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A study of consumer protection law in Hong Kong

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ABSTRACT

Consumption of goods and services is inevitable in our daily life. So consumer protection is essential for every consumer. However, the existing consumer protection system in Hong Kong is not comprehensive enough to protect consumers. Thus, this project concentrates on studying the consumer protection law in Hong Kong to evaluate its sufficiency for protecting consumers. Besides, we also investigate the Hong Kong consumer protection system, including the functions and powers of the Consumer Council, and make compare it with Australia' s consumer protection system.

The Consumer Council is the only statutory consumer protection body in Hong Kong. It is not an independent unit in its operation. Moreover, it lacks investigative, legislative and enforcement powers. Furthermore, the laws and ordinances are not sufficient and comprehensive enough to protect all consumers. Most importantly, the government' s attitude towards consumer protection is non-interventionist.

After a comparison is made with the Australia' s system, we discover that Australia' s consumer protection body, the National Consumer Affairs Advisory Council, is a purely advisory body to deal with the matters about consumer protection. It is independent from the other non-government consumer organizations, such as the Trade Practices Commission. Not only does it have investigative, legislative and enforcement power, it also has a comprehensive competition policy to protect consumers.

Due to the lack of the consumer protection law in Hong Kong, we recommend

that other developed countries' consumer protection systems, such as Australia, should be used as an example to improve our consumer protection system. The comprehensive competition policy, including competition laws and authority, should be introduced in order to ensure that more consumers could be in the protective net. Besides, the Consumer Council should be given more powers to operate and deal with the consumer problems.

In addition, the government should do more for consumer protection. It can be done by increasing the resources to the Consumer Council and educating the public about their consumer rights. Most importantly, the Consumer Council should act independently to achieve its objectives on consumer protection. Thus, all consumers can be better protected under these improvements.

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Chapter 1 INTRODUCTION

1.1 Background

Each year 25th March is the International Consumers' Day, which reflects the recognition of consumer protection all over the world. Consumer Council is regarded as the only statutory body representing the consumer interests in Hong Kong by the Consumer Council Ordinance. It was established in 1974 to combat a serious problem of the market at the time - the soaring price of rice and other commodities caused by profiteering.

The Hong Kong Consumer Council has long been advocating some changes in the consumer laws. Although there now exists a substantially expanded body of consumer protection legislation, addressing selected areas of concern, the current piece-meal approach is considered not sufficient to cover all areas and not conducive to promotion of trader and consumer education.

The Consumer Council engages in a wide spectrum of activities to promote the interests and well-being of consumers, but its existing power is still not enough to protect all consumers. Moreover, consumer protection laws are always criticized for being inadequate. The wide range of products and services available in Hong Kong is not being matched by the legislation designed to protect consumer, because the philosophy of government is to promote self-help of the consumer.

1.2 Rationale

Hong Kong has enjoyed great economic success in recent decades. The consumption of goods and services is inevitable in our daily life. Today consumers start to notice what needs and rights they should have.

We believe that the enactment of an overall consumer protection law will help remove uncertainty and enhance greater awareness and understanding of the legislative protection afforded to the consumer public.

However, economic downturn in recent years has brought on a new record high number of consumer complaints: a total of 22,750 in 1998 representing an increase of nearly 100% over the previous year's record of 11,535¹.

The large volume of complaints is indicative of general low level of consumer satisfaction in the marketplace. Therefore, we want to conduct this project about the consumer protection law in HK in order to examine its adequacy and effectiveness.

¹ See Appendix A: Complaint Statistics For the Year 1996 to 1998

Chapter 2 OBJECTIVES

Our project focuses on studying the consumer protection system in Hong Kong in order to see whether it can really protect the interest of all the consumers. Besides, we would like to investigate Australia' s consumer protection system and make certain comparisons with the Hong Kong' s system.

In order to have a clear picture of consumer protection system in Hong Kong in our project research, there are several specific objectives we want to achieve:

1. To investigate the functions and powers of the Consumer Council and its limitations.
2. To study consumer protection law in Hong Kong in order to evaluate its sufficiency.
3. To find out any proposed law to amend the existing law, if it is not adequate.
4. Comparison will be made of the consumer protection system, including laws, powers and functions of the consumer organization, etc, elsewhere.
5. To recommend improvement to the Hong Kong consumer protection law and its system.

Chapter 3 METHODOLOGY

● Foundation Information Search

Due to the lack of sufficient understanding to the Hong Kong consumer protection system, a foundation search was conducted through the Laws of Hong Kong. By studying such materials, we generated a general idea on the functions and powers of the Consumer Council. Besides, we pursued the Australia Trade Practices Act in Australia.

● Library Research

Sources of secondary data were collected through Lingnan College Library, City University library and Consumer Council library. The materials in these libraries such as reference books, newspaper clippings, journals and articles provide us with many ideas about other people's points of view and help us gain deeper understanding about consumer protection in Hong Kong and other countries.

● Interview

We also interviewed different people to collect the professional opinion on the consumer protection system in both Hong Kong and Australia. The interviewees were Professor Edward Chen Kwan Yiu, the President of Lingnan College (the former Chairman of the Consumer Council), Miss. Lam Mei Fong, the Senior Consumer Education Officer of the Consumer Council, Mr. Yuen Tang-Kwong, the Information Resources Officer of the Consumer Council and Miss Wendy Chan,

the Head of Legal Affairs Division of the Consumer Council. They all kindly gave us information and opinion.

Chapter 4 Comments on the Consumer

Protection Law

According to Li Kai Ming², the Chief Executive of the Consumer Council suggested that a comprehensive consumer statute should be able to achieve these objectives:

- Enable the consumer to have access to adequate information to make informed choices.
- Protect the consumer against hazards to health and safety.
- Protect the economic interests of the consumer against unfair trade practices.
- Make effective redress mechanism easily available to the consumer.
- Provide adequate infrastructure to enforce consumer protection laws and to develop consumer protection polices.

However, the consumer protection law in Hong Kong is always criticized as being inadequate. In fact, according to Anne Carver, the consumer protection law in Hong Kong is less developed than in other countries, such as England and the United State. For example, in England, the *Trade Descriptions Act 1968* states that an advertisement that is misleading is perfectly capable of falling within the control of it. However, in Hong Kong, the *Trade Descriptions Ordinance (Cap.362)* does not include the aspect of misleading advertisement.

Moreover, from the press release by the *Consumer Council on 11 January*,

² Developing Consumer Law in Asia (1994), proceedings of the Asian Seminar on Consumer Law 9-12 August 1993, speech by Li Kai Ming, the Chief Executive of the Consumer Council, P.65.

1999, the number of complaints is increasing. The Chairman of Consumer Council, Ms Anna Wu Hung-yuk, announced the number of complaints are 22,750 in 1998 which increased by nearly 100% when compare with the same period in 1997. Even the number of complaints is huge, the action the Consumer Council can take is limited. The Legislator Hung Chen-ya also criticized that the council can only advocate changes; it's powerless and it can't change things by itself³.

The Provisional Legislator, Law Cheung-kwok, suggested that the only way to combat such "anti-competitive practices" is to have a Competition Law as practiced in the US and Europe, as well as Japan and Taiwan⁴. However, the proposal of the competition policy was rejected by the government in November 1997.

In addition, Jill Cottrell, Senior Lecture in Law in the University of Hong Kong, suggested in a speech⁵ that the relative lack of legislation could be accounted for by, on the one hand, the weakness of pressures for change and, on the other, countervail pressures.

She suggested that the absence of popular pressure behind the Consumer Council led to slow response from government to legislate. For example, as long

³ Published in Far Eastern economic Review Journal on 24 March 1994.

⁴ Published in Hong Kong Standard on 15 November 1997.

⁵ Developing Consumer Law in Asia (1994), proceedings of the Asian Seminar on Consumer Law 9-12 August 1993, speech by Jill Cottrell, Senior Lecture in Law in the University of Hong Kong, P.228-229.

ago as 1981, it was recommended the adoption of general safety legislation in Hong Kong. Consequently, the Consumer Goods Safety Ordinance (Cap.456) was enacted after 14 years in 1995.

She also suggested that the mechanisms of redress may be of the following types:

1. The direct complaint (i.e. you complain to the person or body who you feel has done you wrong).
2. The indirect complaint or ombudsman model (i.e. you complain to some independent individual or body).
3. Advice agency - including the legal profession.
4. The mediation model - the agent does more than advise, it helps settle the dispute.
5. Representation - the agency represents you in negotiation and possibly in litigation.
6. Litigation model (which would include arbitration in many cases).
7. Financial guarantee fund - to ensure that financial claims will be met, possibly in circumstances of insolvency of supplier of goods (or, more usually) services.

Chapter 5 FINDINGS & ANALYSIS (Part I)

In order to investigate the consumer protection law and to evaluate its sufficiency, a knowledge of the Hong Kong Consumer Council is necessary and important. It is because the Consumer Council is regarded as the only statutory body representing consumer interests in Hong Kong.

5.1 Functions of the Consumer Council

The Consumer Council was first established in April 1974. It was established by the Consumer Council Ordinance. In its founding year, the Council was just given the task to look into the cause of the rapid price increase of rice. However, the Council is now engaged in a wide spread of activities to promote the interests and well-being of consumers.

The main functions of the Consumer Council are to monitor trade practices, resolve consumer disputes, investigate into quality and safety aspects of services and products, and undertake consumer education activities. As set out in the section 4 of the *Consumer Council Ordinance (Cap.126)*, it is vested with the functions to protect and promote the interests of consumer of goods and services and purchasers, mortgagors and lessees of immovable property by

1. collecting and receiving complaints by and giving advice to consumers;
2. receiving and examining complaints by and giving advice to consumers;
3. taking such action as it thinks justified by information in its possession, including tendering advice to the Government or to any public officer;

4. encouraging business and professional associations to establish codes of practice to regulate the activities of their members; and
5. undertaking such other functions as the Council may adopt with prior approval of the Governor in Council.

5.2 Powers of the Consumer Council

As set out in section 5 of the Consumer Council Ordinance, the Council may do such things as are reasonably necessary to enable to it to carry out its functions. The Council may in carrying out its functions:

- a) acquire, hold and dispose of all kinds of property movable and immovable and in any manner which it thinks fits;
- b) enter into any contract;
- c) undertake the testing and examination of goods and services and inspection of immovable property;
- d) produce or distribute, by way of sale or otherwise, any publication which is of interest to consumers;
- e) do anything which it may do under this Ordinance in association or co-operation with any other person or sponsor any other person to so that thing;
- f) charge for the use of any facility or service provided by the Council;
- g) with the prior approval of the Governor, become a member of or affiliate to any international body concerned with consumer matters.

5.3 Limitations of the Consumer Council

● Powers

After interviewing different people, they all said that the power of the Consumer Council is not enough.

Prof. Edward Chen Kwan-Yiu, the former Chairman of the Consumer Council, said that in other countries, they have their independent departments to protect consumers. They have enforcement power and the government would vest in them authorization power. However, in Hong Kong, the Consumer Council is like a consumer organization. It has neither enforcement power nor investigative power.

Wendy Chan, the Head of the Legal Affairs Division of the Consumer Council, admitted that the power of the Consumer Council is quite limited. The enforcement power of the Consumer Council in Hong Kong is relatively weak if compared to similar bodies in other countries. The Consumer Council, in fact, is only acting as a mediator between traders and complainants. Besides, the Consumer Council has neither investigative power nor enforcement power to monitor trade practices. She also claimed that the Council assists consumers to sue traders only because the Council itself is not able to sue traders on behalf of consumers. Therefore, Consumer Legal Action Fund was established in 1994. (The details of the Fund will be discussed in the next section.) Currently, the Consumer Council is trying to fight for rights and powers, which can enable it to sue traders because many consumers would refuse to sue traders even though the fund was granted.

Jill Cottrell, Senior Lecturer in Law in the University of Hong Kong, said in a speech⁶ that the Consumer Council would not represent a consumer movement, being itself the creature of government. Elsewhere, consumer organizations have been vital in achieving legislative change, and in providing encouragement and advice to individual consumers to press for redress. The irony that the Hong Kong consumer has had to rely upon a government created body has often been remarked on.

Legislator, Hung Chen-ya, also criticized that the council could only advocate changes; it is powerless and it cannot change things by itself.⁷

● Resources

The Council derives income mainly from a subvention from the Government, with the balance (less than 5%) to be met from proceeds through the sale of publications⁸.

Prof. Edward Chen Kwan-Yiu said that the resources of the Consumer Council are quite limited, especially in terms of funding. Because of the limited resources, it cannot do the best.' He said.

In fact, with reference to the Income and Expenditure Accounts of the Consumer

⁶ Developing Consumer Law in Asia (1994), proceedings of the Asian Seminar on Consumer Law 9-12 August 1993, speech by Jill Cottrell, Senior Lecture in Law in the University of Hong Kong, P.228-229.

⁷ Published in the *Far Eastern Economic Review Journal* on 24th March, 1994.

⁸ Consumer Council Annual Report 1997/98, P.12.

Council⁹, the financial support from the Government is not adequate. Every year, expenditure amount of the Consumer Council exceeds the government subvention. The categories of the expenditures including testing products, staffing, rent and regional informational centers expenses, etc.

⁹ See Appendix C: Government Subvention and Expenditure of the Consumer Council

5.4 The Consumer Legal Action Fund

● Functions

In spite of its powerlessness, the Consumer Legal Action Fund as mentioned above was established on 30th November, 1994. It was given a grant of \$10 million from the Government, where the Consumer Council is the trustee of the Fund and is advised by Management Committee on the eligibility and merits of the cases seeking assistance under the Fund.

The Consumer Legal Action Fund is a trust fund set up to give great consume access to legal remedies by providing financial support and legal assistance. The Fund aims to provide assistance in the following circumstances¹⁰.

1. To assist consumers to bring or defend representative action. This type of action enables one consumer to act on behalf of a group of consumers with the same interest in the manner.
2. To assist consumers to pursue joint claims out of same or same series of transaction with a common question of law or fact;
3. To group consumers with similar causes of action and claims together administratively and arrange for them to be heard at the same or consecutively;
4. To bring action in the interest of the public;
5. To handle cases of significant consumer interest.

● Effectiveness of the Fund

Although the Fund was established with a grant of \$10 million from the

¹⁰ The Consumer Council Website: <http://www.consumer.org.hk>.

Government, the effectiveness of this Fund is not significant.

The Fund was set up on 30 November 1994. Up to 31 December 1998, the Fund has altogether considered 26 groups of cases, whereas only 12 groups of cases were granted assistance¹¹. Each group ranges from several to thousands of consumers. Moreover, the Fund is presently considering whether legal assistance should be granted to one group of cases. The following table indicates that only small groups of consumers were granted assistance.

	Capital and Accumulated Surplus	Expenditure on Legal Fee for Assisted Consumer	Percentage Used
1997-1998	\$12,081,742	\$120,893	1 %
1996-1997	\$11,380,850	\$139,593	1.2 %
1995-1996	\$10,883,446	\$24,000	0.22 %

Besides, referring to the above table, we also observed that the total granted as legal fee for assisted consumers only costs \$284,486, of which \$24,000 was granted in 1996, \$139,593 was granted in 1997 and \$120,893 was granted in

¹¹ Press release by the Consumer Council on 11 January 1999.

The breakdown of the assistance granted groups of cases please see Appendix D: The

1998¹². Moreover, the percentage used for assisted consumers is very limited. It indicates that despite the \$10 million grant from the Government, only a small proportion of consumers could be granted the assistance in fact.

Consumer Legal Action Fund - Breakdown of Group of Cases

¹² Consumer Council Annual Report 1996/1997 and 1997/1998 , Consumer Legal Action Fund Income and Expenditure Account for the Year Ended 31 March 1997(P.66-67) and 31 March 1998(P.74-75).

Chapter 6 FINDINGS & ANALYSIS (Part II)

6.1 Sufficiency of Consumer Law

Hong Kong neither has an omnibus consumer protection statute, nor are there plans to develop one in the near future¹³. However, the government has been developing piecemeal consumer protection law as and when required. And these have been able to meet the basic objectives to certain extent.

Hong Kong has developed some significant laws primary to protect its consumers in response to public demands, as well as in response to developments in the different stages of economic growth. Continuous lobbying by the Consumer Council has resulted in new laws being passed, or existing ones being amended. In analyzing these laws, we would divide these laws into several categories including 1) Consumer Information, 2) Consumer Safety, 3) Fair Trade and 4) Consumer Redress.

1. Consumer Information

- What we have

Public Health and Municipal Services Ordinance (Cap. 132)

Commencement Date: 11th November, 1960.

The purpose of this ordinance is to make provision for public and municipal

¹³ Developing Consumer Law in Asia (1994), proceedings of the Asian Seminar on Consumer Law 9-12 August 1993, speech by Li Kai Ming, the Deputy Chief Executive of the Hong Kong Consumer Council, P.65.

services. In which, there is a subsidiary legislation named Food and Drugs (composition and Labeling) Regulations. These impose requirements for the making and labeling of pre-packaged food and drugs in respect of their names, ingredients, minimum durability, conditions of storage or use, net weight and volume, and for provisions regarding their manufacture and country of origin.

Trade Descriptions Ordinance

Commencement Date: 1st April, 1981.

This ordinance prohibits false trade descriptions, false marks and misstatements in respect of goods provided in the course of trade. It also confers power to require information or instruction relating to goods to be marked on, or to accompany the goods.

Money Changers Ordinance

Commencement Date: 1st April, 1985.

This ordinance requires the money changers disclose exchange rates on exchange transaction and for the obtaining of consent thereto.

● ***Our Further Needs***

Control of Misleading Advertising

Apart from the medical advertisement and false trade description, there is a lack of effective regulation over misleading advertising¹⁴. Many a consumer complaint has probably stemmed from misleading advertisements or claims.

¹⁴ Press released by the Consumer Council on 8 January 1998, the Consumer Council Website:
<http://www.consumer.org.hk>

The Chairperson of the Consumer Council, Ms. Annu Wu observed that existing law dealing with misrepresentation is inadequate for consumer protection purposes, as it requires an infliction of damage which should be avoided in the first place¹⁵.

She cited two recent cases in point brought to the attention of the Council for assistance:

- One concerned an advertisement offering what appeared to be real bargain rates for telecom services to various destinations. But what actually transpired was that only one of the prices advertised was applicable. Further, it was subject to certain conditions such as the validity period for the bargain and the definition of non-peak hours.

- The other was about a sales promotion by an electrical appliance shop. It advertised a Guaranteed Low Price for its goods with promise of refund of the price difference if it is not the case. Again the guarantee and refund promise were applicable only subject to a string of terms and conditions. For example, only the price specified by a department store or electrical appliance company with over 7 branches could be used for comparison and refund in respect of the price difference could only be made before 9:00p.m. on the same day of the purchase.

Said Ms. WU: "In both cases, the advertising was cleverly designed in such a

¹⁵ Press released by the Consumer Council on 20 July, 1998, the Consumer Council Website:
<http://www.consumer.org.hk>

way that – if you are not careful in reading the small print – you could be misled and suffer the consequences."

"The advertisements in question may or may not be a case of misrepresentation. That is a matter for the court to rule. But there is little doubt, in my mind, that they are clearly misleading to many consumers. That is what we want to see regulated by the law," she asserted.

Mandatory Product Labeling

Apart from food and drugs and gold and platinum articles, there is no mandatory requirement for suppliers to disclose the composition or contents of their consumer goods. There is a need for the supply of accurate and adequate consumer information.

Disclosure of Information for Web Shoppers

Shoppers on the Internet may not be protected when they buying from medium and small-sized enterprises, especially from those overseas. Issues such as genuineness of offer, product quality, security of payment and privacy issues, etc, have been raised. "How do they know their goods will be delivered? And that they are not open to fraud? And the service is there?" Mr. Adrian Walker-Smith, the head of Consumer Council's trade practices division, said¹⁶. Consumer protection should be extended to shoppers on the Internet.

Disclosure of Information in Property Transactions

¹⁶ Hong Kong Standard "Web Shoppers Need Protection: Council", 8th July, 1998.

Consumers are now committed to purchasing a piece of property from developers before its completion without sufficient information, on aspects such as floor area, finishes and fittings, environment, etc.

2. Consumer Safety

- **What we have**

Pharmacy and Poisons Ordinance (Cap.138)

Commencement Date: 1st January, 1970.

It provides for the registration of pharmaceutical products and restrictions on the sale of poisons, requirements of labeling, the disclosure of composition of medicines; and the classifications of poisons for the purpose of control.

Gas Safety Ordinance (Cap. 51)

Commencement Date: 1st April, 1991.

It controls the importation, manufacture, storage, transport, supply and use of gas.

Toys and Children's Products Safety Ordinance (Cap. 424)

Commencement Date: 1st July, 1993

This Ordinance to provide for safety standards for children's toys and safety standards for specific chattels used in association with children, and to provide for other powers to enhance the safety of children.

Consumer Goods Safety Ordinance (Cap. 456)

Commencement Date: 20th October, 1995.

This Ordinance had been recommended by the Consumer Council as long ago as 1981. This Ordinance imposes a duty on manufacturers, importers and suppliers of certain consumer goods to ensure that the consumer goods they supply are safe and for incidental purposes.

- **Our Further Needs**

Strict Product Compensation

Strict Compensation should be imposed on the supplier of a product, for injury or damage suffered by the consumer from the use of such product. It is because the existing law is unsatisfactory. Under the principle of privity of contract, only the immediate contracting party can sue. Therefore, if the injured person is not the one who paid the retailer, he cannot have a claim against the retailer¹⁷.

3. Fair Trade

- **What we have**

Sale of Goods Ordinance (Cap. 26)

Commencement Date: 1st August, 1896.

This legislation governs all contracts for the sale of goods. It provides a legal framework for the relationship between the buyer and the seller of goods, implies certain rights and duties on the part of the buyer and the seller, and provides

¹⁷ Consumer Council Annual Report 1997/1998, P22.

remedies in the event of either the buyer or the seller breaching the contract¹⁸.

Sale of Goods Ordinance deals with the minimum conditions as to description, merchantable quality, fitness for a particular purpose, and correspondence with sample, which a consumer relying on a product's good name might expect. The Control of Exemption Clauses Ordinance provides that the obligations of the seller under sections 14 to 17¹⁹ of Sale of Goods Ordinance cannot be excluded as regards consumers.

These implied terms in Sale of Goods Ordinance are summarized as follows:

Section 14 – concerns the seller's right to sell the goods. For example, if the seller is in possession of stolen goods, he does not have the right to sell them because he is not the owner.

Section 15 – says that the goods must correspond with their description. For example, if a buyer receives goods which do not correspond with their description, the goods are different from those described in the contract and the buyer can claim damages for breach of contract or reject the goods and perhaps also have a claim for damages if there is loss suffered that is not too remote²⁰.

Section 16 – provides that the goods must be of merchantable quality and fit for the

¹⁸ Hong Kong Business Law (1998), 4th Edition, Anne Carver, Longman, P.250.

¹⁹ Appendix E: Sale of Goods Ordinance Sections 14 – 17

²⁰ Hong Kong Business Law (1998), 4th Edition, Anne Carver, Longman, P.263.

buyer' s purpose, if the buyer informs the seller the purpose for buying the goods.

Section 17 – that a contract is for sale by sample, then three conditions are implied into that contract:

- that the bulk of the goods will correspond in quality with the sample
- that the buyer will have a reasonable opportunity of comparing the bulk of the goods with the sample
- that the goods will be free from any defect which would not appear on reasonable examination of the sample and which renders the goods unmerchantable²¹.

Undesirable Medical Advertisements Ordinance (Cap. 231)

Commencement Date: 1st April, 1953.

It restricts certain advertisements relating to medical matters.

Travel Agent Ordinance (Cap.218)

Commencement Date: 1st February, 1986.

It provides for the control and regulation of travel agents providing travel services in respect of travel outside or outward from Hong Kong.

Weights and Measures Ordinance (Cap. 68)

Commencement Date: 1st January, 1989.

This ordinance regulates trade transactions regarding goods supplied by

²¹ An Introduction to Hong Kong Business Law(1997), 2nd Edition, Vanessa Stott, Longman, P.125.

weight or measure.

Control of Exemption Clauses Ordinance (Cap. 71)

Commencement Date: 1st December, 1990.

This Ordinance provides that any exclusion clause which exempts the sellers obligations under sections 14 -17 is void. It limits the extent to which civil liability for breach of contract, or for negligence or other breach of duty, can be avoided by means of contract terms and otherwise; and to restrict the enforceability of arbitration agreements.

Supply of Services (Implied Terms) Ordinance (Cap 457)

Commencement Date: 21st October, 1994.

The Ordinance consolidates and amends the law with respect to the terms to be implied in the contracts for the supply of services. Terms implied relate to care and skill, time for performance and consolidation²².

Unconscionable Contracts Ordinance (Cap.458)

Commencement Date: 20th October, 1995.

This Ordinance empowers courts to determine whether a contract was unconscionable at the time it was made and to strike down or rewrite the contract²³.

● **Our Further Needs**

Competition Policy

²² Hong Kong Business Law (1998), 4th Edition, Anne Carver, Longman, P.252-253.

²³ An Introduction to Hong Kong business Law(1997), 2nd Ed, Vanessa Stott, Longman, P.106.

Hong Kong needed a comprehensive policy and related laws to promote fair competition²⁴. The enactment of competition law is needed to cover horizontal and vertical collusive agreements and abuse of a dominant position.

Prepaid Coupons Guidelines

The Council has received, for the year 1996 to 1998, 7,878 consumer complaints involving prepayment purchases²⁵. Of these, 5,197 complaints arose from video rental chains largely due to closure of their of their branches. The remainders of prepayment-related complaints were from cake coupon largely due to the closure of the Maria Bakery which went to liquidation on 29th April, 1998. These indicate that guidelines are needed to monitor business using pre-paid coupons.

4. Consumer Redress

- **What we have**

Small Claims Tribunal Ordinance (Cap.338)

Commencement Date: 1st October, 1976

The Tribunal, which has jurisdiction to deal with monetary claims involving amounts not exceeding HK\$15,000, provides the consumer a simple, informal and

²⁴ Consumer Council Annual Report 1996/1997, P.9.

²⁵ Press released by the Consumer Council on 31st December, 1998, the Consumer Council
Website: <http://www.consumer.org.hk>

inexpensive forum for small monetary claim to be heard. Claims for goods valued at more than HK\$15,000 will have to be heard in the District Court. Legal aid is available, for those who pass the means and merit tests.

Consumer Council Ordinance (Cap. 216)

Commencement Date: 15th July, 1977

This Ordinance defines the Consumer Council's functions and powers. The Council receives and examines consumer complaints and assists consumers to obtain redress.

- ***Our Further Needs***

Class Action or Consumer Representative Action

The legal system in Hong Kong does not provide for class actions to for the consumer organization to represent consumers in court proceedings²⁶.

Fair Trade Authority

Hong Kong lacks a consumer protection authority vested with power to investigate consumer complaints against sharp trade practices and to cease illegal activities.

²⁶ Developing Consumer Law in Asia (1994), proceedings of the Asian Seminar on Consumer Law 9 – 12 August 1993, speech by Li Kai Ming, the Deputy Chief Executive of the Hong Kong Consumer Council, P.65.

6.2 Proposed Consumer Laws

A principal task of the Consumer Council is not only to ensure that consumers have adequate protection under the law, but also to identify areas where improvement is needed to further the interests of consumers.

The Council believes that there is a need for clearly established legal right as the basis for producing redress to consumers. The Council therefore always places much emphasis on lobbying for better consumer protection laws. The Major proposed laws were:

● Medical Advertisement

The Undesirable Medical Advertisements Ordinance restricts certain advertisements relating to medical matters. However, according to the Department of Health, information supplied inside any container or package containing any medicine, surgical appliance or treatment is not considered to be an advertisement²⁷.

Dr Micheal Tsui Fuk-sun, the Council's Publicity and Community Relations Committee Vice-Chairman claimed that the loophole is that the infringing medical claims appear in informational pamphlets and leaflets inserted into the package of the products and are beyond the reach of the law²⁸. The Council believes that these should be brought under the sanction of the Ordinance. Therefore, the Council is

²⁷ Consumer Council Annual Report 1997/1998, P.21.

²⁸ Hong Kong Standard, "Medical Claims Slip Through", 15th August, 1998.

continuing its effort in urging the Government to consider its recommendation.

● **Misleading Advertisement**

Misleading advertisement is a long standing concern of the Council. It is because a lack of effective regulation over misleading advertising. Many a consumer complaint has probably stemmed from misleading advertisements or claims.

Since the present statutory and self-regulatory controls fail to achieve an overall protection to consumers against misleading advertising, the Council is examining relevant laws in other jurisdictions with a view to proposing a new legislation that will strengthen consumer protection in this area²⁹.

The Council is presently directing its efforts in a large scale survey on over 1,000 questionable advertisements in the media of newspapers, periodicals and television, with a view to identify the problem areas and putting forward recommendations for appropriate measures to safeguard consumer interests. The advertisements in the survey cover six categories of products and services: health, food, beauty saloons and fitness clubs, beauty products and cosmetics, private tutorial and training centre, travel agent and properties³⁰.

● **Prepayment**

²⁹ Consumer Council Annual Report 1997/1998, P.22.

³⁰ Press Released by the Consumer Council on 11 January, 1999. Consumer Council Website:

The Consumer Council has put forward a package of voluntary measures aimed at reducing the chances of consumers suffering loss in prepayment schemes or purchasing coupons. Proposal on this subject had been submitted to the Government in 1992 and 1996³¹.

A survey³² about prepayment was conducted by the Council. It showed that consumers were holding in their possession cake and video shop coupons amounting to around \$310 million and \$170 million. On average, each household held 7.9 cake coupons and 27.6 video shop coupons. Results indicated that prepayment was increasingly common in Hong Kong.

Therefore, the Trade and Industry Bureau has requested the Secretary for Justice to consider conducting a study, through the Law Reform Commission, on the feasibility of legislative protection for consumer prepayments³³.

● **Competition Policy**

In November 1996 the Consumer Council produced a report, entitled *Competition Policy: the Key to Hong Kong's Future Success*. In this Report, the Consumer Council argued for the case of establishing a legal framework for a comprehensive competition policy that is consistent across different sectors of the

<http://www.consumer.org.hk>

³¹ Consumer Council Annual Report 1997/1998, P.17.

³² Consumer Council Annual Report 1997/1998, P.33.

³³ Press released by the Consumer Council on 13th October, 1998, the Consumer Council
Website: <http://www.consumer.org.hk>

economy. This is better than the sector specific and piece meal approach that is now adopted by the government.

The competition law would provide an overall, transparent, and non-arbitrary "rule of the game" promoting competition and guarding against various forms of restrictive behavior and the abuse of market power that artificially inflate prices. The law should be administered by a competition authority serving as an impartial referee, who could allow waivers in justifiable circumstances³⁴.

● Product Liability Law

At the moment, a person who is injured by faulty goods can either sue the retailer under contract law or the manufacturer for negligence. But the onus is on the consumer to prove negligence, which can be costly and complicated if expert evidence is required.

The Law Reformed Commission published a report on 24th February, 1997³⁵ on proposals to reform the law governing compensation for injury and damage caused by defective or unsafe goods.

The Commission proposed changes in product liability law of Hong Kong in terms of liability, standard of safety, liability of manufacturers, producers, own-branders, importers, wholesalers, distributors and retailers, and the right to sue of

³⁴ Submission on Motion on 'Anti-monopolization' to be moved at the Legislative Council on Wednesday, 27 January 1999, from the Consumer Council Website:

<http://www.consumer.org.hk>

³⁵ "Help for Victims of Faulty Goods", 25 February 1997, South China Morning Post.

injured person³⁶. Therefore, under the new proposal, victims would only have to show they had been injured by the product.

³⁶ Consumer Council Annual report 1997/1998, P.22.

Chapter 7 ANALYSIS (Part III)

Comparison of consumer protection system between Hong Kong and Australia

● **The Role of the Consumer Protection Unit**

In Hong Kong, Consumer Council is the only organization to protect consumers. It receives government's resources to operate. Neither a government department nor a consumer organization (pressure group) does it belong to. Thus, its role is unclear, as it is not an independent department.

In Australia, on the other hand, the Commonwealth Government has established, by executive action, a National Consumer Affairs Advisory Council, which is the combination of the Consumer Affairs Council and the Consumer Affairs Bureau³⁷. It is a representative and purely advisory body to deal with the matters about consumer protection. Another organizations, such as the Trade Practices Commission, also help to handle the consumers' difficulties. They separate consumer organization and government department into two kinds. Their roles are very clear and they are absolutely independent from each other.

● **Powers of the Consumer Protection Unit**

From the interview of Professor Edward Chen Kwan Yiu, the President of Lingnan College, he commented that in Hong Kong, Consumer Council is like a

³⁷ Consumer Protection Law (1993), 4th Ed, Goldring, Maher and Mckeough, the Federation Press, P.375.

consumer organization. Its powers are quite limited and it has no enforcement power. The existing Consumer Council is too loose. Actually, no formal independent organization or board carries out the functions of legislative, enforcement and investigative powers for those who violate the regulations.

However, in Australia, consumer organization and government department are independent from each other. The former one is a pressure group and the latter one has the investigative, legislative and enforcement powers for consumer protection. Besides, the government gives them authorization power and the power of questioning and search. Under all Acts, failure to give information or impeding an authorized officer is a criminal offence.

Example of handling complaints

When dealing with the complaints from the consumers, both Hong Kong and Australia have different ways, as their powers are different.

In Hong Kong, the Consumer Council acts as a mediator between complainants and unscrupulous traders, Miss Wendy Chan One, the Head of Legal Affairs Division of Consumer Council, expressed. The officers of the complaint division record complaints from consumers and try to contact the related traders. If the complaints are about professionals, eg. law and medical, they will transfer the complaints to the relevant professional association for them to judge and handle. However, some cases may not be compromised between traders and consumers.

Besides, Professor Edward Chen Kwan Yiu, the President of Lingnan college,

also said that as the government is business interest dominant, it does not put much intervention on the Consumer Council and gives little power for it to carry out its functions. They are afraid that the economic development would be distorted. As it does not have investigative and enforcement power to control the activities of the traders, the only way it could do is to make Voluntary Code to remind and advise traders on how should they behave. However, the Consumer Council cannot guarantee the traders' compliance on the code.

Once the Consumer Council is not able to sue directly against traders, it tries hard to persuade traders to behave themselves and holds press conference to label some unscrupulous trades. These kinds of actions will only have some impact on traders in order to force them to behave themselves.

However, in Australia, as the Council has enforcement, legislative and investigative powers, it has powers to sue against the unscrupulous traders directly. Besides, at the Commonwealth level, the Trade Practices Act, s28³⁸, gives Trade Practices Commission the functions of conducting research, and disseminating information in relation to matters affecting the interests of consumers in cases where the federal parliament has the powers to make laws³⁹.

When the Council receives complaints from the consumers, it uses the given resources to investigate and negotiate with the related parties on behalf of the consumers. If the complaints remain unjustified, the Council will represent

³⁸ See Appendix F: Trade Practices Act

³⁹ Consumer Protection Law (1993), 4th Ed, Goldring, Maher and Mckeough, the Federation Press, P.375.

consumers in litigation, provided that the matter involved does not exceed a specified amount⁴⁰. Besides, the commissioner may grant legal assistance to the consumers by assigning their case to a solicitor employed by the Department.

- **The Effectiveness of the Consumer Protection Laws**

From Miss Wendy Chan One' s interview, she said that Hong Kong Consumer Council does not have any powers to legislate laws. And the government only make piecemeal consumer protection laws as and when required. So far, the existing laws can fulfill the basic objectives of a Consumer Protection Law to a certain extent, but still not adequate. In the past, the Consumer Council has put much effort on promoting the consumer protection law in Hong Kong, such as competition law, misleading advertisement, etc. But the government did not promote it for fear that it would distort the market. Thus, the only way it can do is to advocate new legislation, without any legislative power.

As we have mentioned in the previous chapter about the ordinances of consumer protection, we know that Hong Kong lacks competition policy and specific ordinance for the misleading advertisement. However, it is very important for the consumers in their daily life.

However, in Australia, there is Trade Practices Act, which is effective in protecting consumers. It would be reflected in any piece of well-designed consumer protection legislation. It has its features: flexibility, focus, universality,

⁴⁰ Consumer Protection Law (1993), 4th Ed, Goldring, Maher and Mckeough, the Federation Press, P.378.

completeness and linkage to competition policy⁴¹. It is a sound framework for building a responsive regulatory environment that asserts and strengthens the eight fundamental consumer rights. It includes competition policy and the specific legislation for the misleading advertisement.

Example of competition policy

For the competition policy, its main purpose is to utilize the society's resources efficiently and to limit market (or monopoly) power. Competition constrains firms to try to meet the demands of those dealing with them and to do so at the lowest price. If those demands are not met, persons dealing with the firm may turn to a competitor. The objective is the protection and advancement of a competitive environment and competitive conduct. The implementation of an effective competition policy helps restore competitiveness, ensuring that no parties can gain abnormal profits through restrictive practices, rather than efficiency enhancing measures.

Example of misleading advertisement

Although the potential purchaser has no remedy against the advertiser in contract law, there may be other remedies available under consumer protection laws (eg. under section 53e of the Trade Practices Act⁴²) which relates to false or misleading statements about price⁴³. The consumers also have the right to claim damages for loss suffered if the misrepresentation is fraudulent or negligent.

⁴¹ Global Trends of Consumer Laws in a Changing World (Papers from the Japan Seminar on Consumer Affairs) [JASCA], P.18-19, 2-4th August, 1994.

⁴² See Appendix F: Trade Practices Act

Besides, section 52 of the TPA⁴⁴ prohibits suppliers from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive⁴⁵. The legislation covers a wider range of activity than common law misrepresentation because ‘conduct’ covers more than just statements.

• **Government’s Attitude towards Consumer Protection**

In our interview, Professor Chen Kwan Yiu said that the Hong Kong Government, the government gives limited resources and powers to the Consumer Council for operation, especially in financial part. Every year, the Consumer Council receives about \$50,000,000 from the government⁴⁶. It includes product testing which is very expensive, rent, staff salary, regional information center’s expenses, etc. All of these expenditures should be over the given amount as it covers over 6,000,000 consumers.

Because the resources are limited, what the Consumer Council could do is also limited. Besides, as the government is business interest dominant, it is no doubt that it always takes the business side. For example, when the Consumer Council proposes to have competition policy, the government’s attitude towards it is non-intervention. It is afraid that the business interest will be affected. Also the government rejects the setup of trade commission for arbitration. What the government believes is that non-legislative approach is more appropriate for the economy and non-interventionist comprehensive competition policy, moderated

⁴³ The Law Handbook (January, 1995), 5th Ed, Redfern Legal Centre Publishing, P.343

⁴⁴ See Appendix F: Trade Practices Act

⁴⁵ The Law Handbook (January, 1995), 5th Ed, Redfern Legal Centre Publishing P.349.

with need-based sector-specific regulations best suits the needs of Hong Kong at this stage of economic development⁴⁷.

However, in Australia, the government pays much attention on how to protect consumers in the best way. Thus, it promotes competition among firms and seeks to promote fair-trading. It also prohibits and regulates unfair practices against consumers. Besides, as restrictions on competition are required in relation to natural resources which are not privately owned, such as forests, government intervene to limit assess these resources and to regulate the manner of their exploitation. Then optimal resources management can be achieved.

⁴⁶ See Appendix C: Government Subvention and Expenditure of the Consumer Council

⁴⁷ Consumer Council Annual Report 1997/1998, P.13.

Chapter 8 CONCLUSIONS

In the previous chapters, we have analyzed the limitations on the Consumer Council, the effectiveness of the Consumer Legal Action Fund and the sufficiency of the consumer protection law in Hong Kong.

From all of these, the one really significant redress mechanism in Hong Kong seems to be the Consumer Council. However, in fact, the Council is “toothless” because it does not have investigative, legislative and enforcement powers. It can only advocate changes in the law and acts as a mediator between traders and complainants.

In spite of its advocacy of changes in the consumer law, the government's response to the proposed changes is not rapid enough to keep pace with changes in the consumer market. For example, the proposed law of the Consumer Safety Goods Ordinance was finally passed after 14 years and the legislation concerning prepayment issue is still under consideration by a government working party since 1992.

Concerning the Consumer Legal Action Fund, its establishment seems to give great consumer access to legal remedies by providing financial support and legal assistance. However, the effectiveness of the Fund is not obvious since only a small group of consumers could grant assistance. Besides, the Council seems cannot make good use of the Fund to help consumer.

After analyzing the consumer protection laws in Hong Kong, we now realize that what are the existing consumer laws and what our further demands on consumer protection are.

Form our research, it can be seen that our laws are still far from adequate to provide comprehensive protection to consumers in Hong Kong. The government has just been developing piecemeal consumer protection laws as and when required. Even though they are inadequate, these have been able to meet the basic objectives to a certain extent.

The Sale of Goods Ordinance governs contract for the sale of goods is a very important piece of consumer protection law. Whereas the supply of services is governed by the Unconscionable Contracts Ordinance, the Supply of Services (Implied terms) Ordinance, and the Control of Exemption Clauses Ordinance, which also aim to protect consumers. But there are other aspects of consumer protection which are not regulated.

After making the comparison of consumer protection system between Hong Kong and Australia, the role of the consumer organization in Australia is more clear than Hong Kong Consumer Council. The consumer organization in Australia is absolutely independent from government. It not only has investigative, legislative and enforcement power, but also it has comprehensive competition policy to protect consumers.

However, the recommendation of establishing a comprehensive competition policy by the Consumer Council was rejected by the government since the government's attitude towards consumer protection is non-intervention as it is business interest dominant.

Following this conclusion, we would like to give some possible recommendations in the following chapter to improve Hong Kong consumer protection.

Chapter 9 RECOMMENDATIONS

Many countries around the world have their own consumer protection policies and systems. They continuously improve the system to be the best to protect the consumers' interest. Different parties, including government, non-government consumer organization, businessmen and consumers, co-ordinate to work for the consumers. However, from the analysis mentioned in the previous chapters, we know that Hong Kong consumer protection system is quite incomplete and too loose. It lags behind the other countries. Thus, we suggest some ways to help improve the consumer protection in Hong Kong.

● The Implementation of Comprehensive Competition Policy

Actually, competition policy can benefit both businessmen and consumers. For businessmen, it acts against anti-competitive practices that can drive efficient and well-run companies out of business or prevent new companies from entering a market⁴⁸.

Besides, consumers can benefit in terms of choice, quality of service, price and product innovation. It will maintain low prices and high service standards for the consumers.⁴⁹ Thus, the Consumer Council should try to act more to promote an understanding of the aims of competition policy to the Government and persuade it to carry out the policy.

⁴⁸ Competition Policy: The Key To Hong Kong's Future Economic Success (November 1996), Consumer Council, P.45.

⁴⁹ Competition Policy: The Key To Hong Kong's Future Economic Success (November 1996), Consumer Council, P.49.

● **Competition Policy**

To achieve this, action should be taken to promote an understanding of the aims of competition policy within Government as a whole and in the business community a member of the public. Besides, a new system or procedure is necessary to ensure that Government decisions and the design of all Government policies and decisions give regard to the implications on competition. New proposals for regulation should be scrutinized to filter out those that are not strictly necessary. In additions, the existing regulations should be scrutinized to ensure that they are still necessary, effective and their objectives could not be achieved by other means, e.g. a review of statutory monopolies and procedures for awarding franchises with the aim of increasing competition at the earliest possible opportunity.

⇒ **Competition law**

It should be enacted to prohibit horizontal and vertical collusive agreements and abuse of dominant position. Horizontal agreements include price-fixing cartels, bid-rigging, etc. Vertical agreements include retail price maintenance, exclusive dealership, tie-in sales, long-term supply contracts, etc.⁵⁰ As the competition law covers these issues to protect consumers, the setup of the law will be very useful on the consumers' interests.

⇒ **Competition authority**

The authority should be and independent body outside the civil service.

⁵⁰ Competition Policy: The Key To Hong Kong' s Future Economic Success (November 1996), Consumer Council, P.76.

Besides, it should have a full-time chairman and other members appointed by the Chief Executive of the Hong Kong Special Administrative Region.

In addition, it should be given the following duties:

1. to advise the Government on competition policy
2. to ensure compliance with the law
3. to consider and suggest reforms to the relevant legislation
4. to have a widely defined general public interest 'deregulation' duty, to become aware of circumstances leading to lack of market contestability and, in the performance of this or his specific duties, to recommend to Government changes to regulation to facilitate competition in the public interest. Such recommendations should be made public.

It should also be given the following powers:

1. To initiate investigations, or to act on the recommendations of others
2. To issue notices requiring the company to cease and desist from a practice deemed to be illegal, if in the course of its investigation, the Authority is satisfied that such a practice is illegal.

● **The Increase in Resources to the Consumer Council**

Every year, only limited amounts of resources are given to the Consumer Council. It will limit what they require to do for the interest of consumers. Thus, the government should put more resources to let them do better on product testing, research, complaints from the consumers, etc. Besides, more resources should be

added to the Legal Action Fund to take litigation on behalf of the consumers.

● **Consumer Education for the Public about Their Rights**

The Consumer Council should put more emphasis on the dissemination of information material concerning the rights and remedies of consumers. Besides, it should have extensive school and community education programs. If possible, it should work in hand with the media to advertise extensively to inform consumers of their rights and the need to take care of their interest, provided that the media is independent from the related advertisers.

● **Clarification on the Role of the Consumer Council**

Since the Consumer Council depends on the government resources to operate and the government is more business interest dominant, then the government may have biases on the proposals set by the Consumer Council. We suggest that the Consumer Council should act more independent, adopt Australia's consumer protection system as an example, to divide consumer protection unit into government department and consumer organization to carry out its own functions and powers. Then the Consumer Council's decision would not depend too much on the government.

● **Enlargement on the Powers of the Consumer Council**

As the powers of the Consumer Council is very limited, the government should enlarge the Council's powers by giving them legislative, enforcement and investigative powers. If it has these powers to operate, it can force the

unscrupulous traders to act in compliance with the consumer protection ordinances. For example, when dealing with the complaints from the consumers, the Consumer Council should not act as a mediator anymore. The government should give them the powers to prosecute or sue directly against the unscrupulous traders on behalf of the consumers.

- **Fully Utilize the Consumer Legal Action Fund**

Every year, the government gives certain amount of funds to the Consumer Council to help the consumers. We suggest that the Consumer Council should make good use of the given funds if any consumers have problems on their litigation. Besides, it should consider more cases about the consumers' complaints.

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ⁱ From the press released by the Consumer Council on 11 January 1999, the Consumer Council Website:
<http://www.consumer.org.hk>

ⁱⁱ From the Income and Expenditure Accounts of the Consumer Council for the Year 1993 to 1998, Consumer Council Annual Report 1993/1994 - 1997/1998.

ⁱⁱⁱ From the press released by the Consumer Council on 11 January 1999, the Consumer Council Website: <http://www.consumer.org.hk>

^{iv} Extract from the Laws of Hong Kong.

^v Extracted from Australia Trade Practices Legislation(1 January 1998), 14th Edition.

Appendix A

Complaint Statistics For the Year 1996 To 1998 (In order of the number of complaints)

CLASS	1996	1997	1998	% CHANGE
VIDEO CLUB	142	155	5,197	+3,253%
CAKE COUPON	3	7	2,681	+38,200%
ELECTRICAL APPLIANCE	1,455	1,813	2,171	+20%
PROPERTY	649	789	1,300	+65%
TELECOMMUNICATION NETWORK	401	563	1,010	+79%
TRAVEL AGENT	845	861	969	+13%
FURNITURE & FIXTURE	754	994	824	-17%
FOOD & DRINK	320	497	716	+44%
PHOTOGRAPHIC EQUIPMENT	325	386	643	+67%
MISCELLANEOUS SERVICES	83	192	602	+214%
COMPUTER	349	379	554	+46%
FINANCIAL SERVICE	297	341	533	+56%
CLOTHING & APPAREL	356	415	478	+15%
LAUNDRY	350	319	364	+14%
FURTHER EDUCATION SERVICE	186	247	352	+43%
RESTAURANT	140	265	343	+29%
MODELLING/SINGER	203	599	290	-52%
AUTOMOBILE	91	136	273	+101%
DRUG & CHINESE HERBAL MEDICINE	196	221	254	+15%
JEWELLERY	170	146	222	+52%
PARKING SERVICE	29	34	219	+544%
RECREATION/HEALTH CLUBS	22	31	215	+594%
INSURANCE	80	104	206	+98%
PUBLIC UTILITIES	82	75	205	+173%
DOMESTIC APPLIANCE	151	159	180	+13%
MISCELLANEOUS GOODS	84	304	177	-42%
PUBLIC TRANSPORT	38	74	158	+114%
PHOTO TAKING/FINISHING	91	85	148	+74%
BOOK/MAGAZINE/NEWSPAPER	47	42	132	+214%
BROADCASTING SERVICE	30	34	117	+244%
WATCH & CLOCK	73	77	104	+35%
PERSONAL CARE PRODUCTS	36	42	97	+131%
BEAUTY SALOON	53	97	94	-3%
EMPLOYMENT AGENCY	82	83	93	+12%

Appendix A

MEDICAL SERVICE	47	51	86	+69%
OPTICAL	106	96	83	-14%
SCHOOL MATTERS	20	34	65	+91%
STATIONARY & OFFICE EQUIPMENT	25	37	58	+57%
HAIR DRESSING	28	34	58	+71%
BABY PRODUCT	51	50	54	+8%
RECORD & TAPE	33	43	52	+21%
FUEL	34	26	49	+88%
LAWYER	7	37	47	+27%
SPORTING GOOD	29	298	33	-89%
OLD-AGE AFFAIRS	10	12	33	+175%
LOCAL REMOVAL SERVICE	35	33	32	-3%
EMMIGRATION CONSULTANT,	9	15	29	+93%
CINEMA/THEATRE	19	51	28	-45%
PET	27	23	21	-9%
MUSICAL INSTRUMENT	8	21	17	-19%
OVERSEAS REMOVAL SERVICE	16	12	16	+33%
OVERSEAS DELIVERY SERVICE	13	7	15	+114%
ARTISTIC COMMODITIES	8	31	12	-61%
MONEY CHANGER	15	11	12	+9%
ADVERTISEMENT	14	19	10	-47%
PUB	15	13	6	-54%
LOCAL RESORT HOUSE	16	6	6	0%
PRIVATE DETECTIVE	4	4	4	0%
FUNERAL SERVICE	3	5	3	-40%
TOTAL	8,805	11,535	22,750	+97%

**Letter to Mrs. Chan Wong Shui
(The Chief Executive of the Consumer Council)**

Lingnan college
A509, Block A
Fu Tei,
Tuen Mun
Tel: 9211 9231
9093 4422
5th November, 1998

Mrs. Chan Wong Shui, Pamela
Chief Executive
Consumer Council
22/F, K. Wah Centre
191, Java Road,
North Point,
Hong Kong

Dear Mrs. Chan¹,

We are 2 Year three students of Lingnan College. We are doing an honours project entitled Consumer Protection Law in Hong Kong.

In the project, we would like to know more about the functions and powers of the Consumer Council. We also wish to seek opinion on whether or not our consumer protection law is adequate when compared with the law of other countries, such as UK and Australia. Has the Consumer Council made any proposal to the government to amend the existing laws if they are inadequate, or to propose any new law to supplement the existing laws.

We want to interview you on the above issues and would be grateful if you would find us a time convenient to you.

Yours sincerely,

(Chung Chi Kwan, Lee Pui Ling)

¹ Mrs. Chan Wong Shui consequently passed the interview to Miss Wendy Chan, the Head of the Legal Affairs Division of the Consumer Council, to handle.

Interview Questions

Attention: Miss Wendy Chan

(Head of the Legal Affairs Division of the Consumer Council)

1. Can you tell me more about the structure of the Consumer Council?
2. Please supply us a list of consumer protection ordinances.
3. What are the most important ordinances relating to consumer protection apart from the Sale of Goods Ordinance and the Control of Exemption Clauses Ordinance?
4. Is it true that the Consumer Council does not have teeth?
5. Are our laws relating to consumer protection rather backward when comparing with the law of other countries such as Australia and United Kingdom? If yes, what is our inadequacy?
6. How does the Consumer Council assist consumers when they are cheated by dealers?
7. What are the most complaints about? How does the Consumer Council handle complaints? And how long does the Consumer Council take to deal with consumers?
8. Will the Consumer Council take legal action on behalf of the consumers? Do they have to pay for the legal costs?
9. What are the salient features of our consumer protection law?
10. Are there any proposals from the Consumer Council to strengthen our consumer protection law?
11. Has the Consumer Council made any recommendations to the government to improve our consumer law?
12. If there is any consumer law is found incomplete, how does the Consumer Council channel its view to government to amend the existing law?
13. Regarding the current hot issues, such as prepaid coupons and misleading advertisements, has the Consumer Council taken any action to tackle this kind of problems?

**Letter to Professor Chen Kwan Yiu, Edward
(The President of Lingnan College)**

Lingnan College,
Hostel Block A,
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Tel : 9211 9231
9093 4422
20th November, 1998

Professor Chen Kwan Yiu, Edward
The President
Lingnan College
Tuen Mun
N.T.

Dear Professor Chen,

We are Two Year III students of Lingnan College. We are doing an honours project entitled "Consumer Protection Law in Hong Kong".

We want to interview you to get your opinion on the adequacy or inadequacy of the consumer protection law in Hong Kong and the power and functions of the Consumer Council.

We would be grateful if you could kindly find us a time convenient to you.

Yours sincerely,

(Ms Chung Chi Kwan & Ms Lee Pui Ling)

Interview Questions

Attention: Professor Chen Kwan Yiu, Edward

1. Do you think that HK consumer protection is adequate?
2. There are many consumer protection ordinances in HK, do you think that they are adequate to protect consumers. If not, which one or area is inadequate?
3. Generally, Consumer Council only advises companies and consumers on how should they do, but legally(both civil and criminal), it does not have powers to prevent trader from deceiving consumers. Do you think that it is real? Can it be improved?
4. How about the foreign Consumer Council's legal power, is it similar to HK's? If not, which area HK lacks? And if HK learns from the other countries, such as England and Australia, is it possible and applicable?
5. Which country do you think the best to copy? Why?
6. Which kind of complaints is the most difficult to tackle?
7. When facing the complaints about prepaid coupons, misleading advertisements and actual size of building, how does Consumer Council use its powers to protect consumers?
8. How about the competition law proposed by the Consumer Council? Outside parties have opposite sound and the government is also self-regulatory and do not promote, is there any contradiction and how do the Consumer Council strike a balance?
9. Is there any other law like this, have contradiction?
10. When you are the Chairman of the Consumer Council, what outstanding issue you were willing to enforce, but now it is still not complete?
11. How about your greatest contribution?
12. Do you think that the Consumer Council resources are enough?
13. Which areas of the Consumer Council should be improved?

**Letter to Ms. Anna Wu Hung Yuk
(The Chairperson of the Consumer Council)**

Lingnan College
A509,
Hostel Block A,
Fu Tei,
Tuen Mun
Tel : 9211 9231
9093 4422
20th November, 1998

Ms. Anna Wu Hung Yuk
The Chairperson
Consumer Council
22/F, K. Wah Centre,
191, Java Road,
North Point,
Hong Kong

Dear Ms. Wu²,

We are Two Year III students of Lingnan College. We are doing an honours project entitled "Consumer Protection Law in Hong Kong".

We want to interview you on whether or not our consumer protection law is adequate and on the purpose of establishing Legal Action Fund and its functions.

We would be grateful if you could kindly find us a time convenient to you.

Yours sincerely,

(Ms Chung Chi Kwan & Ms Lee Pui Ling)

² Miss Wu consequently passed the interview to Miss Lam Mei Fong, the Senior Consumer Education Officer of the Consumer Council, to handle.

Interview Questions

Attention: Miss Lam (Education Division)

1. What is the function of each division of the Consumer Council?
2. Would the Consumer Council hold any function periodically, such as seminar and exhibition, to promote consumer rights and educate consumer against unfair trading?
3. What is competition policy? Would you please tell us more about that?
4. Is that any other consumer organization in Hong Kong?
5. Is there any proposal law amending the existing consumer law?
6. How about the foreign Consumer Council's legal power, is it similar to HK's? If not, which area HK lacks? And if HK learns from the other countries, such as England and Australia, is it possible and applicable?
7. Which country do you think would be the best to copy? Why?
8. What are the most complaints about? How does the Consumer Council handle complaints? And how long does the Consumer Council take to deal with consumers?
9. Which action would the Consumer Council take if there were a sudden increase in the same type of complaint?
10. Regarding the current hot issues, such as prepaid coupons, misleading advertisements and flat cheat, has the Consumer Council taken any action to tackle this kind of problems?
11. Many people criticize that the Consumer Council's legal power is not strong enough in HK. In your opinion, is there any other feasible method to improve consumer right?

Requisition Letter for Entering into the Consumer Council Library

Lingnan College
A509, Block A,
Fu Tei,
Tel : 9662 6060
9093 4422
5 March 1999

Miss Lam Mei Fong
The Senior Consumer Education Officer
Education Division of the Consumer Council
22/F, K. Wah Centre,
191, Java Road,
North Point,

Dear Miss Lam³,

RE: **Request for Entering into the Consumer Council Library**

We are two Year III students of Lingnan College. We are undertaking an honors project entitled "A Study of Consumer Protection Law in Hong Kong".

Our project is mainly focus on several aspects, including:

- to study consumer protection law in Hong Kong in order to evaluate its sufficiency,
- Whenever appropriate comparison will be made of the laws in other countries such as the United Kingdom and Australia,
- To investigate the functions and legal powers of the Consumer Council and its limitations on power,
- To find out any proposed changes to amend the existing law, if it is not adequate, and
- To recommend improvement on consumer protection law.

We need to search for more information concerning the above issue, such as the Consumer Council Annual Report 97-98, the reports of speeches which were held by the Consumer Council, other countries consumer laws, etc. We believe that there are many materials in the Consumer Council Library which are very helpful to us to conduct our project.

We want to get your approval to enter the Consumer Council Library on 12th March, 1999 to search for the above information. We can assure you that all information collected will be used for academic purpose only.

We would be grateful if you could kindly reply to us as soon as possible. Please feel free to contact us if you need any further information.

Yours sincerely,

(Ms Lee Pui Ling , Ms Chung Chi Kwan)

³ Miss Lam consequently passed our request to Mr. Yuen Tang-Kwong, the Information Resources Officer of the Consumer Council, to handle.

Government Subvention and
Expenditure of the Consume Council

	<u>Government Subvention</u>	<u>Expenditure</u>	<u>Net Amount</u>
<u>1997/98</u>	\$97,367,500	\$106,856,304	(\$9,488,804)
<u>1996/97</u>	\$53,754,000	\$60,070,399	(\$6,316,399)
<u>1995/96</u>	\$47,409,000	\$51,897,987	(\$4,488,987)
<u>1994/95</u>	\$40,977,500	\$44,017,033	(\$3,039,533)
<u>1993/94</u>	\$32,053,000	\$36,667,407	(\$4,614,407)
<u>1992/3</u>	\$33,623,000	\$35,728,495	(\$2,105,495)

The Consumer Legal Action Fund

-Breakdown of Group of Cases

(For the Period of 30/11/1994 - 31/12/1998)

Applications received and presently handled by Council	1
Complaints Division	
Group of Cases presently under consideration	1
Groups of Cases considered since 30 November 1994	26
Problem Solved During Application	1
Assistance Granted	12
Compensation obtained	3
Liquidation	1
Judgment obtained	2
Cases not pursued - no recovery prospect	1
Cases not pursued - applications' withdrawal	1
In process	4
Referred to Council for Policy Consideration	3
Referred to Council for Mediation	2
Assistance declined	8

14. Implied undertaking as to title etc.

(1) In every contract of sale, other than one to which subsection (2) applies, there is—

- (a) an implied condition on the part of the seller that in the case of the sale, he has a right to sell the goods, and in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass, and
- (b) an implied warranty that the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made and that the buyer will enjoy quiet possession of the goods except so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known.

(2) In a contract of sale, in the case of which there appears from the contract or is to be inferred from the circumstances of the contract an intention that the seller should transfer only such title as he or a third person may have, there is—

- (a) an implied warranty that all charges or encumbrances known to the seller and not known to the buyer have been disclosed to the buyer before the contract is made; and
- (b) an implied warranty that neither—
- (i) the seller; nor
- (ii) in a case where the parties to the contract intend that the seller should transfer only such title as a third person may have, that person; nor
- (iii) anyone claiming through or under the seller or that third person otherwise than under a charge or encumbrance disclosed or known to the buyer before the contract is made, will disturb the buyer's quiet possession of the goods.

(Replaced 58 of 1977 s. 4)
[cf. 1973 c. 13 s. 1 U.K.]

15. Sale by description

(1) Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale is by sample, as well as by description, it is not sufficient that the bulk

14. 有關所有權等的隱含責任承擔

(1) 除第(2)款適用的售賣合約外，每份售賣合約均有——

- (a) 一項賣方須符合的隱含條件：如該合約是一宗售賣，他有權售賣有關貨品，如該合約是一項售賣協議，則他在貨品產權轉移時，將有權售賣該等貨品；及
- (b) 一項隱含的保證條款：該等貨品並無任何在訂立合約前未向買方披露或未為買方所知的押記或產權負擔，而在產權轉移前亦不會有這樣的押記或產權負擔；此外，買方將安寧地享有對該等貨品的管有，但如對該項管有的干擾是由有權享有已向買方披露或已為買方所知的任何押記或產權負擔的利益的擁有人或其他有權享有該等利益的人作出的，則不在此限。

(2) 如售賣合約所顯示或從合約的情況所推定的意向，是賣方只轉讓其本身的所有權或第三者的所有權，則合約中有——

- (a) 一項隱含的保證條款：賣方所知但不為買方所知的所有押記或產權負擔，在合約訂立前已向買方披露；及
- (b) 一項隱含的保證條款：下列人士不會干擾買方安寧地管有貨品——
- (i) 賣方；及
- (ii) 如合約雙方的意向是賣方只轉讓第三者的所有權，則該第三者；及
- (iii) 任何透過或藉着賣方或第三者提出申索的人，而該項申索並非根據在合約訂立前已向買方披露或已為買方所知的押記或產權負擔而提出的。

(由 1977 年第 58 號第 4 條代替)
[比照 1973 c. 13 s. 1 U.K.]

15. 憑貨品說明的售賣

(1) 憑貨品說明售賣的合約，均有貨品必須與貨品說明相符的隱含條件：如既憑貨品說明又憑樣本售賣，而貨品與貨品說明不相符，則即使整批貨品與樣本相符，亦不足夠。(由 1977 年第 58 號第 5 條修訂)

Sale of Goods Ordinance (Section 14 - 17)

CAP. 26 Sale of Goods

第26章 貨品售賣條例

of the goods corresponds with the sample if the goods do not also correspond with the description. (*Amended 58 of 1977 s. 5*)

(2) A sale of goods shall not be prevented from being a sale by description by reason only that, being exposed for sale or hire, they are selected by the buyer. (*Added 58 of 1977 s. 5*) [*cf. 1973 c. 13 s. 2 U.K.*]

(2) 一宗貨品的售賣，不得僅因貨品在陳列以作售賣或租賃時為買方所選定而不屬於憑貨品說明的售賣。 (*由 1977 年第 58 號第 5 條增補*) [*比照 1973 c. 13 s. 2 U.K.*]

16. Implied undertakings as to quality or fitness

16. 有關品質或適用性的隱含責任承擔

(1) This section provides for the circumstances in which, and the extent to which, there is any implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. (*Replaced 85 of 1994 s. 4*)

(2) Where the seller sells goods in the course of a business, there is an implied condition that the goods supplied under the contract are of merchantable quality, except that there is no such condition—

- (a) as regards defects specifically drawn to the buyer's attention before the contract is made; or
- (b) if the buyer examines the goods before the contract is made, as regards defects which that examination ought to reveal; or (*Amended 85 of 1994 s. 4*)
- (c) if the contract is a contract for sale by sample, as regards defects which would have been apparent on a reasonable examination of the sample. (*Added 85 of 1994 s. 4*)

(3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known to the seller any particular purpose for which the goods are being bought, there is an implied condition that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the seller's skill or judgment.

(4) An implied condition or warranty as to quality or fitness for a particular purpose may be annexed to a contract of sale by usage.

(5) Subsections (1), (2), (3) and (4) apply to a sale by a person who in the course of a business is acting as agent for another as they apply to a sale by a principal in the course of a business, except where that other is not selling in the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made.

(6) In the application of subsection (3) to an agreement for the sale of goods under which the purchase price or part of it is payable by instalments any reference to the seller shall include a reference to the person by whom any antecedent negotiations are conducted.

(1) 本條規定在何情況下及在何範圍內，就根據售賣合約所供應貨品的品質或該等貨品對某特定用途的適用性，有任何隱含條件或隱含保證條款。 (*由 1994 年第 85 號第 4 條代替*)

(2) 凡賣方在業務運作中售賣，有一項隱含的條件：根據合約供應的貨品具可商售品質，但在以下事項方面則並無該項條件——

- (a) 在合約訂立前曾明確地促請買方注意的缺點；或
- (b) 如買方在合約訂立前驗貨，則該次驗貨應揭露的缺點；或 (*由 1994 年第 85 號第 4 條修訂*)
- (c) 如合約是憑樣本售賣的合約，則在對樣本進行合理檢驗時會顯現的缺點。 (*由 1994 年第 85 號第 4 條增補*)

(3) 凡賣方在業務運作中售賣，而買方以明示或暗示方式令賣方知悉，買方是為了某特定用途而購買該貨品，則有一項隱含的條件：根據合約供應的貨品在合理程度上適合該用途，不論該類貨品是否通常供應作此用途；但如有關情況顯示買方不依靠賣方的技能或判斷，或顯示買方依靠賣方的技能或判斷是不合理的，則不在此限。

(4) 關於貨品品質或對某特定用途的適用性的隱含條件或隱含保證條款，可按慣例附加於售賣合約上。

(5) 第(1)、(2)、(3)及(4)款適用於由任何在業務運作中以另一人的代理人身分行事的人所作的售賣，猶如該等條文適用於由一名主事人在業務運作中所作的售賣一樣，但如該另一人並非在業務運作中作售賣，而此事實已在合約訂立前已為買方所知，或在合約訂立前已採取合理步驟令買方知悉此事實，則屬例外。

(6) 對於買價或部分買價可分期付款的售賣協議，在應用第(3)款時，凡提述賣方之處，須包括提述進行任何事先商議的人。

(7) In subsection (6) "antecedent negotiations" (事先商議) means any negotiations or arrangements with the buyer whereby he was induced to make the agreement or which otherwise promoted the transaction to which the agreement relates.

(8) Except as provided by this section and section 17, and subject to the provisions of any other enactment, there is no implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. (*Added 85 of 1994 s. 4*)

(*Replaced 58 of 1977 s. 6*)
[*cf. 1973 c. 13 s. 3 U.K.*]

Sale by sample

17. Sale by sample

(1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

- (2) In the case of a contract for sale by sample—
- (a) there is an implied condition that the bulk shall correspond with the sample in quality;
 - (b) there is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
 - (c) there is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

(7) 在第 (6) 款中，“事先商議”(antecedent negotiations) 指與買方所作的任何商議或安排，而該商議或安排是誘使買方訂立該商議，或促成與該商議有關的交易的。

(8) 除本條及第 17 條以及任何其他成文法則另有規定外，就根據售賣合約所供應貨品的品質或該等貨品對某特定用途的適用性，並無任何隱含條件或隱含保證條款。
(由 1994 年第 85 號第 4 條增補)

(由 1977 年第 58 號第 6 條代替)
[比照 1973 c. 13 s. 3 U.K.]

憑樣本售賣

17. 憑樣本售賣

(1) 凡售賣合約中有一項明訂或隱含的條款，意思是該合約是憑樣本售賣的，該合約即憑樣本售賣的合約。

- (2) 憑樣本售賣的合約，有以下各項隱含條件——
- (a) 整批貨品須在品質上與樣本相符；
 - (b) 買方須有合理機會，將整批貨品與樣本作比較；
 - (c) 貨品並無任何令其不可商售且不會在對樣本進行合理檢驗時顯現的缺點。

Sale of Goods Ordinance (Section 14 - 17)

Trade Practices Act 1974

SECTION 28 FUNCTIONS OF COMMISSION IN RELATION TO DISSEMINATION OF INFORMATION, ALW REFORM AND RESEARCH

28(1) [Additional functions of Commission] In addition to any other functions conferred on the commission, the Commission has the following functions:

- (a) to make available to persons engaged in trade or commerce and other interested persons general information for their guidance with respect to the carrying out of the functions, or the exercise of the powers, of the Commission under this Act;
- (b) to examine critically, and report to the Minister on, the laws in force in Australia relating to the protection of consumers in respect of matters referred to the Commission by the Minister, being matters with respect to which Parliament has power to make laws;
- (c) to conduct research in relation to matters affecting the interests of consumers, being matters with respect to which the Parliament has power to make laws;
- (ca) to conduct research and undertake studies on matters that are referred to the Commission by the Council and that relate to the Commission's other Functions;
- (d) to make available to the public general information in relation to matters affecting the interests of consumers, being matters with respect to which the Parliament has power to make laws;
- (e) to make known for the guidance of consumers the rights and obligations of persons under provisions of laws in force in Australia that are designed to protect the interests of consumers.

28(2) [Notice to be published in para (1)(b) matter] Where a matter of a kind mentioned in paragraph (1)(b) is referred by the Minister to the Commission for examination and report:

- (a) the Commission shall cause to be published in the Gazette and in such newspapers and other journals as the Commission considers appropriate a notice:
 - (i) Stating that the reference has been made and specifying the matter to which the reference relates; and
 - (ii) inviting interested persons to furnish to the Commission their views on that matter and specifying the time and manner which those views are to be furnished;
- (b) the Commission shall not furnish its report to the Minister until a reasonable opportunity has been given to interested persons to furnish to the Commission their

views on the matter to which the reference relates; and

- (c) the Commission shall include in its report to the Minister any recommendations that it considers desirable with respect to the reform of the law relating to the matter to which the reference relates, whether those recommendations relate to the amendment of existing laws or the making of new laws.

28(3) [Copy of Commission Report in para (1)(b) matter to be laid before Parliament] The Minister shall cause a copy of each report furnished to him by the Commission in relation to a matter referred to the Commission under paragraph (1)(b) to be laid before each House of the Parliament as soon as practicable after the report is received by him.

SECTION 52 MISLEADING OR DECEPTIVE CONDUCT

52(1) [Prohibited conduct] A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

52(2) [Subsection (1) not too be limited] Nothing in the succeeding provisions of this Division shall be taken as limiting by implication the generality of subsection (1).

SECTION 53 FALSE OR MISLEADING REPRESENTATIONS

53 A corporation shall not, in trade or commerce, in connexion with the supply or possible supply of goods or services or in connexion with the promotion by means of the supply or use of goods or services:

- (a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use;
- (aa) falsely represent that services are of a particular standard, quality, value or grade;
- (b) falsely represent that goods are new;
- (bb) falsely represent that a particular person has agreed to acquire goods or services;
- (c) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;
- (d) represent that the corporation has a sponsorship, approval or affiliation it does not have;
- (e) make a false or misleading representation with respect to the price of goods or services;
- (ea) make a false or misleading representation concerning the availability of facilities for the repair of goods or of spare parts for goods;
- (f) make a false or misleading representation concerning the need for any goods or services; or
- (g) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.