

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS AT HKTDC EXHIBITIONS

Exhibitors' Brief

The Hong Kong Trade Development Council (HKTDC), the statutory body promoting Hong Kong's international trade, is committed to fostering original design and safeguarding intellectual property rights.

We have on-the-spot procedures at our trade fairs for handling any complaint that a product on display infringes someone else's intellectual property rights. These complimentary procedures are not the only way in which complainants can file complaints. Complainants can also file complaints with Hong Kong Customs and Excise Department and/or the Courts of Hong Kong.

These procedures, carried out with our legal advisor, are designed to help establish whether there is a case to answer so that complaints may either be pursued or resolved promptly.

Our aim is as much to protect the rights of individual exhibitors to be promptly cleared of unfounded complaints as it is to uphold their obligation to respect the intellectual property rights of others.

In this respect, the attention of all exhibitors is drawn to Clause 43 of the conditions of participation, setting out rights and obligations of exhibitors at HKTDC/MFHK exhibitions:

The Exhibitor warrants that the exhibits and packages thereof and the Publicity Material or any other part of the display on the Stand do not in any way whatever violate or infringe any third party's rights including all intellectual property rights including but not limited to trade marks, copyright, designs, names, and patents whether registered or otherwise. The Exhibitor agrees to fully indemnify the Organisers and its agents, representatives, contractors and employees against all costs, expenses and damages arising from any third party's claim of infringements by the Exhibitor and/or the Organisers and/or the latter's agents, representatives, contractors or employees of such third party's rights.

The Exhibitor agrees that it shall comply with any "Exhibitors' Brief on the Protection of Intellectual Property Rights at HKTDC/MFHK Exhibitions" ("**Exhibitors' Brief**") that the Organisers may issue from time to time, including abiding by any complaint procedures and penalties stated in the Exhibitors' Brief, whether as a complainant of infringement of intellectual property right or as a party subject to any such complaint. If the Exhibitor fails or refuses to abide by any of the terms and conditions of the Exhibitors' Brief, the Organisers shall have the sole and absolute discretion to ban the Exhibitor and any of its parent, associate, affiliated and/or subsidiary companies from any or all future HKTDC/MFHK exhibitions and / or to further ban any representatives of the Exhibitor in question from entering the venue of the current HKTDC/MFHK Exhibition in which the Exhibitor is participating.

If a complainant/an Exhibitor ("**complainant**") files a complaint with the Organisers in accordance with the Exhibitors' Brief and requests the Organisers to take action against an Exhibitor, the complainant agrees to hold the Organisers, its agents, representatives, contractors and employees (including but not limited to their legal advisors) harmless and to fully indemnify each and every one of them against any and all liabilities, losses, costs (including but not limited to legal costs), expenses and damages of any nature whatsoever incurred or suffered by any of them as a result of or however arising from any action that the Organisers, its agents, representatives, contractors or employees (including but not limited to their legal advisors) may take in reliance of or as result of such complaint filed by the complainant, or any other requests, directions or instructions made or given by the complainant pursuant to such complaint. The complainant further agrees not to take any legal action or make any claim or demand against the Organisers, its agents, representative, contractors or employees (including but not limited to their legal advisors) in relation to such complaint and the alleged infringement of intellectual property rights.

Procedures

1. If you have any complaint involving infringement of your intellectual property rights, this should be reported to the Fair Management Office, where it will be handled by HKTDC/MFHK Fair Officials and the Fair Legal Advisor engaged by HKTDC/MFHK.
2. If you receive a complaint at your booth, you should refer the complainant to the Fair Management Office.
3. Both the documents attached to the Exhibitors' Brief and the Fair Legal Advisor on site will specify the kind of documents and other evidence necessary to support a complaint.
4. If the Fair Legal Advisor is satisfied, on the basis of the documents provided, that the complainant's intellectual property rights are valid and have been infringed by the display of the Exhibitors' product or material in dispute at the Fair, a HKTDC/MFHK Fair Official will visit the booth involved.
5. The Fair Legal Advisor will also visit the HKTDC's website (www.hktdc.com) to check whether the product or any material in dispute is displayed on the said website. If so, the HKTDC has the sole and absolute discretion to disable the link or otherwise take down / remove the disputed product or material from the HKTDC's website in accordance with the HKTDC's *Terms & Conditions for Printed Advertisement & Online Promotion* without further notice.
6. As Fair Organisers, HKTDC/MFHK has the power to immediately take at least 3 photographs of the product or any material in dispute.
7. The exhibitor will be asked to remove the product or material in dispute immediately from display and not to trade in it for the remainder of the exhibition unless he/she can adduce evidence to show to the satisfaction of the Fair Legal Advisor that he/she has the right to deal in such product or material. He/she will also be required to sign an undertaking immediately to this effect. A copy of the signed undertaking and one copy of the photograph will be given to the complainant and the Exhibitor. A further copy of the signed undertaking together with one copy of the photograph will be retained by the HKTDC/MFHK for its records.
8. If the HKTDC/MFHK is notified by the Customs and Excise Department that it is investigating possible violation of copyright and/or trademark by an Exhibitor at the Fair, the Exhibitor will be required to immediately remove the product or material which is under investigation for the remainder of the fair.
9. If the exhibitor fails or refuses to co-operate with HKTDC/MFHK under paragraphs 6 and/or 7 and/or 8 above, HKTDC/MFHK shall have the power, in its sole and absolute discretion, to ban the Exhibitor, or any parent, associate, affiliated and / or subsidiary company, from any or all future HKTDC/MFHK exhibitions.
10. HKTDC/MFHK staff will visit any booth in respect of which a complaint has been received and accepted by HKTDC/MFHK's legal advisors, in order to reconfirm that the disputed product or material is no longer on display and is not being traded. If the Exhibitor is found to have breached its undertaking not to display or deal with the product or material in dispute during the remaining period of the Fair, HKTDC/MFHK shall have the power, at its sole and absolute discretion, to immediately terminate the Exhibitors' right of participation in the Fair in question without any refund of the participation fee already paid by the Exhibitor and to ban the Exhibitor or any parent, associate, affiliated and / or subsidiary company from any or all future HKTDC/MFHK exhibitions.

Penalties

An exhibitor or any parent, associate, affiliated and / or subsidiary company may, in the sole and absolute discretion of the HKTDC/MFHK, be banned from any or all future participation in HKTDC/MFHK exhibitions if :

a. after HKTDC/MFHK has received and accepted a complaint against the Exhibitor, the Exhibitor fails or refuses to:

- allow HKTDC/MFHK to immediately take 3 photographs of the product or material in dispute;
- sign an undertaking immediately in favour of HKTDC/MFHK in a form provided by HKTDC/MFHK, indicating its decision whether to remove or continue to display the product or material in dispute;

OR

b. if the Exhibitor refuses to remove from display the product or material in dispute and a legal action brought against the Exhibitor in relation to the display of the product or material in dispute is upheld by a Court in Hong Kong, notwithstanding that the Exhibitor has signed an undertaking in favour of HKTDC/MFHK and allowed HKTDC/MFHK to take photographs of the product or material in dispute during the Fair;

OR

c. the Exhibitor removes the product or material in dispute immediately from display and signs an undertaking provided by HKTDC/MFHK not to display or deal with any such item for the rest of the Fair period, but is subsequently found to be in breach of such an undertaking; in which case the HKTDC/MFHK shall, in addition, be entitled to immediately terminate the Exhibitors' right of participation for the rest of the Fair period without refund of any participation fee already paid by the Exhibitor;

OR

d. there are two or more court rulings from a Court in Hong Kong against the Exhibitor confirming its infringement of intellectual property rights of the complainant(s) during two consecutive fair periods, notwithstanding that the Exhibitor has cooperated with HKTDC/MFHK during the Fairs by removing the disputed product or material from display;

OR

e. within two consecutive fair periods there are four or more valid complaints filed against the same exhibitor and which have been accepted by the Fair Legal Advisor:

- by more than one complainant in respect of different intellectual property rights; or
- by the same complainant in respect of different products or material items

OR

f. the Exhibitor is accused or convicted of any criminal offence relating to infringement of intellectual property rights or violation of intellectual property-related laws and regulations.

Penalties for intellectual property-related criminal offences

Copyright Ordinance (Chapter 528 the Laws of Hong Kong)

It is a criminal offence to make or deal in articles that infringe copyright. The Copyright Ordinance sets out in detail the different activities that constitute criminal offences. A person who commits such a criminal offence is liable to a fine of HK\$50,000 in respect of each infringing copy and to 4 years' imprisonment or a fine of HK\$500,000 and 8 years' imprisonment depending on the type of infringing activity carried out.

Trade Descriptions Ordinance (Chapter 362 the Laws of Hong Kong)

Under the Trade Descriptions Ordinance, any person who:-

- (i) applies a false trade description to any goods;
- (ii) supplies or offers to supply any goods to which a false trade description is applied; or
- (iii) has in his possession for sale, or for any purpose of trade or manufacture, any goods to which a false trade description is applied commits a criminal offence.

Further, any person who forges any registered trade mark or falsely applies to any goods any trade mark so nearly resembling a registered trade mark as to be calculated to deceive also commits a criminal offence.

Any person who commits such an offence under the Trade Descriptions Ordinance may be liable -

- (a) on conviction on indictment, to a fine of \$500,000 and to imprisonment for 5 years; and
- (b) on summary conviction, to a fine of \$100,000 and to imprisonment for 2 years.

Documents Required as Evidence of Subsistence, Ownership and Infringement of Intellectual Property Rights

A. Copyright

1. date and place that the work was first made;
2. name of author and name of owner of the work;
3. original work or a certified copy of the original work e.g. design drawings, sketches;
4. proof of ownership of the work. In the event the author of the works is an employee of the complainant, contract of employment;
5. in the event the author of the works is not the complainant nor an employee of the complainant, copyright assignment evidencing assignment of copyright from author to complainant;
6. invoice, shipping document or other documents evidencing the date of (i) first sale of the product or article to which the original copyright work relates or (ii) first publication of the relevant copyright work;
7. alternatively, an affidavit of the copyright ownership pursuant to Section 121 of the copyright Ordinance.

B. Trade Mark

1. Original or certified copy of a valid Certificate of Registration of Trade Mark in Hong Kong including any renewal certificates or proof of renewal.

C. Registered Design

1. Original or certified copy of a valid Certificate of Registration of Design in Hong Kong including any renewal certificates or proof of renewal.

D. Patent

1. Original or certified copy of a valid Certificate of Grant of Patent in Hong Kong including any renewal certificates or proof of renewal.
2. A written opinion from the complainant's Hong Kong patent agent or legal advisor that the Hong Kong patent is valid and infringed by the display of the Exhibitor's product or material in dispute during the Fair.

And any other evidence that the Legal Advisor may require depending on the specific facts of the case.
