

IPR Complaint Procedures and Guidelines for HKTDC Publications & HKTDC Website

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 set out below the procedures that we adopt for handling any complaint that a product or service featured in any advertisement in our publications and on our website (www.hktdc.com) infringes someone else's intellectual property rights.

These procedures 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 advertisers to be promptly cleared of unfounded complaints as it is to uphold their obligation to respect the intellectual property rights of others.

If someone ("**Complainant**") files a complaint with the HKTDC in accordance with the procedures below and requests the HKTDC to take action against an advertiser, the Complainant agrees to hold the HKTDC, 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 HKTDC, 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 HKTDC, 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.

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 good 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.

Procedures and guidelines

1. A Complaint must be submitted to the HKTDC in writing together with supporting documents as shown on the attached sheet.
2. The HKTDC will consider complaints based on Patents, Trade Marks, Registered Designs and/or Copyright ("IPRs") validly registered and/or enforceable in Hong Kong. The HKTDC may also review complaints based on IPRs validly registered and/or enforceable in other countries but only when the *advertisements in question are published in such countries.
3. After receiving a complaint, the HKTDC will first consider whether there is a case to answer. In considering whether or not there is a case to answer, the HKTDC will seek advice from its legal advisor.
4. If the HKTDC considers that there is a case to answer, the HKTDC will notify the advertiser of the complaint.
5. In respect of advertisement which has been published in an existing HKTDC publication, the HKTDC will not remove the advertisement from the relevant publication but will simply refuse to place any advertisements complained of in future publications unless the advertiser can, within three (3) working days of being requested to do so, adduce evidence to the satisfaction of the HKTDC's legal advisor that it has the right to place the advertisement complained of.
6. In respect of advertisement which has been published on the HKTDC website, the HKTDC will remove the advertisement complained of immediately. HKTDC will consider to publish the advertisement again only if the advertiser can, within three (3) working days of being requested to do so, adduce evidence to the satisfaction of the HKTDC's legal advisor that it has the right to place the advertisement complained of.
7. If the complainant submits an Order granted by the Hong Kong Court restraining the advertiser from trading in merchandise featuring the IPRs, the HKTDC will not allow the advertiser to place any future advertisements featuring the IPRs in question .
8. If the complaint is based on IPRs validly registered and/or enforceable in countries other than Hong Kong AND the HKTDC considers that there is a case to answer, the HKTDC will notify the advertiser of the complaint.
9. If the HKTDC discovers that a valid IPR complaint was filed during one of our exhibitions or fairs against a product that is advertised in our publications or on HKTDC website, the HKTDC reserves the right to refuse to list the product in its future publications and to remove the product from HKTDC website immediately unless the advertiser concerned can, within three (3) working days of being requested to do so,

adduce evidence to the satisfaction of the HKTDC's legal advisor that it has the right to advertise the product concerned.

10. The HKTDC reserves the sole and absolute discretion to decide whether or not it will allow future placing of any advertisements complained of.
11. The HKTDC may, in its sole and absolute discretion, terminate an advertiser's advertising contract and/or prohibit the advertiser from placing advertisements on the HKTDC website and in its publications, if there have been more than two (2) valid IPR complaints filed against the advertiser within any one (1) year period, which have been accepted by HKTDC's legal advisor.

*** *Advertisements here refer to print advertisements and/or online advertisements.***

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

A. Copyright

1. date and place that the artistic work was first made;
2. name of author and name of owner of the work;
3. original artistic 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 artistic works is an employee of the complainant, contract of employment;
5. in the event the author of the artistic 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 (Cap. 528).

B. Trade Mark

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

C. Registered Design

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

D. Patent

Original or certified copy of a valid Certificate of Grant of Patent including any renewal certificates or proof of renewal.

A written opinion from the complainant's patent agent or lawyer in the country where the patent relied upon is registered in confirming that the said patent is valid and being infringed by the product or service complained of.

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