



"Doman Kwan"

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cc

2010/10/29 17:12

bcc

Please respond to
"Doman Kwan"

 Subject Public Consultation Paper on Legislation to Enhance Protection
for Consumers Against Unfair Trade Practices - Comments

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Dear Sirs,

In response to the government's Public Consultation Paper on Legislation to Enhance Protection for Consumers Against Unfair Trade Practices, we would like to provide our comments below as a theme park and a member of the tourist industry:

(1) in view of the substantial number of consumer complaints lodged in the past, we agree that stronger actions must be taken by the government to prevent or minimise the recurrence of unfair trade practices. However, any such actions must not be at the sacrifice of the interests of the traders who act in good faith at all times and average consumers should continue need to exercise their reasonable diligence.

(2) While the proposed amendments to the Trade Description Ordinance ("TDO") can help protect consumers' interests, it is in doubt if the interests of good faith traders can be maintained at the same time, particularly those of the traders within the tourist industry whose core business is to provide services to consumers.

(3) Our concerns simply lies with the fact that "services" are much less tangible than goods and different persons may have different perceptions concerning the quality of a service, this may easily give rise to a lawsuit under the proposed law amendments. Two examples are given below for illustrating our concerns:

(a) we always promote our Park as a Park for fun and education. If a visitor does not feel fun after visit to our Park, he/she may have a case against the Park on the ground of misrepresentation on our part. In case this happens, we will be compelled to make settlement/refund to the visitor so as to avoid bad publicity and/or expensive legal costs as well as criminal charges, regardless the fact that the Park is always equipped with numerous entertainment and educational facilities;

(b) the creation of an offence under the TDO prohibiting misleading omissions in consumer transactions may also easily put us under the threat of criminal charges as it is not customarily for theme parks or tourist attractions to include boring message/details in their promotion materials, e.g., the risks inherent with some facilities such as mechanical rides, which may arguably be considered as misleading omissions under the proposed law amendments.

(4) Besides, as a member of the tourist industry, we find that there is nothing mentioned in the proposal whether the trade customs and practices of our counterparts in hotels or travel agency will be taken into account in the making of the amendments. For example, it is usual/common practice for tour guides to give recommendations to tour group members on shopping activities or even bring tour groups to their partnering shops. Would such customs and practices become illegal after the law amendments? If yes, then the operations and even the survival of certain travel agencies will be in problem. We would like to see how the trade customs and practices, particularly those of tourist industry, could be duly respected and accommodated in the law amendments.

(5) We also do not find that whether the due diligence/primary responsibility of an average consumer factors into the proposed law amendments. Without this, we wonder how the interests of good faith traders can be balanced. In this connection, we would suggest the relevant government department to consider to change the law amendments to the effect that the criminal sanctions do not apply to small value consumer transactions, say at or below \$5,000 each. This is because an average consumer should have the ability to make proper decision on small value consumer transactions, which are

usually not involving complicated terms/context. The benefits of this exception are that traders will be able to defend such cases without the threat of criminal charges and the Court can also focus its efforts and resources more important cases.

(6) With regard to the proposed compliance-based mechanism, we would suggest that all cases must go through the mediation process of Consumer Council before any action by the law enforcement department. This suggestion is simply trying to provide a level playing field to both consumers and good faith traders in resolving consumer disputes, since the pressure on the latter for making settlement will unduly increase upon action by the law enforcement department.

(7) Given the proposed law amendments will affect the majority of the traders in Hong Kong in the long run, we have the following suggestions for the relevant government department to consider for mitigating some of its negative impact upon implementation:

(a) a grace period of no less than 12 months to be provided to traders, particularly service providers, so that sufficient time will be allowed to review their existing operations and make necessary adjustments. The Government can also take this chance to promote public awareness, training and education to those being affected; and,

(b) industry specific guidelines (similar to those issued by the Office of the Privacy Commissioner in relation to protection of personal data) be established and distributed by the relevant government department so as to facilitate traders' understanding of the new regulations relevant their respective trades.

Please feel free to contact me if any clarification or further information on the above is needed.

Kind regards

Doman Kwan
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Ocean Park Corporation
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fax:
e-mail :

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