prices for consumers. Therefore, instead of imposing a mandatory cooling-off period in the industry, Mr. To suggests that consumers should have a choice to opt into a cooling-off period and to pay more in the contract price for those who choose to do so.

The legislators are aware about the difficulty of balancing consumers' interests and trade efficiency. Echoing this concern, Professor Eric Tan suggests that it may be possible to apply a cooling-off period in specific situations, for example, when people are not aware of the risks that are involved or when the consumer is not in the position to make a choice as they cannot compare the services available to them at that point in time. However, he remains cautious about the implementation of a cooling-off period and proposes for greater consumer advocacy and for the self-regulation within industries instead. The majority of academics and independent bodies support imposing a cooling-off period on all sectors or industries because it would give consumers sufficient time to understand and exercise their rights. Ms. Mak, however, does not think that a cooling-off period would assist consumers in making their purchases as they would do so with or without such a "reflection period."

Hong Kong should look at different countries such as the United Kingdom,²⁹ Canada,³⁰ Australia³¹ and the United States³² whose states have enacted some form of cooling-off period for consumers to rethink their purchases and get out of contracts that they had not really intended to sign. A gathering of consumers' opinions may indicate a stronger preference of having a cooling-off period for certain industries only, so that blanket application of a cooling-off period can be avoided. This should be one issue to be addressed during the public consultation to begin in July 2010 by the CEDB.

Issue 3: What type of enforcement mechanism(s) should be available for consumers of services to seek redress?

Looking at the issue from the consumer's point of view, Ms. Mak and Hon Lee Wing-Tat think that victims of sudden shop closures such as Yoga Yoga and Planet Yoga should be able to rely on a refund policy and get their money back. Mr. Lee has suggested for banks that have undertaken the transactions for consumers in pre-paid and contractual services to execute such a refund policy. Legislative Council members from the Panel on Economic Development, James To and Starry Lee, suggest instead for "a fund be set up to ensure that consumers get their prepayments back if businesses shut down."³³ The CEDB is, however, in part

²⁹ UK Business Link. "The cooling-off period and cancellations"

<http://www.businesslink.gov.uk/bdotg/action/detail?itemId=1073792577&type=RESOURCES>

³⁰ Office of Consumer Affairs, Industry Canada. "Canadian Consumer Handbook 2008-2009."

<http://www.ic.gc.ca/eic/site/oca-bc.nsf/eng/ca02362.html>

³¹ New South Wales Office of Fair Trading. "Cooling off period."

http://www.fairtrading.nsw.gov.au/Property_agents_and_managers/Agency_responsibilities/Agency_agreements/Cooling_off_period.html

³² Federal Trade Commission. "The Cooling-Off Rule: When and How to Cancel a Sale."

<http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro03.shtm>

³³ Nip, Amy. "Beauty centres to escape new sales laws." South China Morning Post, May 25, 2010.

against this as this would result in difficulty on resolving issues such as identifying the industries to be covered by the fund and the body that will regulate it.³⁴

Instead, the CEDB recommends the Customs & Excise Department ("C&ED") to continue to carry out enforcement work for the amended TDO which will cover services as well. However, as Professor Mark Williams points out, the C&ED is more of a border protection agency rather than a centralized agency advocating consumer interests. Professor Williams and Dr. McInnis recommend for the establishment of an enforcement agency with legal powers to search, seize and prosecute whereas Ms. Starry Lee, Mr. Kam Nai-wai, Ms. Alice Tai and Ms. Connie Lau think that the Consumer Council should be vested with legal powers ranging from investigative powers to having an adjudicative role. Professor Williams, Dr. McInnis and Mr. James To suggest that the enforcement body should have the power to take civil and criminal action on behalf of consumers against businesses. On the other hand, Mr. Fred Li supports the expansion of the C&ED's powers to enforce the amended TDO but thinks that it should co-operate with the Consumer Council to utilize the latter party's powers of research and testing and consumer education. The Consumer Council could then refer cases to the C&ED.

One frequent problem with the Consumer Council helping to bring a consumer's case to court is that the legal costs incurred usually greatly outweigh the consumer's loss. Therefore the Consumer Council has proposed that the consumer should have access to efficient redress from a "measured and compliance-oriented enforcement approach,"³⁵ carried out in five-step methodology: (i) voluntary reconciliation disputes between traders and consumers; (ii) written court enforceable undertakings from traders; (iii) court enforceable cease and comply notice issued by the enforcement agency; (iv) right of the Consumer Council to publicize the names of unlawful traders; and (v) applying to the court for declarations, injunctions, orders and/or financial penalties if an undertaking or cease and comply notice has not been adhered to.³⁶

This recommendation to a five-step approach may help increase the Consumer Council's power not only to protect consumers but also to punish unscrupulous traders that have exploited the consumers' weaknesses. In Australia, the bodies include the Australian Consumers Association, the Australian Competition and Consumer Commission, and the State Government (consumer protection) Agencies; in the United Kingdom, the Consumers' Association and the Office of Fair Trading are responsible for enforcement of consumer protection laws and handling complaints; in the United States, the Better Business Bureaus, the Consumer Product Safety Commission, the Consumer Union, the Federal Trade Commission and State Government Agencies are all responsible in enforcing consumer protection laws.³⁷ Again, Hong Kong can look to other jurisdictions to see which bodies handle complaints and sue on behalf of consumers and how they operate in order to establishment a more effective redress system once the TDO is amended.

Issue 4: How should we balance consumers' rights with the commercial interests of businesses?

Ms. Tai recognizes that ideally there should be equal standing between consumers and businesses; however some businesses have technical or professional knowledge that is not easily understood by the ordinary consumer. Therefore because of this unequal standing between consumers and traders, the government should become involved and consumer protection should be made a public interest matter. Supporting this theory, Legislators Lee Wing-Tat, Starry Lee and Fred Li and Ms. Connie Lau of the Consumer Council emphasize that there should not be too much regulation as this would distort market conditions and stunt healthy business competition.

Professor Eric Tan thinks that consumers should bear some risk as well because it is difficult to harmonize the interests of all parties. Professor Mark Williams and Dr. Arthur McInnis are of the view that there should

³⁴ Ibid.

³⁵ Pg. 39. Consumer Council. "Fairness in the marketplace for consumers and business"

³⁶ Ibid, pg. 34

³⁷ Economic Services Bureau. "Consumer protection, comparison with consumer protection framework in places outside Hong Kong." <http://www.ln.edu.hk/econ/staff/plin/HK.pdf>

be more consumer rights advocacy because the businesses in Hong Kong have, in general, been able to exert great influence over government policies.

The CEDB disagrees that there is an inherent conflict between consumers' rights and business interests and suggests that "only when honest businesses compete with each other on a level playing field will consumers have greater confidence and be more disposed to shop."³⁸ Perhaps a more realistic opinion is that of James To. He submits that each industry has its own way of dealing with the costs of consumer protection; only each industry would know where the balance lies in terms of reaching an optimum result of minimum of social cost in the face of intensity of regulation.³⁹

It will be inevitable that greater consumers' rights will come at the expense of commercial interest of businesses because tighter regulation means that the businesses will have to seek a way to recover the costs incurred in order to conform to the rules and formalities set out. However, allowing consumers to have the confidence to spend is also one way of understanding the need for better consumer protection. With so many parties' interests involved, reaching a balance may not be the easiest thing, but if we take steps to prevent unfair trade practices and exploitation by unscrupulous service providers, this can only lead to fairer market conditions beneficial to all.

Conclusion

Consumer protection should be a public interest issue because the behavior of unscrupulous traders creates a negative environment for competition and development. Currently as it stands, Hong Kong's consumer protection laws lag behind those of developed economies as business interest groups wield a significant amount of influence over governmental policy making. Greater consumer advocacy is needed in order to champion for better consumer protection. In order to create and to maintain a sustainable and thriving economy, consumers should be given more rights by way of legislation so that adequate protection is provided especially for those most impressionable and vulnerable against the practices of unscrupulous businesses.

³⁸ Interview with CEDB (Rita Lau) on 24th June 2010

³⁹ This idea is illustrated by Layton and Holmes' article "Consumerism—A Passing Malaise or a Continuing Expression of Social Concern?" 46, *Australian Quarterly* 6.

CASE STUDY ON PLANET YOGA

INTRODUCTION

Background

Planet Yoga was a well-known local yoga training center that opened in 2003. It had over 13,000 members, but on 14th May 2010, it suddenly closed down without any prior notice.⁴⁰ Some members had even signed contracts shortly before its closing.⁴¹ This was the second large-scale yoga training center that went bankrupt, following the March 2010 closure of Yoga Yoga, and debate over current consumer rights protections was once again brought into the media spotlight.

Methodology

We interviewed four victims in order to examine what sales practices Planet Yoga had engaged in for their respective cases. We also conducted an interview with LegCo member Lee Wing-Tat, who has since initiated various meetings to help the Planet Yoga victims. He has so far pushed for much more awareness of the potential risks involved with the pre-payment system, and sought action from the Hong Kong Monetary Authority ("HKMA"). We attended a meeting held at the HKMA on 19th June 2010 that addressed the concerns of the pre-payment system. This meeting helped us better understand the interactions between three groups: health and beauty service providers, banks and consumers. Below is a run-down of events that have happened since Planet Yoga closed down.

Date	Issue(s)	Participants
14 May 2010	- Closure of Planet Yoga	
31 May 2010	<ul style="list-style-type: none">- First Creditors' Meeting- Over 850 people attended⁴²- Insufficient seating at the Duke of Windsor Social Service Building's auditorium led to the postponement of the meeting; date for new meeting still unknown.- A victim at the meeting who identified herself as "Theresa" suggested that commercial fraud had potentially been committed, and called for police to investigate- Around 30 victims reported to the Wanchai police headquarters	Victims, Lee Wing-Tat, reporters
19 June 2010	- Meeting at the HKMA	Victims, Lee Wing-Tat, Kam Nai-Wai, HKMA officials, reporters

Significance

The Economic Development Panel meeting held on 24 May 2010 at LegCo illustrated the extent to which the government was willing to amend the TDO to cover unfair trade practices for services. A study of the sales practices employed by Planet Yoga can help contribute to a greater understanding of the nature of unfair sales practices in Hong Kong's health and beauty industries. It also gives deeper insight about how any new consumer protection laws or amendments can cure existing mischief.

As for complaints regarding prepayment mechanisms, the Consumer Council received 1,994 such

⁴⁰ Wan, Adrian. "Allegations fly with Planet Yoga Meeting Overwhelmed." South China Morning Post, June 1, 2010.

⁴¹ Nip, Amy and Paggie Leung. "Trade protections may be extended to cover services." South China Morning Post, May 19, 2010.

⁴² Wan, Adrian. "Allegations fly with Planet Yoga Meeting Overwhelmed." South China Morning Post, June 1, 2010.

complaints in 2009 aimed at “beauty care and slimming services” and “fitness club.[sp] (including yoga).”^{43,44} Only 546 prepayment disputes in these sectors were classified as resolved.⁴⁵ This case study will examine the problems associated with prepayment in the context of the Planet Yoga closure in order to provide recommendations for reforming the prepayment system to better balance consumer and commercial interests.

Structure

In this case study, we present three Planet Yoga victims’ interview transcripts as a background to the analysis we undertake. The victims have expressly asked to remain anonymous during the interview so we shall identify them as Ms. A, Ms. B, and Ms. C. The analysis will focus on unfair sales tactics which have been employed by the health and beauty industries. We seek to identify the potential problems of the prepayment system as well as providing recommendations for the way forward.

INTERVIEW TRANSCRIPT

Interview Victim One: Ms. A

a) When did you sign the contract? How much did you pay for it?
“In early 2008, I paid over HK\$20,000 for the Planet Yoga membership and bought 50 sessions with a private instructor. This came to HK\$700 per session. On 28 th April 2010, I bought another 50 sessions with the private instructor which amounted to HK\$500 per session.”
b) Did you pay in lump sum or by monthly installment?
“I paid by monthly installment. The 2008 transaction was paid with _____ credit card. The 2010 transaction was paid with a _____ credit card.”
c) Did you encounter unfair sales tactics? If so, what were they?
“In early April 2010, the sales agent from Planet Yoga called me saying there were a few private instructor sessions remaining in my contract and there was a promotion for private instructor sessions for HK\$500 each. The original price was HK\$750 per session. In fact, there were actually 30 sessions remaining. On 28 th April 2010, I went to the Causeway Bay Planet Yoga branch and bought another 50 sessions for a total amount of HK\$25,000. At the time I signed the contract, I expressed concern about the possibility of bankruptcy since Yoga Yoga went down two months earlier. In order to nail the deal, the sales agent made several statements to relieve my concerns. First, the agent claimed that Planet Yoga was planning to expand its business by taking over Yoga Yoga’s fitness centres. A new Planet Yoga branch was to be opened in Wanchai as well. This was convenient for me as the new branch would be located near my work place. Second, with the knowledge that I am also a member of Fitness Club B, the sales agent told me that Planet Yoga and Fitness Club B were working on a joint arrangement which will enable me to enjoy the facilities of the two centres but only paying for the price of one. Two weeks later, 14 th May 2010, Planet Yoga went bankrupt and closed down.”

Interview Victim Two: Ms. B

a) When did you sign the contract? How much did you pay for it?
“On April 30 2010, I paid HK\$8,488 for a 2-year membership.”
b) Did you pay in lump sum or by monthly installment?
“I paid by interest-free monthly installment via _____.”

⁴³ Commerce and Economic Development Bureau. “The number of complaints received by the Consumer Council concerning prepayment and the number of such cases resolved” http://www.cedb.gov.hk/speech/2010/annex_19052010.pdf

⁴⁴ GovHK, “Protecting consumers who make prepayment for services” <http://www.info.gov.hk/gia/general/201006/02/P201006020202.htm>

⁴⁵ Commerce and Economic Development Bureau. “The number of complaints received by the Consumer Council concerning prepayment and the number of such cases resolved” http://www.cedb.gov.hk/speech/2010/annex_19052010.pdf

c) Did you encounter unfair sales tactics? If so, what were they?

"I am a double victim of both Yoga Yoga and Planet Yoga. In March 2010, I learned from a notice on one of Yoga Yoga's news boards that said Yoga Yoga members can enjoy a discount when joining Planet Yoga. The sales agent from Planet Yoga called me and told me this promotion is valid only this month. The sales agent also indicated his willingness to pay me a house-visit in Shatin, where I live. Since the Yoga Yoga thing had already happened, I was already aware of the potential risk involved in prepayment by installment. Therefore, I repeatedly inquired about the risk of advance payment. The sales agent told me that the installment payments could be terminated if the company went bankrupt. On 30th April 2010, I joined Planet Yoga under a two-year membership for HK\$8488, on a 12 months interest-free installment."

Interview Victim Three: Ms. C

a) When did you sign the contract? How much did you pay for it?

"In December 2009, I signed a contract for HK\$21,388 for seven-year membership which allowed me to attend classes at the three Planet Yoga branches."

b) Did you pay in lump sum or by monthly installment?

"I paid by monthly installment using a credit card."

c) Did you encounter unfair sales tactics? If so, what were they?

"I joined Planet Yoga in December 2009. I was approached by a street agent who forced me to accept a gift in order to draw my attention. The agent led me to the fitness centre and gave me four classes for free. After the trial, I was persuaded by a sales agent for two and a half hours, during which the sales agent proposed four different sets of pricing. They were all discounted packages with different conditions attached, such as the restraint on locations, mode of payment, and brands of credit card accepted. In the end, I paid HK\$21,388 for a seven year membership that allowed me all-access to class at the three different yoga centre locations."

ANALYSIS

i. Unfair Sales Tactics

Firstly, one common feature from the first two cases (interviews with Ms. A and Ms. B) that draws our attention are the times when the contracts were signed. In both cases, the contracts were concluded at the end of April 2010, around two weeks prior to the sudden closure of Planet Yoga. From our conversations with the victims, we infer that the sales agents were probably under pressure to recruit more members or increase the sales turnover of subscription to yoga sessions. For instance, in Ms. A's case, the sales agent successfully persuaded her to buy another 50 private instructor sessions by misrepresenting to her that she only had a few remaining private sessions, though in reality she still had around 30 left. In Ms. B's case, the sales agent even suggested he was willing to pay her home in Shatin a visit from the fitness centre in Central in order to get her to sign a contract with Planet Yoga. As for Ms. C's case, although she did not purchase any additional services during the month of April 2010, she received phone calls from her sales agent at the end of April, asking her to introduce more friends to join Planet Yoga for an opportunity to win an Apple iPad. From these statements, we can infer a general trend that Planet Yoga continued to aggressively recruit members even only two weeks before it closed down.

Secondly, in the first two cases where Ms. A and Ms. B bought new services or joined the yoga centre within a specified period, misrepresentation was the main form of unfair sales tactic used. In Ms. A's case, the sales agent had given her false information to induce her into signing a contract with Planet Yoga, such as the claim that a new yoga branch in Wanchai was opening near her workplace. Furthermore, armed with the knowledge of Ms. A's membership with Fitness Club B, her sales agent told her that with payment of the membership fee for Planet Yoga, she would be waived for payment of fees to Fitness Club B. With such

personalized situationally-tailored misrepresentations, the sales agent was able to successfully induce Ms. A to conclude a contract with Planet Yoga. In Ms. B's case, the most apparent misrepresentation was the assurance that the monthly installment would be automatically self-terminate if Planet Yoga shut down. Ms. B had largely relied on the sales agent's statement when concluding her contract with Planet Yoga.

Thirdly, apart from the misrepresentations used by Planet Yoga sales agents during the immediate weeks prior to closure, Ms. C's case illustrates the usual sales tactics employed by Planet Yoga to induce customers to sign a contract. The multitude and complexity of pricing strategies show a dramatic fluctuation and flexibility in its pricing policies. Ms. C believes that the pricing is very negotiable as she had asked the sales agent five times to enquire from his manager for further discounts. The sales agent came back to her each time with different conditions attached to the pricing. Another sales tactic employed are constant persuasion and cajoling that could be considered borderline cases of harassment. Ms. C was kept in the fitness centre for *two and a half hours*. Being subject to such a long duration of constant persuasion and corraling coupled with being assailed by a constantly revolving door of complex price setting strategies have the effect of reducing a consumer's ability to make a cool-headed and rational judgment. Moreover, Ms. C told us that she felt boxed in during the sales pitch and that she felt she had no choice but to sign the contract so as to be able to leave store premises – and not so much because she wanted the yoga service per se. She just wanted to leave. In fact, these tactics are not unique to Planet Yoga. Ms. A, also a Fitness Club B member, had shown Planet Yoga staff her Fitness Club B membership card at their request. She indicated to us that she had then as a result been detained by Planet Yoga staff members who were unwilling to return her Fitness Club B membership card. She expressed that she had felt unable to leave until she signed the contract with Planet Yoga. We should note that we had also experienced tactics similar to those described above during the course of our undercover operations, which we will explain in detail in the next chapter of this study.

ii. Prepayment

The prepayment method is commonly used in the health and beauty industries. During our interview with the legislator Mr. Lee Wing-Tat, he drew our attention to the role of banks in these transactions. He revealed that if the bill is being paid by credit card, there are three parties to the transaction. First, the service providers sign a contract with the consumers which states whether payment is made by a lump sum or by monthly installment. Second, the bank will pay the agreed price to the service provider. At this instance, the bank has loaned the same amount of money as the agreed price to the consumer. Mr. Lee indicated that the service provider under this transaction is acting as the agent for the banks who loan money to the consumers. The normal banking practices suggest that if the bank is lending money, it should disclose the risk involved upon entry of a loan contract. He analogized the necessity of banks or its agents (the service provider) to disclose terms and risks of prepayment to his experience purchasing foreign currency at the bank. "Everytime I buy renminbi, I must listen to the bank's three-minute caution about the terms and risks of my transaction. I've asked them before if we can skip it because I've already heard it before, but they stop me and say 'No, as a matter of bank policy, we must read you your terms.' Why shouldn't service providers do the same?" said Mr. Lee.⁴⁶

In reality, however, as the above three cases show, there is no documentary evidence that the customers knew that they were also dealing with the bank. Given their demonstrably aggressive, cut-throat attitudes in trying to sign people to contracts, it is unlikely that the sales agents of the service providers would disclose to the consumer the risk of entry into what is essentially a loan contract.

To try to bring resolution to the Planet Yoga situation, Mr. Lee led some of the firm's former members to the HKMA offices to discuss how the authority could adopt measures restraining banks from transferring consumers' retention money to Planet Yoga's liquidator. At the meeting with HKMA officials, several victims presented various arguments pertaining to the problem with the prepayment method.

⁴⁶ Interview with Lee Wing Tat. Conducted June 9, 2010.

Firstly, with regards to the prepayment method, there is a distinction between payment in a lump sum and payment by installment as one will determine whether a charge back clause will apply. With a charge back clause, the consumer will be able to recover from the bank any monies paid via credit card if the contract cannot be carried out as agreed. However, according to banking practice, the charge back clause does not apply to payments by installment. One victim contended that she had no idea of the implications or the distinctions between the two payment methods because neither the bank nor her Planet Yoga sales agent had warned her of the consequences in choosing payment by installment. She said that this was equivalent to being deprived of her right to make a fully informed choice as a consumer. She furthermore stated that the HKMA had failed to discharge an obligation to educate consumers about the risks inherent in such transactions.

Secondly, retention money, as stated above, is the amount of money detained by the banks for a period of time, which is then transferred to service providers. Businesses may experience cash flow problems if retention money is held too long by the banks. As we understood the discussions in the HKMA meeting, consumers may have a chance of recovering their lost membership fees from the retention money held by their banks. However, the exact amount of money retained and the duration of retention are regulated by internal banking regulations. The consumers, as outsiders, have no access to such information. One victim said at the meeting that if she had known which banks detained more money for a longer period of time than others, she would have chosen to pay with that bank so that there would be a greater chance for her to recover money.

iii. Recommendations

To sum up the victims' arguments: firstly, the lack of transparency in current banking practices has deprived consumers of their right to an informed choice; and secondly, the HKMA failed to educate consumers about the risks and problems involved in various payment methods. The current problem leads to a question: how do we strive for a more transparent banking practice environment? LegCo member Mr. Kam Nai-Wai has pointed out that there would no doubt be vehement objections from the banking and finance constituencies if there is a requirement for greater transparency in banking practices. Thus, the ultimate barrier to transparent practices is the current polity in Hong Kong. However, this does not mean there is no solution to prevent similar crises from happening. We provide three recommendations to help solve the problem stemming from the current prepayment system.

The first recommendation was proposed by Mr. Lee. He contended that the government should more closely integrate communication between banks and businesses with relation to the retention money policies, by enabling banks to stop its payment to the service providers once they have learned a company has gone out of business. This means money in the hands of the bank that consumers can potentially claim back, rather than into the coffers of a bankrupt company. The advantage of this recommendation is that it is relatively easy to carry out, since such lines of communication have already been adopted between banks. In addition, some parties proposed during the HKMA meeting that consumers, as paying members of service businesses, should have a right to know about any financial irregularities and should be added to the communicative relationship between banks and companies. However, this approach does require a delicate balance between the trader's interest and consumers' protection. To detain an excessive amount of the service providers' money or for too long a duration could be fatal to business operations.

The second recommendation was suggested by another LegCo member, Mr. Fred Li. He proposed during our interview that Hong Kong could learn from Taiwan's experiences. In Taiwan, an intermediate agency has been set up to collect all the pre-payment monies from each industry. This agency has the power to halt the release of money to the service providers if certain valid grounds have been satisfactorily met.

The third recommendation is to adopt the American approach by developing the charge-back system. Normally, the charge-back system is operated by Visa, MasterCard, and other credit card companies, in order to resolve disputes between banks themselves, and between banks and merchants. It is not for disputes between consumers and merchants. Consumer protection laws generally regulate the consumer-card issuer

relationship and the consumer-merchant relationship, but not the triangular relationship between consumers, banks, and merchants that is the case in credit and debit card payment systems. However, section 170 of the United States' Truth-in-Lending Act (TILA) permits credit cardholders to raise against the issuer any claims or defenses they may have against the merchant, under four conditions: "(1) the cardholder made a 'good faith attempt' to resolve the dispute with the merchant; (2) the transaction amount has exceeded US\$50; (3) the initial transaction occurred in the same state or within 100 miles of the cardholder's billing address; and (4) claims or defenses are limited to the balance remaining on the card when the cardholder first notifies the card issuer or merchant of the claim or defense."⁴⁷ The statute entitles consumers paying by credit card to have "the right of charge-back against the issuer when goods arrive in defective or non-conforming condition, or when there are any other claims or defenses against the merchant giving them the legal right not to make the payment."⁴⁸

By following these recommendations, the current problems associated with prepayments may be reduced as consumers will be reasonably informed of the risks involved in such transactions; this itself will translate into more protection for consumers who can make better informed choices when signing up for health and beauty services in the future.

⁴⁷ Pg. 23. Arnold S. Rosenberg, "Better than Cash? Global Proliferation of Payment Card and Consumer Protection Policy", 60 CONFLQR 426

⁴⁸ Ibid.

UNDERCOVER OPERATIONS

1) Beauty Salon A

We visited Beauty Salon A at Causeway Bay Plaza 2 on 5th June 2010, at 3.54pm. The visit lasted for 13 minutes. The staff led us into a private meeting room and explained the package services to us. The HK\$6000 package consisted of 20 coupons of HK\$300 each, where a "Buy One Get One Free Offer" was already included as only 10 coupons was originally included in the plan. The staff then told us that they were doing a "Today's Special" and further discount could be given to us: HK\$6000 for 30 coupons (i.e. HK\$200 each). However, this promotional price was only available today and for HKID card holders. Payment must be made in a lump sum of HK\$6,000 and all coupons must be used within 3 years. One coupon is required for each service component. Among the 100+ components on offer, the company provides services including facial, slimming, massage, detoxification, body wraps and spa sessions. There is no extra charge for towel and sauna. Treatment can be booked in any of the 47 branches in Hong Kong. Non-members were not allowed to take away the component lists and menu.

2) Beauty Salon B

We then went to the Sino Plaza Causeway Bay Branch of the Beauty Salon B at 4.20pm. The meeting lasted for approximately 25 minutes. Package A costs HK\$15,000 for 150 sessions (i.e. HK\$100 per service). Services provided include slimming and facial treatments, along with machine slimming and toning options available. We asked the saleslady where the machines are from and she indicated to us that they are the latest technology from Europe. Package B costs HK\$7,500 for 50 sessions of facial treatments only (i.e. HK\$150 per service). Payment can be made by interest-free installments. Similar to Beauty Salon A, all services must be used within 3 years however extension is allowed for frequent travelers and no components lists were allowed to be taken away. Treatment is restricted to be done in one branch only.

3) Fitness Club A

Our two male operatives visited Fitness Club A's Central branch, located in Asia Pacific Tower. Our visit began at 5:45pm, it lasted approximately 70 minutes and was conducted entirely in Cantonese. In its advertising, Fitness Club A bills itself as a "Skin Care & Body Toning Authority" catering to male clients. We were led by one female staff member into a room which presumably serves as their work and sales office.

Our first operative expressed a desire to lose weight, and he was told that Fitness Club A's equipment would be able to help him do so by "melting fat" in his body via electrical stimulation. The sales representative stated that neither changes in diet nor exercise would not be necessary. Our operative was in fact specifically advised to not train in the gym with weights as this would presumably have the effect of cancelling out the weight loss done by Fitness Club A's equipment.

According to the pictorial look-book we were offered for viewing, the company's weight loss regime consisted of the application of wired, sticky electrical patches onto the client's skin; the wires were attached to machines that we were not able to identify. The client would relax on a bed while the machines would presumably shed body fat through "passive exercise."

Our second operative said he wanted to gain muscle mass. He was told that Fitness Club A's machines would be able to add and then shape muscle, again using electrical stimulation. In this case, the company representative stated that there would be able to continue lifting weights in the gym.

When asked what kind of training or official certification Fitness Club A's staff had, the representative stated that the company's employees were all trained internally. When pressed to reveal the training methods and procedures, she offered assurances that staff had been properly qualified and that we need not worry.

We were told that Fitness Club A had recently received full approval of its services from a Kowloon City hospital to open a branch *inside* the medical institution. This is doubtful. However, even after listening again to our recording, we were not able to catch the name of the hospital.

We were offered a file folder containing the following price list, which listed Fitness Club A's four price packages, which were differentiated only according to the number of sessions purchased. Prices were independent of what service (massage, weight loss, etc.) was purchased; only the number of sessions selected determined the final price. We were allowed to copy down this list for our notes:

<u>Number of sessions</u>	<u>Original price</u>	<u>Discount</u>	<u>Discounted Price</u>
55	\$39,000	30%	\$27,000
95	\$60,000	35%	\$39,000
130	\$80,000	40%	\$48,000
210	\$120,000	40%	\$72,000

Seeing that there were a number of sheets in the file folder, our second operative attempted to remove the other sheets. As this was being done, he was told "You can't do that," but he went ahead anyway, and revealed several other price menus formatted similarly. Only the prices and discounts associated with the four different selections for Fitness Club A sessions were different from the list we were initially shown. We were not allowed to record these new prices, but our notes taken contemporaneously immediately after we left Fitness Club A record one price menu listing the "95 sessions" selection discounted instead by 40%. When asked i) why there were so many different prices discounts and price lists for the same packages; and; ii) why there were no respective promotional dates attached to these price lists, the sales representative replied that they constantly changed their promotions and that she would be able to remember which was the appropriate promotion to offer clients.

We asked to take away a copy of the contract and price list, but this request was declined.

4) Fitness Club B

Our two male group members also visited the Fitness Club B Central branch on 5th June 2010. It began at 7:00pm, and it lasted for about 90 minutes. Everything was conducted in Cantonese.

At the beginning, a sales agent introduced a gym instructor to us. He helped us do some body tests to determine how much fat we needed to lose or gain. He also taught us how to correctly use two sets of gym equipments. This took about 45 minutes. In the remaining 45 minutes of our visit, the sales agent sent the gym instructor away and led us to his sales office which consisted of very tall cubicle partitions with the exit facing the welcome counter. He stated that they had no sales brochure, nor set prices. He assured us that this was normal practice for Hong Kong gyms.

Over the course of his sales pitch, he offered us several price points. His first offer was as such, which he wrote down on a sheet of paper: a HK\$689 processing fee, and a monthly fee of HK\$682 monthly fee for a contract period of 12 months. He said that he was waiving the one-time HK\$999 joining fee for us. If we paid with a credit card, he offered a "special promotion" contract with a length of 18 paid months with six more thrown in for free.

We expressed a reluctance to buy this package, explaining that our hesitance originated from the fact that we felt the price was too high. We then asked whether the price was negotiable. He counter-offered with HK\$598/month for 12 months plus 12 free months. The HK\$999 joining fee would again be waived, he said. Still, we demurred.

The sales agent asked us what type of credit card we had. One operative replied that he owned a Hang Seng student credit card. He said that with a credit card, we should consider joining together on one credit card, and we were assured that we could use the account interchangeably. He asked to see our operative's credit card, but did not take it. He offered us HK\$598/month for three years plus 12 months free. Again, we said that the price was too high. Up to this point, the agent cut us off with rapid-fire sales talk every time we tried make an effort to speak to him about what we felt was too expensive of a price.

Our sales representative said he would speak to his superiors, and brought back the club's General Manager, who wore a blue suit jacket over a dress shirt. This manager also spoke rapidly (even faster than the sales rep) and kept asking us whether we were really interested in joining the club. We told him that we were young, recently graduated lawyers working at small law firms and as such, had neither ample savings nor disposable income to spend. To this he replied, "As the general manager, I have decided to offer you two the lowest price possible. I can make you a special deal." He slapped his hand against the tabletop to emphasize his point. He asked us to hand him our student cards. We declined, and he asked again. We refused. He said that he could create an account for us under a "couples package" normally reserved for spouses, but since he, as general manager of the Central branch, was creating the account, no one would find out that we were really just two platonic male friends. The couples package would be created using our operative's one credit card, said the manager. He offered a five-year deal at HK\$284/month.

When we indicated that we needed about 30 minutes at a neighbourhood restaurant to think about this deal, he emphasized to us that this was the only chance. "The deal is valid only at this moment," repeated the manager several times. We were also told (not requested) not to leave the store premises. When we walked out the door, the offer would be revoked, he stated.

We remained uncertain, and he made a final offer: HK\$284/month for 3 years. When we again hesitated at signing this, he turned around to leave, but not before commanding his sales representative to "Sign them [us] up immediately." Of course, we protested. On the way out of the store, the sales representative gave us his business card.

To sum up the practices we encountered at Fitness Club B, the price is highly negotiable as it ranged from HK\$682 to HK\$284. We suspect that there is in fact no set price, and that what clients pay depends on how quickly they cave into pressure. If we had not requested for a discount, it is highly likely we would have had to pay for a very high amount to join the gym. Furthermore, we were not, at any given time, shown any price listings; the sales agent himself sets the price according to how much he thinks the client is willing to pay off the bat, or how well he feels they can negotiate under high pressure.

Also, we were asked to show our credit card and student card to the sales agent. We were later told by a Planet Yoga victim whom we interviewed for our individual case study that her Fitness Club B membership card was briefly withheld from her by a Planet Yoga sales agent until he had successfully persuaded her to conclude a contract with Planet Yoga. As seen, this is a practice used by the health and beauty industries to prevent people from leaving the premises until some sort of contract is signed. The manager implied that the promotional offers were done in the form of a special favour for us; any hesitation was a waste of his time. (Colloquially called a "guilt trip"). He kept asking us if we were serious about our time, and his time. He also tried to prevent us from leaving the premises by stating repeatedly that the offer was valid only at that given point in time.

It is understandably difficult for many consumers facing similar constant, high-pressure sales practices to resist signing just to be able to leave the premises. Both operatives, despite being senior law students with a knowledge of unscrupulous sales tactics, felt highly pressured and a sense of disorientation and distress when trying to negotiate with this gym.

ANALYSIS

Complaints of beauty and health club service received by Consumer Council:⁴⁹

No. of Complaints	2008	2009	1-5/2010
Beauty	1353	1480	324
Health Clubs	469	514	552

Over the last decade, many health and beauty services have been subjected to frequent public criticisms of inappropriate sales methods. Consumer Council had regularly received complaints from consumers about the beauty clubs' guarantees. Many of such guarantees were in fact fraudulent claims or omissions as can be found in the ubiquitous slimming advertisements.

Having conducted these undercover operations, we observed a shifting trend in the health and beauty industries. The industry has slowly worked to become more aligned with the Beauty Industry Code of Practice such that advertising strategy is no longer flushed with misleading guarantees but is more focused on discounts and trial price promotions to lure customers in.

Beauty Salon A is one of the largest chain beauty clubs in Hong Kong and has been established for over 10 years. During the three years that ended in 31 March 2005, 303 complaints had been lodged against Beauty Salon A, according to an announcement it published to the Stock Exchange of Hong Kong that we found in the "Investors Relation" section of the company's website.⁵⁰ In February 2006, the company made an announcement with regards to those complaints that the company will enhance communication channels with the Consumer Council in order to remedy the situation and to avoid similar complaints in the future. From this visit, we experienced the attractive promotion sales tactics of "Today's Special" that tried to sway us into purchasing the services impulsively on the spot without sufficient consideration.

Beauty Salon B is beauty club under a holding company that opened in 2000. Its sales tactic is focused on providing cheaper prices to consumers but also to induce the consumer into purchasing a high quantity of services through a one-off coupon pre-payment system that ties the consumer for 3 years.

The coupon pre-payment system is widely adopted in the beauty industry. The alleged sales promotion is in fact not as cost-saving or economic as it looks. In fact, the coupon system gives the customer a sense that they only need to use one coupon for each visit at the beauty club. However, this is not true. Beauty Salon A splits each treatment into different procedures, and each procedure requires the deduction of one coupon. For example in a facial treatment, it includes the steps of cleansing, mask, and purifying, thus 3 coupons, HK\$600, would be needed in order to have a complete facial treatment. In contrast, Beauty Salon B expressly provided to us that only one coupon would be needed to complete the entire facial treatment that included all necessary procedures mentioned above. The saleslady also represented to us that each coupon would entitle a use of the newest slimming machine for 20 minutes. However, a 20 minute treatment does not complete the entire treatment so many more coupons would need to be deducted at each visit before the completion of the slimming machine programme.

Our two male operatives noticed the difference between the sales practices employed by Fitness Club A and Fitness Club B. Fitness Club A's practices consisted of blatantly false scientific claims (muscle shaping, or weight loss using electricity) and dubious factual assertions (getting full approval for its weight loss procedures from a Kowloon City hospital, and getting permission to open a branch inside the hospital). But the way the sales talk itself was conducted was very low-key. On the other hand, Fitness Club B's sales

⁴⁹ Consumer Council. "Complaints statistics for the year from 2008-2010."

http://www.consumer.org.hk/website/ws_chi/news/complaintstatistics/monthlyupdate.pdf

⁵⁰ Modern Beauty Salons Holdings. "Announcement." Dated February 14, 2006.

<http://www.modernbeautysalon.com/Corporate/StatutoryAnnouncements/LTN20060215030.pdf>

practices did not involve any false misrepresentations; but it did involve very high pressure methods to erode a potential client's willpower by assailing them with machine-gun speed sales talk, cutting off the consumer's attempts to voice objections, the use of theatrics (the manager, if he did indeed correctly represent to us his role at the gym; his table slapping) and false time constraints (some of our acquaintances who are members of Fitness Club B revealed to us that their sales reps also told them that their special promotional offer would expire that day. This was also true with Planet Yoga closure victims we interviewed.) We suspect that because Fitness Club B caters also to a higher income clientele, including university-educated professionals from Hong Kong and abroad, it is much more difficult for the gym to pass off misrepresentations as egregious as those made by Fitness Club A. In other words, there is much less room for trickery, so the gym instead relies on high-intensity sales tactics to pressure consumers into signing a contract.

LIMITATIONS OF THE UNDERCOVER OPERATIONS

It was difficult to be convincing that three females in their early-20s could afford to subscribe to the services on offer at the beauty centres. Most of the treatment packages start at HK\$5,000 and more often than not, there is a need to pay up-front the entire lump sum to the beauty centre. Also, we felt difficulty in convincing the saleslady we needed body slimming treatments as none of us actually had such a need while we enquired about the different treatments on offer. Nonetheless, despite us probably lacking persuasion, we continued to enquire about their services. On the whole, we still experienced the sales tactics of promotional offers to get us to subscribe to their services and we saw the different kinds of treatment packages available that had lacked medical or scientific literature to support its purported claims.

Our male investigators thought their operations were a success. As the visit profiles illustrate, they were able to get a very clear picture of just how far both businesses they visited were willing to go in their attempts to secure very expensive contracts.

FINAL REMARKS

INTRODUCTION

A consistent theme throughout our discussions with our interviewees was the need to bring Hong Kong's consumer protection laws on par with the levels of protection offered in other developed economies in the world, including the United Kingdom, Australia and the United States. As it currently stands, Hong Kong's best known legislation affecting consumer protection is the Trade Descriptions Ordinance ("TDO", Cap. 362) which provides mostly satisfactory protection for the majority of consumer purchases of goods, but the law's Achilles heel is its lack of protection for services. Given the advanced state and size of Hong Kong's economy, and the great extent to which services contribute to the city's GDP, the time is long overdue to enact legislation governing sales practices in the service sector and attendant system of redress for aggrieved consumers. The high number of complaints related to trade practices and contract terms in the health and beauty industries makes the necessity of implementing ground rules for these sectors an undeniable public interest matter affecting the city's purchasers of services. What we can say confidently is *all* of Hong Kong's population are consumers of some sort of service, whether it is mobile phone subscriptions, doctor's visits or gym visits. The extraordinary depth of the existent well of support from legislators and especially ordinary citizens (according to our surveys, 80% of male respondents and 86% of female respondents agreed that consumer protection should be extended to services) we talked to should make the question of whether there needs to be legislative oversight of sale of services an obvious and foregone conclusion; it then behooves the Hong Kong government to fulfill its responsibility to the population it governs by acting now to set out the rules for provision of services to consumers, and to punish recalcitrant traders. Whether the health and beauty sector should be included is what we have sought to answer.

An equally important question to answer is what should be the extent and scope of any consumer protection statutes should take, which then necessarily entails thought about its form and constituent elements. The aim of any proposed legislation should be to put consumers and businesses on more equal footing, acknowledging that the average consumer cannot reasonably be expected to know the ins-and-outs of the service nor of the sector to which it belongs, as thoroughly as the vendor.

In cases of non-negotiable standard contracts prevalent in the health and beauty sectors, it must also be further recognized that many Hong Kong consumers are legal laymen without an understanding of contract terms that will allow them to identify and challenge what are often onerous terms skewed favourably towards businesses. (Such as a trader's right to unilateral variation of pricing or services offered without buyer consent) Therefore, any new legislation should start from the *prima facie* assumption that ordinary consumers (those dealing as private individuals or as groups of private individuals) are the far weaker party who have neither the requisite knowledge nor experience to enter into a transaction with a service provider as complete equals. In relevant cases, once unscrupulous merchant conduct such as unfair pressure, intimidation or misrepresentation that further disadvantages bargaining power and willpower is factored in, buyers end up labouring under even considerably greater handicap.

The point is not to absolve consumers completely of responsibility for contracts they enter; nor is our aim to punish businesses since the vast majority of those in Hong Kong are operated with utmost honesty and integrity. Rather, our suggestions are to spell out clearly into legislation what is an intrinsic moral duty of honest dealing (the disclosure of contract terms, for example), with the natural consequence that there should also be legally enforceable sanctions in the event of breach. In other words, what the government must do is to encode specific statutory prescriptions and prohibitions, placing the onus of proper observation of these principles onto traders, in order to create a just commercial environment concerning transaction of services, to better reflect the values of justice that our legal system sets to uphold for general society. Just as importantly, realigning consumer and vendor rights by redistributing relevant responsibilities for commercial transactions of services inspires confidence in local shoppers and tourists alike that our economy is up to the advanced, comprehensive standards of other developed countries.

New consumer protection laws should cover only consumer-to-business transactions, and concern neither business-to-business or private individual-to-private individual transactions. Why? The reason is, *prima facie*, businesses – especially those dealing in the same or similar industries – can be presumed to possess

reasonable and sufficient knowledge of the normal, requisite business transactions and negotiations that are part and parcel of running a Hong Kong commercial operation to deal as equals. Similarly, commercial relations between two private individuals can be held to be a transaction of equals and should therefore not be covered by new consumer protection laws.

WEARING THE CONSUMER'S SHOES

Our undercover operations taught us the value of real-life experience compared to "book learning." Our literature review and legal training as final year law students could not have fully prepared us for what we experienced during our undercover operations when face-to-face with doggedly aggressive sales staff. Despite our intentions, fully-formed beforehand, to *not* purchase the merchants' services, some of us nonetheless felt boxed-in and pressured under the relentless cajoling, misrepresentations, and theatrics. These tactics were particularly prevalent and taken too far in our visit to the gym. As noted in our report, we were constantly cutoff and besieged with rapid-fire staccato sales talk, asked to hand over our property (student cards, which we refused), and when we said that we would like 30 minutes to make our decision at a nearby restaurant, we were told (not *requested*) to not leave the gym's premises by our sales representative. As part of the gym's last ditch efforts to get our signatures, the gym's manager forcefully asserted unilaterally without our consent that the sales representative was to "Sign them [us] up immediately." We, of course, emphatically did not allow the representative to do so.

The most important thing we learned was not whether some health and beauty centres in Hong Kong resort to unscrupulous tactics (they do), but just how difficult it is for the ordinary consumers not to feel highly pressured into buying a service they do not want. If we were researchers doubly equipped with legal training and foreknowledge of unscrupulous practices, complemented by the mindset to only conduct investigations (rather than to purchase), but then nonetheless felt under pressure and found it difficult to leave the business premises without harassment, one cannot begin to imagine just how much more disorienting and intimidating the ordinary consumer would feel. It would be especially more difficult for the average consumer if they were to inquire on a business alone, and without a partner for moral support as in our case. Some consumers may feel that the only way to leave the store premises is to agree to a contract.

Therefore, in order for lawmakers to get a sense of "being in the consumer's shoes," we feel that they should have members of their staff (most lawmakers being recognizable in public) conduct, and then report on, the same sort of undercover operations we did, in order to get a first-hand experience of shopping for health and beauty services in some Hong Kong shops.

PROBLEMS WITH THE CURRENT LAWS

Hong Kong's current consumer protection laws currently fall under civil and criminal liabilities. However, the difficulty of proving misconduct according to high criminal offence standards has the ultimate effect of discouraging consumers from pursuing redress even in cases where the buyer has a legitimate claim. Additional difficulties associated with prosecuting under criminal provisions is the issue of cost; depending on the charge and its associated mandatory evidential standards that must be met, prosecution in the criminal court may potentially involve high legal costs beyond what the average consumer may legitimately be expected to bear on his own, and it is an especially salient topic in cases where the relative cost of their purchases service is small compared to the potential legal costs that may be incurred. This is also true for civil claims in the District and High Courts where fees for legal representation can run very high.

Further complicating the possibility of redress by consumers of services is the scattered, patchwork nature of Hong Kong's relevant criminal and civil legal provisions that may potentially be of use to aggrieved consumers of services. For example, a hypothetical claim involving a contract with unconscionable terms entered into via misrepresentation and concluded in a public location may require use of provisions in the Misrepresentation Ordinance ("MO", Cap. 284), Summary Offences Ordinance ("SOO", Cap. 228) and Unconscionable Contracts Ordinance ("UCO", Cap. 458). The piecemeal fashion in which litigants must currently assemble their claims imposes very high time and financial burdens that the average buyer will find difficult to justify given that many claims involve purchase of services that cost only several thousands of dollars. In addition, filing claims using the patchwork of existing ordinances requires a greater than

average legal awareness and dexterity above and beyond what can be reasonably be expected of Hong Kong's ordinary consumers, meaning that even some of the most determined complainants with legitimate grievances are deterred from taking action in the courts. (After all, it goes without saying that the majority of Hong Kong population are not lawyers nor have they had structured legal training) The natural consequence of Hong Kong's unreasonably (and perhaps unintentionally) complex and disorganized approach to consumer protection vis-à-vis the rights of the ordinary buyer is that unscrupulous traders are encouraged to persist in misbehaviour which they know may be actionable *in theory* but are unlikely to be litigated for the reasons just articulated.

An additional difficulty for consumers is that the ordinances mentioned above themselves have numerous gaps and loopholes that may be exploited. The most egregious gap we found during our research was in the UCO. Unlike Australia's Trade Practices Act, the UCO does not regulate unconscionable *conduct* nor does it cover actions after the conclusion of the contract. As Stefan Lo, a law professor at City University of Hong Kong, wrote, "undue harassment or coercion of a consumer into making a purchase would not be caught by the legislation *unless* the resultant purchase was made under terms which are unconscionable."⁵¹ (Our italics)

There have been concerns about our laws for advertising as well. While the Broadcasting Ordinance ("BO", Cap. 562) and Broadcasting Authority Ordinance ("BAO", Cap. 391) have provisions governing content and claims that can be made in advertising, the onus is currently on the carrier (radio and television stations), and not the originator of the advertisement.⁵² The problem with the current arrangements in the BO and BAO is that it assumes radio and television stations have the requisite expertise to accurately assess the presumably factual or scientific claims made by many health and beauty businesses. This situation ignores that radio and television bodies are in the media business (essentially the business of information transmission using their respective mediums), while simultaneously ignoring the reality that health and beauty centers will be the best ones to know whether their claims are grounded properly in science or fact, or if their assertions are simply hogwash, so to speak. After all, the creators of an advertisement will know best which statements are real and which are fabricated. Thus, radio and television entities are unduly burdened with the requirement to parse advertising statements that they have no real experience or expertise to assess, meaning that the net loser is the common audience in Hong Kong. As end-users of media resources, television watchers and radio listeners are the ones who must bear the costs of health and beauty ads that misrepresent or contain patently false statements about the safety of their services. The Undesirable Medical Advertisements Ordinance ("UMAO", Cap. 231) is of no help in that it does not cover slimming and beauty services.⁵³

Alarming, in this modern age when more and more advertising is migrating by the terabyte to iPhones, internet, computers and e-books, Hong Kong still lacks laws to govern the electronic realm.⁵⁴ It is a further, damning indictment of Hong Kong's anachronistic legal attitudes toward consumer protection laws for advertising that there are also no laws to cover *printed* media!⁵⁵

MANDATORY COOLING-OFF PERIOD

The May 25, 2010 issue of the South China Morning Post reported that, perplexingly, the Legislative Council is proposing to exempt the health and beauty industries from a mandatory cooling-off period.⁵⁶ Several of our interviewees could only suggest that this was because of political pressure from trade constituencies from the health and beauty industries. Compared to other developed economies, it is a quirk

⁵¹ Pg. 13. Lo, Stefan. "Limitations in the regulation of unfair marketing practices in Hong Kong." *Journal of International Business Law*, Spring 2008.

⁵² Pg. 3. Economic Development Panel. "Paper for economic development. for discussion." <http://www.legco.gov.hk/yr09-10/english/panels/edev/papers/edev0524cb1-1910-3-e.pdf>

⁵³ Pg. 8. Lo, Stefan. "Limitations in the regulation of unfair marketing practices in Hong Kong." *Journal of International Business Law*, Spring 2008.

⁵⁴ Pgs. 18-19. Consumer Council. "Fairness in the marketplace for consumers and business."

⁵⁵ *Ibid.*

⁵⁶ Nip, Amy. "Beauty centres to escape new sales laws." *South China Morning Post*, May 25, 2010.

of Hong Kong's political environment that economic interest groups are given such direct, front-door access for influencing the political process via voting rights codified in our Basic Law.

Nonetheless, some of the ideas floated as alternatives to a blanket cooling-off period across all service industries include adding a surcharge to cover costs that could reasonably be foreseen to be incurred by the trader as a result of giving a refund.⁵⁷ For example, a tariff amounting to 3% of the total contract price could be charged for situations where the cost could be reasonably estimated or calculated as 3%. In such a case, the tariff may be calculated on a sector-by-sector basis by the Consumer Council, which has experience dealing with consumer issues. Another way is for industry, including relevant trade associations, to calculate and promulgate what would be an acceptable surcharge.

Of course, questions that inevitably rise from these proposals are: 1) how sectors within an industry will be demarcated. (For example, should slimming centers be classified as separate from gyms, or should they fall under the umbrella group of "weight loss" or "fitness"?); and 2) how to calculate a surcharge. What elements will be considered (for example, average revenue, customer traffic, cost of providing the service, average wages paid) in the calculations? Should a uniform formula should be applied across sectors and their parent industries, or should surcharges be calculated in a more individually discriminating way to respect the distinguished financial and operating nuances of different areas of the service economy?

The issues of whether or not there should be surcharges, and how to calculate them, may be debated. However, what is clear is that Hong Kong's health and beauty industries *need* a cooling-off period. Given that these two industries frequently rely on both advertising and sales practices that contrive to systematically exploit weaknesses in the understanding, willpower and emotional states of consumers, we think it necessary to require these sectors to give a cooling-off period. Our interviews with yoga center closure victims indicate that many of them had signed a contract because they felt deeply pressured, harassed and intimidated by the sales staff to push them into expensive contracts.

CAN SELF-REGULATION PROVIDE AN ANSWER?

Another question that arises is should the health and beauty sectors be allowed to continue to self-regulate. As we wrote in our introduction, the Consumer Council's 2006 Voluntary Code of Best Practices has had little effect in curtailing unscrupulous sales tactics. Consumer Council statistics show that there were 514 complaints in 2009 against recreation and health clubs, and 552 complaints as at May 2010.⁵⁸ As for beauty services, there were 1,480 complaints in 2009 which put it among the top-five for categories that received the most complaints during that year and accounted for roughly over 4% of the total complaints in 2009.⁵⁹ In contrast, food and entertainment services, sectors which arguably accumulate more overall transactions (after all, everyone has to eat) received 910 complaints, or 40% fewer than the beauty industry, in that same year. Not only that, but complaints, despite the Code, actually *rose* 9% from just 12 months previous, when 1353 complaints were lodged in 2008.⁶⁰ As at May 2010, the Council has noted 324 complaints about beauty services.⁶¹

The question then is whether the health and beauty industries should continue to self-regulate. The pros are: 1) that self-regulation can be more flexible because trade associations inevitably have more agility and speed in changing code provisions than the Legislative Council can change laws⁶²; and 2) that self-regulation can better reflect the "specific needs and circumstances of the particular industry."⁶³ However, on the flip side, there is a distinct and undeniable danger that self-regulation will nonetheless breed the defense of narrow

⁵⁷ Interview with James To. Conducted June 18, 2010.

⁵⁸ Consumer Council. "Complaints statistics for the year from 2008-2010."

http://www.consumer.org.hk/website/ws_chi/news/complaintstatistics/monthlyupdate.pdf

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Pg. 10. Lo, Stefan. "Limitations in the regulation of unfair marketing practices in Hong Kong." *Journal of International Business Law*, Spring 2008.

⁶³ Ibid

commercial self-interests with the consequence that a voluntary, or non-voluntary code will not be enforced by industry or sector members. There is the additional possibility that an enforcement body under a self-regulating regime will itself be influenced by clubby, parochial interests to give short shrift to consumer complaints. There is also the fact that individual shops and business must themselves first belong to specific trade associations who have agreed to self-regulate, if industry codes are to be effective. In other words, if an individual shop (say a small “mom-and-pop” massage parlour) does not itself belong to the relevant trade association with a best practices code, there will essentially be no self-regulatory oversight of this particular business.

For this reason, we submit that it is best to have laws of the Hong Kong SAR, rather than voluntary codes, regulate all businesses in the beauty and health industry. There will be no way for businesses to “hide” from mandatory statutory provisions of honest sales practices that carry the authority of this local government. Given the continuing high number of complaints leveled against the health and beauty industries, we think it appropriate to have the government legislate, and for appropriate criminal or public administrative bodies to monitor and enforce breaches. Not only will enforcement be more objective this way, but consumers will tend to receive more objective treatment at the hands of a politically independent enforcement body (or bodies) that allies itself neither with consumers nor businesses per se, but to the overall objective of promoting a fair commercial environment in Hong Kong.

CONSUMER LEGAL ACTION FUND

It is mooted by the authors of this report that Consumer Legal Action Fund (“CLAF”) should continue to operate in its primary, specialized function as a guardian and proponent of issues concerning general public interest in the commercial realm with relation to ordinary consumers. Injecting additional funds into CLAF should not function as a complete, or even partial, replacement for the need to enact additional consumer legislation. According to the Consumer Council’s own statistics, from November 1994 to March 2010, CLAF has “considered”⁶⁴ only 148 cases and gave financial or legal support in 34. Of these 34, the number of cases in which “compensation or judgment [was] obtained” was 17.⁶⁵

By way of analogy, CLAF can be seen as a sort of Court of Final Appeal for Hong Kong’s consumers, only helping to litigate claims that are of great and meritorious concern to the consuming public rather than acting as a full-service body fighting generally for aggrieved consumers. The CLAF is most effective as an entity taking up landmark or precedent cases but not as a general go-to for consumers. It should continue in its current role by maintaining its high thresholds of requisite public interest before it considers taking a case. The CLAF has great specialized experience doing what it has done for the past 16 years, and its expertise as a champion for consumer issues of wide and general public importance may be muddled by large expansions of its staff and workload that must inevitably follow an augmented mission if it were to act as a general complaints body for Hong Kong’s public. But this does not suggest that consumers should lack a place to pursue trader misconduct. A Consumer Tribunal, perhaps similar in set up to the Small Claims Tribunal, should act as the de facto forum through which consumers with legitimate complaints, but not necessarily of wide public interest or concern, can litigate.⁶⁶ Like the Small Claims Tribunal, a proposed Consumer Tribunal can exclude lawyers or legal representation to keep costs down, but should have the power to transfer cases to the High Court should its merits warrant such a move.⁶⁷

SHOULD THERE BE A COMPREHENSIVE STATUTE OR SHOULD THERE BE AMENDMENTS TO EXISTING LAW ONLY?

There are two main proposals to remedy the situation in Hong Kong regarding consumer laws for services. Some sources suggested a brand new comprehensive all-in-one statute while others suggest amending the existing TDO. As with any new ideas, there are advantages and disadvantages to each. Amending the TDO and other ordinances relevant in the context of protection for services (again, the Misrepresentation

⁶⁴Pg. 8. Consumer Council News. “Consumer Council fact sheet.”

⁶⁵Ibid

⁶⁶Pg. 42. Consumer Council. “Fairness in the marketplace.”

⁶⁷Interview with Mark Williams. Conducted June 15, 2010.

Ordinance, Summary Offences Ordinance, etc.) can provide an effective short-term solution.⁶⁸ However, amending different pieces of individual legislation does nothing to solve one of Hong Kong's most pressing problems for consumers: that the mixture of common law and disparate legislation is not user-friendly for the ordinary consumer. In fact, putting together a claim can be grossly difficult for the inexperienced litigant without (expensive) professional help. So while amending the TDO and other ordinances to cover existing gaps in the law will be useful and provide strengthened tools for consumers seeking redress, it is not a long-term solution.

The ultimate and perhaps only viable long-term solution would be to enact a unified, comprehensive statute for consumer services that covers both goods and services, and which provides for relevant sanctions and enforcement actions against recalcitrant traders. It will be an expensive, lengthy process to assemble such a statute, but it is sorely needed in light of the confusing state of Hong Kong's consumer protection laws.

Regardless of whether one or both proposals are implemented, existing common law remedies and private civil actions should be retained in order to maintain legal continuity in Hong Kong. Only where there are inconsistencies between the old and new provisions should the former be excised from the city's laws.

WHAT SHOULD THAT STATUTE LOOK LIKE?

We agree with the Commerce and Economic Development Bureau ("CEDB")'s paper for the panel on Economic Development to fill in the legislative gaps in Hong Kong in the following manner⁶⁹:

- 1) Augmenting coverage of false representations to include services;
- 2) Constructing a new offence banning misleading omissions;
- 3) Constructing a new offence banning aggressive practices;
- 4) A nuanced approach to regulating bait-and-switch schemes rather than a wholesale prohibition (our justification for this is in the next section);
- 5) A mandatory cooling-off period for services but one *that must extend to health and beauty services*.

These recommendations can be implemented wholesale into the existing TDO, or into a new statute. We recommend that, ideally, they be implemented together, rather than in a piecemeal nature to immediately strengthen consumer protection laws. However, we also acknowledge the political environment created by powerful trade interests-backed functional constituencies in that it may be more politically palatable (and realistic) to not pass the above proposals all at the same time, but perhaps in measured steps instead.

PROPOSED FRAMEWORK FOR ENFORCEMENT

The Consumer Council, in its 2008 report *Fairness in the Marketplace for Consumers and Business* called for a graduated scale of escalating actions against unscrupulous traders, including the possibility of legal sanctions.

The step-by-step framework set out by the Consumer Council for oversight of consumer protection offences was proposed as follows:⁷⁰

- 1) Mediation between the trader and aggrieved consumer;
- 2) The power to get written court enforceable undertakings from businesses found to be in breach of provisions;
- 3) The power to give court enforceable cease-and-comply warnings;
- 4) Applying to the judiciary for fines, declarations and injunctions where a cease-and-comply warning or undertaking has been disobeyed;
- 5) The power to monitor and investigate, including entering premises to search and seize.

⁶⁸ Interview with Fred Li. Conducted June 28, 2010.

⁶⁹ Pg. 12. Economic Development Panel. "Paper for economic development. for discussion."

⁷⁰ Pg. 39. Consumer Council. "Fairness in the marketplace."

- 6) Where the sanctions involve criminal liability, the enforcement agency should transfer the case to the appropriate criminal enforcement bodies.

Within this framework, it was noted that offending merchants should be given "reasonable opportunities to make representations at various stages (including investigation) and appeal against cease and comply notices or any part of a notice."⁷¹ It is important that the enforcement process should begin on a note of reconciliation, particularly where it can be demonstrated that the infringing business has breached consumer protection provisions in a non-egregious manner accidentally or unknowingly, such as in a situation where a dealer negligently underestimates demand for a low-priced massage but then attempts to fix the situation by compensating consumers.⁷² (This may be construed prima facie as a "bait-and-switch," notwithstanding the attempt to rectify the circumstances. Taking into account such possibilities, this is why the fourth point in the previous section suggested a more nuanced approach to these offences),⁷³ The enforcement body's powers of mediation and the right to demand court enforceable undertakings have the following advantages: it will give vendors a chance to rectify their errors; it will save public funds; and it is a quick, efficient way to resolve breaches.

The Customs and Excise Department currently enforces the TDO⁷⁴ and can continue to do so even if services are added to the TDO. But as regulating under a new, comprehensive consumer protection statute will entail many more addition responsibilities, that may be outside its current experience acting primarily as this city's border protection agency.⁷⁵

The Consumer Council is so far currently mainly a consumer advocacy and research agency.⁷⁶ In regards to enhancing its powers to give it authority as an enforcement agency, we agree with the Council's report that there are legitimate concerns about how the businesses may view its objectivity given that it is Hong Kong's putative *consumer* advocacy body, not a putative *consumer commercial markets* regulatory body.

Therefore, in the long-term, once a comprehensive self-standing statute unifying all the consumer protection provisions currently scattered across various ordinances is created, a new body should take over. A new entity devoted specifically to enforcing a new consumer protection statute should be politically independent, and like the Independent Commission Against Corruption ("ICAC"), report only to the highest levels of government. A new body must be equipped with a large enough budget and diverse staff to effectively conduct its wide-ranging activities of compliance monitoring, investigation and enforcement. Its staff can comprise former members of the police, ICAC, legal profession and trade bodies to ensure sufficient representation across the spectrum – though there must be thought and care to balance competing perspectives from these members. Debate should be tolerated, even encouraged, but any deviation from its mission as the de facto body governing fair dealing in consumer-to-business transaction must not be permitted. If such an agency is properly steered from the beginning, it will have the best chance to objectively oversee a fair commercial playing field. Hong Kong, its businesses and consumers deserve as much.

⁷¹ Pg. 40. Consumer Council. "Fairness in the marketplace."

⁷² Pg. 34. Consumer Council. "Fairness in the marketplace."

⁷³ Ibid.

⁷⁴ Pg. 7. Economic Development Panel. "Paper for economic development. for discussion."

⁷⁵ Interview with Mark Williams.

⁷⁶ Ibid.

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Miscellaneous

Planet Yoga Victims Rights Facebook Group

“Planet Yoga 苦主關注組>> 部份Citi苦主報告獲得退款 - 大家繼續密切留意”

<http://www.facebook.com/#!/group.php?gid=126579404022755&ref=ts>

APPENDIX I: QUANTITATIVE RESEARCH RESULTS

Table 1. Age of Respondents * Buying of health and beauty services Cross tabulation

			Buying of health and beauty services		
			Yes	No	Total
Age of Respondents	16-25	Count	46	36	82
		% within Age of Respondents	56.1%	43.9%	100.0%
	26-35	Count	45	29	74
		% within Age of Respondents	60.8%	39.2%	100.0%
	36-45	Count	26	6	32
		% within Age of Respondents	81.3%	18.7%	100.0%
	46-55	Count	13	13	26
		% within Age of Respondents	50.0%	50.0%	100.0%
	Above 55	Count	2	10	12
		% within Age of Respondents	16.7%	83.3%	100.0%
	Total	Count	132	94	226
		% within Age of Respondents	58.4%	41.6%	100.0%

Table 2. Age of Respondents * Sufficiency of Current Legal Protection Cross tabulation

			Sufficiency of Current Legal Protection					Total
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	
Age of Respondents	16-25	Count	18	26	26	6	6	82
		% within Age of Respondents	22.0%	31.7%	24.4%	7.3%	7.3%	100.0%
	26-35	Count	20	13	28	5	18	74
		% within Age of Respondents	27.0%	17.6%	37.8%	6.8%	24.30.0%	100.0%
	36-45	Count	12	6	8	6	2	32
		% within Age of Respondents	37.5%	18.8%	25.0%	18.8%	6.3%	100.0%
	46-55	Count	6	6	7	5	3	27
		% within Age of Respondents	22.2%	22.2%	25.9%	18.5%	11.1%	100.0%
	Above 55	Count	2	5	3	0	2	12
		% within Age of Respondents	16.7%	41.6%	25.0%	0.0%	16.7%	100.0%
	Total	Count	58	56	69	22	21	226
		% within Age of Respondents	25.7%	24.8%	30.5%	9.7%	9.3%	100.0%

Table 3. Age of respondents * Reliance of self regulation of service industry Cross Tabulation

			Reliance of self regulation of service industry					Total
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	
Age of Respondents	16-25	Count	5	8	10	23	36	82
		% within Age of Respondents	6.1%	9.8%	12.2%	28.0%	43.9%	100.0%
	26-35	Count	6	13	12	22	21	74
		% within Age of Respondents	8.1%	17.6%	16.2%	29.7%	28.4%	100.0%
	36-45	Count	5	7	9	3	7	32
		% within Age of Respondents	15.6%	21.9%	28.1%	9.4%	21.9%	100.0%
	46-55	Count	12	2	7	3	3	27
		% within Age of Respondents	44.4%	7.4%	25.9%	11.1%	11.1%	100.0%
	Above 55	Count	8	1	0	3	0	12
		% within Age of Respondents	66.7%	8.3%	0.0%	25.0%	0.0%	100.0%
	Total	Count	36	31	38	54	67	226
		% within Age of Respondents	15.9%	13.7%	16.8%	23.9%	29.7%	100.0%

Table 4. Age of respondents * Extension of legal protection to services Cross tabulation

			Extension of legal protection to services					Total
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	
Age of Respondents	16-25	Count	0	2	1	15	64	82
		% within Age of Respondents	0.0%	24.4%	1.2%	12.2%	78.0%	100.0%
	26-35	Count	3	4	7	27	33	74
		% within Age of Respondents	4.1%	54.1%	9.5%	36.5%	44.6%	100.0%
	36-45	Count	1	1	10	6	13	32
		% within Age of Respondents	3.1%	3.1%	31.5%	18.8%	40.6%	100.0%
	46-55	Count	1	1	3	14	8	27
		% within Age of Respondents	3.7%	3.7%	11.1%	51.9%	29.6%	100.0%
	Above 55	Count	0	1	1	3	7	12
		% within Age of Respondents	0.0%	8.3%	8.3%	25.0%	58.3%	100.0%
	Total	Count	5	9	22	65	125	226
		% within Age of Respondents	2.2%	4.0%	9.7%	28.8%	55.3%	100.0%

Table 5. Age of respondents * Establishment of Cooling-off Period for beauty & health service Cross tabulation

			Establishment of cooling-off period for beauty & health service					Total
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	
Age of Respondents	16-25	Count	1	4	19	17	41	82
		% within Age of Respondents	1.2%	4.9%	23.2%	20.7%	50.0%	100.0%
	26-35	Count	1	0	9	26	38	74
		% within Age of Respondents	1.4%	0.0%	13.5%	35.1%	51.3%	100.0%
	36-45	Count	4	7	8	5	8	32
		% within Age of Respondents	12.5%	21.9%	25.0%	15.6%	25.0%	100.0%
	46-55	Count	8	0	4	3	12	27
		% within Age of Respondents	29.6%	0.0%	14.8%	11.1%	44.4%	100.0%
	Above 55	Count	1	1	4	2	4	12
		% within Age of Respondents	8.3%	8.3%	33.3%	16.7%	33.3%	100.0%
	Total	Count	11	15	44	53	103	226
		% within Age of Respondents	4.9%	6.6%	19.5%	23.5%	45.5%	100.0%

Table 6. Age of respondents * Should consumer protection offences be criminalized Cross tabulation

			Should consumer protection offences be criminalized		
			Yes	No	Total
Age of Respondents	16-25	Count	64	19	82
		% within Age of Respondents	78.0%	22.0%	100.0%
	26-35	Count	53	21	74
		% within Age of Respondents	71.6%	28.4%	100.0%
	36-45	Count	23	9	32
		% within Age of Respondents	71.9%	28.1%	100.0%
	46-55	Count	20	6	26
		% within Age of Respondents	76.9%	23.1%	100.0%
	Above 55	Count	4	8	12
		% within Age of Respondents	33.3%	66.7%	100.0%
	Total	Count	164	62	226
		% within Age of Respondents	72.6%	27.4%	100.0%

Table 7. Gender of Respondents * Buying of Beauty and Health Services Cross tabulation

			Buying of Beauty and Health Services		
			Yes	No	Total
Gender of Respondents	Male	Count	39	58	97
		% within Gender of Respondents	40.20%	59.20%	100.00%
	Female	Count	93	36	129
		% within Gender of Respondents	72.10%	27.90%	100.00%
	Total	Count	132	94	226
		% within Gender of Respondents	58.40%	41.60%	100%

Table 8. Gender of Respondents * Inducement of Sales Practices Cross tabulation

			Inducement of Sales Practices		
			Yes	No	Total
Gender of Respondent	Male	Count	17	22	39
		% within Gender of Respondents	43.6%	56.4%	100.0%
	Female	Count	70	23	93
		% within Gender of Respondents	75.3%	24.7%	100.0%
	Total	Count	87	69	132
		% within Gender of Respondents	65.9%	34.1%	100.0%

Table 9. Gender of Respondents * Sufficiency of Current Legal Protection Cross tabulation

			Sufficiency of Current Legal Protection					Total
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	
Gender of Respondents	Male	Count	21	12	42	13	9	97
		% within Gender of Respondents	21.6%	12.4%	43.2%	10.3%	9.3%	100.0%
	Female	Count	37	44	27	9	12	129
		% within Gender of Respondents	28.6%	34.1%	20.9%	7.0%	9.3%	100.0%
	Total	Count	58	56	69	22	21	226
		% within Gender of Respondents	25.7%	24.7%	30.5%	9.7%	9.3%	100.0%

Table 10. Gender of Respondents * Reliance on self-regulation of service industry Cross tabulation

			Reliance on self-regulation of service industry					
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	Total
Gender of Respondents	Male	Count	18	12	16	24	27	97
		% within Gender of Respondents	18.6%	12.4%	16.5%	24.7%	27.8%	100.0%
	Female	Count	18	19	22	30	40	129
		% within Gender of Respondents	14.0%	14.7%	17.1%	23.3%	31.0%	100.0%
	Total	Count	36	31	38	54	67	226
		% within Gender of Respondents	15.9%	13.7%	16.8%	23.9%	29.7%	100.0%

Table 11. Gender of Respondents * Extension of Legal Protection to Services Cross tabulation

			Extension of Legal Protection to Services					
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	Total
Gender of Respondents	Male	Count	1	2	15	29	50	97
		% within Gender of Respondents	1.0%	2.1%	15.5%	30.0%	51.5%	100.0%
	Female	Count	4	7	4	36	75	129
		% within Gender of Respondents	3.1%	5.4%	3.1%	27.9%	58.1%	100.0%
	Total	Count	5	9	22	65	125	226
		% within Gender of Respondents	2.2%	4.0%	9.7%	28.8%	55.3%	100.0%

Table 12. Gender of Respondents * Establishment of refund system for aggrieved consumers Cross tabulation

			Establishment of refund system for aggrieved consumers					
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	Total
Gender of Respondents	Male	Count	0	2	20	27	48	97
		% within Gender of Respondents	0.0%	2.1%	20.6%	27.8%	49.5%	100.0%
	Female	Count	9	7	16	13	84	129
		% within Gender of Respondents	7.0%	5.4%	12.4%	10.1%	65.1%	100.0%
	Total	Count	9	9	36	40	132	226
		% within Gender of Respondents	4.0%	4.0%	15.9%	17.7%	56.4%	100.0%

Table 13. Gender of Respondents * Cooling-off Period for Health & Beauty Services Cross tabulation

			Cooling-off Period for Health & Beauty Services					Total
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	
Gender of Respondents	Male	Count	9	12	17	31	28	97
		% within Gender of Respondents	9.2%	12.4%	17.5%	32.0%	28.9%	100.0%
	Female	Count	2	3	27	22	75	129
		% within Gender of Respondents	1.6%	230.0%	20.9%	17.1%	58.1%	100.0%
	Total	Count	11	15	44	53	103	226
		% within Gender of Respondents	4.9%	6.6%	19.5%	23.5%	45.5%	100.0%

Table 14. Gender of Respondents * Criminalization of Consumer Protection Offence Cross tabulation

			Criminalization of Consumer Protection Offence		
			Yes	No	Total
Gender of Respondents	Male	Count	70	27	97
		% within Gender of Respondents	72.2%	27.8%	100.0%
	Female	Count	94	35	129
		% within Gender of Respondents	72.9%	27.1%	100.0%
	Total	Total Count	164	62	226
		% within Gender of Respondents	72.6%	27.4%	100.0%

Table 15. Education Level of Respondent * Reliance of Self-Regulation of Service Industry Cross Tabulation

			Reliance of Self-Regulation of Service Industry					Total
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	
Education of Respondents	Primary	Count	1	0	1	0	1	3
		% within Education Level of Respondents	33.3%	0.0%	33.3%	0.0%	33.3%	100.0%
	Secondary	Count	10	12	10	8	9	48
		% within Education Level of Respondents	20.8%	25.0%	20.8%	16.7%	18.8%	100.0%
	Diploma/ College	Count	3	4	8	8	8	31
		% within Education Level of Respondents	9.7%	12.9%	25.8%	25.8%	25.8%	100.0%
	Undergraduate	Count	14	8	10	17	13	62
		% within Education Level of Respondents	22.6%	12.9%	16.1%	27.4%	21.0%	100.0%
	Postgraduate or above	Count	9	7	9	21	36	82
		% within Education Level of Respondents	11.0%	8.3%	11.0%	25.6%	43.9%	100.0%
	Total	Count	36	31	38	54	67	226
		Respondents	15.9%	13.7%	16.8%	23.9%	29.7%	100.0%

Table 16. Education Level of Respondent * Establishment of Cooling-off Period for Health & Beauty Industry Cross Tabulation

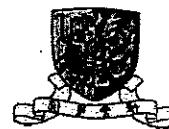
			Establishment of Cooling-off Period for Health & Beauty Industry					
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree	Total
Education of Respondents	Primary	Count	0	0	0	2	1	3
		% within Education Level of Respondents	0.0%	0.0%	0.0%	66.7%	33.3%	100.0%
	Secondary	Count	9	5	10	6	18	48
		% within Education Level of Respondents	18.8%	10.4%	20.8%	12.5%	37.5%	100.0%
	Diploma/ College	Count	1	3	6	5	16	31
		% within Education Level of Respondents	3.2%	9.7%	19.4%	16.1%	51.6%	100.0%
	Undergraduate	Count	1	2	14	16	29	62
		% within Education Level of Respondents	1.6%	3.2%	22.6%	25.8%	46.8%	100.0%
	Postgraduate or above	Count	0	5	14	24	39	82
		% within Education Level of Respondents	0.0%	6.1%	17.1%	29.3%	47.6%	100.0%
	Total	Count	11	15	44	53	103	226
		% within Education Level of Respondents	4.9%	6.6%	19.5%	23.5%	45.5%	100.0%

Table 17. Income of Respondents * Buying of health and beauty services Cross tabulation

			Buying of health and beauty services		
			Yes	No	Total
Income of Respondents	<\$15,000	Count	69	51	120
		% within Income of Respondents	57.50%	42.50%	100.00%
	\$15,000-30,000	Count	28	24	52
		% within Income of Respondents	53.90%	46.10%	100.00%
	>\$30,000	Count	31	19	50
		% within Income of Respondents	62%	38%	100%
	Total	Count	130	92	222
		% within Income of Respondents	58.60%	41.40%	100%
	Missing System	Count	2	2	4
	Total	% within Income of Respondents	132	94	226
			58.40%	41.60%	100%

APPENDIX II: SURVEY DATA AND SURVEY DESIGNS

FACULTY OF LAW, THE CHINESE UNIVERSITY OF HONG KONG



PART I: Personal experiences of being subjected to sales practices

1. Have you ever bought any health/ beauty club services? Yes No (If "No", go to PART II)
If yes, please specify the type of service and the name of its provider: _____

2. How were you initially solicited? (Can pick more than one)
 Magazines TV Radio Leaflets Telephone Internet
 Approached in person on the street Approached at home
 Encouraged by friends or family members Others, please specify: _____

3. Were any of the following sales practices used to get you to buy the health/beauty service? (Can pick more than one)
 False representations / misleading advertising (e.g. untrue, dubious or exaggerated claims about the service's benefits, prices or affiliation with a spokesperson)
 Misleading omissions (e.g. extra charges that were not disclosed at the time of purchase)
 Aggressive or high pressure tactics (eg. coercion, prevented from leaving the shop, etc.)
 Bait and Switch (i.e. seller advertises goods or services at a low price without having reasonable quantities available to meet the demand that would be reasonably expected)
 Vendor accepting payment without ability or intention to supply
 Shaming / insults / criticisms (e.g. to embarrass you into buying)
 Others: _____
If you have never subjected to any of the above sales practices, please go to next question.

4. What were the main reasons that influenced you in purchasing the service? (Can pick more than one)
 Seller's sales practices in Question 3 Attractive promotion Improve self-image
 To be healthy Encouraged by friends or family members Others: _____

5. What is/are your main complaint(s) during the use of the service?

6. a) Have you ever been subjected to the following terms in a contract for health/beauty services? (Can pick more than one)
 Extra charges Extension of contract without buyer's consent
 Seller can unilaterally vary monthly fees Restrictions on termination of contract
 Quality of service not guaranteed Others: _____
 No, I have not been subjected to any of the above terms in a contract (Please go to Part II)

b) Were one or more boxes you picked in Question 6a disclosed to you when the contract was made?
 Yes No

7. a) What were reasons that led to the termination of the contract?
 Unsatisfactory service Shop closure (go to Question (7c)) Other reasons
 Completed Contract No, the contract has not yet been terminated. (go to Question (7c))

b) Did the vendor make it difficult for you to terminate your contract?
 Yes No (If "No", please go to PART II)

If yes, how? _____

c) Did you seek redress? (e.g. complain to Consumer Council, seek refund with the shop)
 Yes No (If no, why? _____)

PART II: Opinions on consumer protection

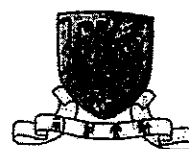
1. Do you agree that the government has done enough to protect the consumer from unfair sales practices?
Strongly disagree 1 2 3 4 5 Strongly agree
2. Currently there is no legislation to protect consumers against unscrupulous sales practices for services.
- a) Do you agree that the service industry should be self-regulated?
Strongly disagree 1 2 3 4 5 Strongly agree
- b) Do you agree that legal protection should be extended to services?
Strongly disagree 1 2 3 4 5 Strongly agree
- c) Do you agree that legal protection should be extended so that consumers can get their money back when businesses can no longer supply the purchased services?
Strongly disagree 1 2 3 4 5 Strongly agree
- d) Do you think there should be a cooling-off period for health and beauty services? (A cooling off period is a fixed length of time immediately after signing the contract during which the service can be cancelled without penalty)
Strongly disagree 1 2 3 4 5 Strongly agree
- e) Which party should be responsible for enforcement? (**Can pick more than one**)
 Police Consumer Council Customs and Excise Department
 Proposed new body (e.g. Consumer Tribunal) Small Claims Tribunal
 Others (please specify): _____
- f) What powers do you think the enforcement bodies should have? (**Can pick more than one**)
 Mediation Imposing fines Consumer advocacy
 Research and testing Others (please specify): _____
- g) Should consumer protection offences be criminalized? Yes No

PART III: Personal Particulars (Choose only one answer)

1. Sex : Male Female
2. Age group : 16-25 26-35 36-45 46-55 56 or +
3. Income : \$<15,000 \$15,000-30,000 \$30,001+
4. Education: Primary Secondary Diploma/College
 Undergraduate Master/Postgraduate or above
5. Occupation: Student Housewives Self-employed Professional
 Banking & Finance Real Estate IT
 Accommodation and Food service Transportation Business services
 Retail/Wholesale Manufacturing Others: _____

The End. Thank You!

香港中文大學 法律學院



第一部分：關於銷售策略陷阱的個人經驗

8. 你是否曾經享用過健身或者美容的服務？ 是 否 (如果“否”，請直接到第二部分)
如有，請列明服務類別和商店名稱：_____
9. 你是如何第一次注意到這些服務？ (可選多項)
 雜誌 電視 收音機 宣傳冊子 電話 互聯網
 街上面對面推銷 上門推銷 家人/朋友介紹
 其他，請列出：_____
10. 你購買健身或者美容服務時有否遇過以下情況？ (可選多項)
 虛假或誤導的商品及服務說明 / 誤導的廣告 (例如不真實地，或誇張地介紹服務的好處。)
 資訊的不足 (例如在購買時不披露額外的收費)
 威脅性或高壓手法 (例如阻止你離開商店)
 餌誘式銷售 (例如賣方在廣告中聲稱貨品以特惠價出售，其實並無足以應付預期需求的合理供應數量)
 接受付款時並沒有能力或者意圖提供貨品或者服務
 欺詐/侮辱/批評 (例如基於尷尬而購買)
 我沒有被以上銷售策略吸引
 其他：_____
11. 下列哪項是你購買這些服務的原因？ (可選多項)
 基於問題3中列出的銷售策略 吸引的優惠 提升自我形象
 基於健康著想 朋友或者家庭成員的鼓勵 其他：_____
5. 你在享用服務時有不滿嗎？ 有 沒有
如有，請列明：_____
6. a) 你是否曾經在健身或者美容服務合約中遭遇以下條款？ (可選多項)
 額外收費 擅自延長合同期限
 賣方單方面更改月費 限制買方終止合同的權利
 貨不對辦 其他：_____
- 如沒有遭遇過以上經歷，請直接到第二部分
- c) 賣方是否在簽訂合約時向你披露6 (a) 中涉及的條款？ 是 否
7. a) 曾因以下哪些原因終止合約？
 服務不佳 商店倒閉 (跳到7c) 合約完滿 其他原因
 沒有，合約仍未終止 (跳到7c)
- b) 賣方有沒有設法阻撓你終止合約？
 有 沒有 (如沒有，請直接第二部分)
如有，採取了哪些方式？_____
- c) 你曾否因不合理/不合法對待而嘗試追究？ (如：向消委會投訴，或者要求賣方退款)
 有 沒有 (如沒有，原因？_____)

第二部分：關於消費者權益保護的個人意見

3. 對於不公平營商手法，你是否贊同政府已提供足夠保護予消費者？

強烈反對 1 2 3 4 5 強烈贊同

4. 目前法律上，保護消費者免受不公平營商手法的範圍並不包括服務業。

a) 你贊同服務行業應該自我管制嗎？

強烈反對 1 2 3 4 5 強烈贊同

b) 你贊同法律保護應該擴展到服務業嗎？

強烈反對 1 2 3 4 5 強烈贊同

c) 你贊同立例保障消費者在商店倒閉後獲得賠償或退款嗎？

強烈反對 1 2 3 4 5 強烈贊同

d) 你贊同美容及健身業應設立冷靜期，讓惠顧後的消費者在固定時間內取消合約嗎？

強烈反對 1 2 3 4 5 強烈贊同

e) 以下哪個組織適合擔任執法機構？(可選多項)

- 警方 消費者委員會 海關
 成立新組織 (例如消費者審裁處) 小額錢債審裁處
 其他(請列出): _____

f) 你認為上述組織應該具備那些權力？(可選多項)

- 調解 罰款 組織消費者申訴
 研究與測試 其他(請列出): _____

g) 你認為違反消費者權益的行為應否列作刑事罪行？

是 否

第三部分：個人資料

6. 性別：
 男性 女性
7. 年齡：
 16-25 26-35 36-45 46-55 56或以上
8. 收入：
 <\$15,000 \$15,000-30,000 \$30,001+
9. 學歷：
 小學程度 中學程度 大專 大學學位
 碩士或以上
5. 職業：
 學生 家庭主婦 自僱人士 專業人士
 電腦 銀行金融 地產 餐飲/酒店
 交通/運輸 商業 批發/零售 建造
 其他: _____

問卷完, 謝謝!