


"創意無限！ 責任無限"

Ways to Improve the Regulation of Advertising

"Advertising means the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations. * "

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The Issue

1. Advertising serves the purpose of moving products and services from the supplier to the ultimate consumer. It also plays the role of extending markets and creating images of consumption as advertising may change tastes as well as

provide information.

2. Advertisement, having the power to shape consciousness, has been subject to frequent complaints and criticisms. Critics are concerned about the harms of misleading and fraudulent advertising to the consumer.
3. The Consumer Council (the Council) has from time to time received complaints from both consumers and the business sector against claims made in advertisements appearing in the broadcast as well as non-broadcast media. The complaints were mainly about the deceptive and misleading nature of the advertising claims. Suggestions were put to the Council that the Government should review the adequacy of the existing regulatory mechanism for advertising, particularly that for advertising in the non-broadcast media.
4. In addition, the approach to the regulation of advertising has also become a matter for public discussion. Hence the Council considers it appropriate to formally raise the issue for public discussion.
5. This paper sets out the background of the regulatory mechanism of advertising currently in existence in Hong Kong. In order to facilitate focused discussions on the subject, it outlines options for strengthening the existing regulatory system for advertisements in the non-broadcast media. The Council invites members of the public to forward their views on these options.

The survey on advertisements

6. To assess the extent of the problem with advertising in Hong Kong, the Council has conducted a massive survey on the advertisements for seven categories of products and service groups which appeared in both the printed and broadcast media in Hong Kong from June to August 1998 and from January to March 1999. The Survey collected advertisements in these seven categories and compared them against established standards and codes locally and abroad. The results are quite alarming: in the TV ads, 58 out of 256 samples (22.7%) were found to contain questionable claims, and in the ads in newspapers and periodicals, 913 out of 1777 samples (51.4%) were found to contain questionable claims [1](#).
7. In the seven product or service groups, it was found that real property ads (92%) contained the most questionable claims. Ads of beauty & fitness (slimming) services (85%), medicines, health food & therapies (84%), and cosmetics & beauty products (82%) come next. This is followed by ads of telecom equipment & services (46%), tutorial & training services (18%), and travel services (12%). The questionable claims of these ads are summarized at [Appendix I](#).
8. The Council has examined the complaints it received and the questionable claims identified above to see whether they are detrimental to consumer welfare. It has come to the conclusion that there are some prevailing problems which need to be addressed. They include:
 - (a) Untrue information abusing the credulity of the consumer or exploiting his lack of knowledge or inexperience;
 - (b) Inaccuracy, ambiguity, exaggeration or omission misleading the

consumer;

(c) Claims that are incapable of objective substantiation;

(d) Fictitious endorsements presented as though they were genuine testimonials;

(e) Inexplicit price information or overestimation of the value of goods or service;

(f) Unfair comparison with other businesses or their products;

(g) Omission of the requirements of the law; and

(h) Non-availability of the advertised products at the price stated or baits advertising for the purpose of switch selling.

Philosophy of advertising regulation

9. The issue of the regulation of advertising poses a significant challenge in law. The challenge is made more acute by the fact that in many cases it is the revenue from advertising that enables free and pluralistic media to exist or survive.

10. Nonetheless, most jurisdictions have found it necessary to impose some form of regulation over advertising. They believe that the principle of *caveat emptor* is no longer appropriate in today's marketplace. The marketing of goods and services is conducted in a highly sophisticated manner and by trained business executives. The untrained consumers who lack the knowledge of the product need protection against misleading advertising.

11. In the formulation of the Directive for Regulation of Misleading Advertising, the Council of the European Union has accepted that "*advertising, whether or not it induces a contract, affects the economic welfare of consumers.*"² Further, the EU Council has also found it desirable, in certain cases, to prohibit misleading advertising even before it is published. To implement its consumer protection and information policy, the European Union has introduced a programme to provide for appropriate action against misleading and unfair advertising.

12. The Council of European Union has defined "Misleading advertising" as:

*"any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor."*³

13. On the basis of this definition, it is highly justifiable to regulate or control misleading advertising because:

(a) misleading advertising can lead to distortion of competition; and

(b) it may cause a consumer to take decisions detrimental to him

when acquiring goods or other property, or using services.

14. In Australia, justification for government regulation of advertising (as provided by the Australian Trade Practices Act) is summarized in Heydon's *Trade Practices Law* as follows:

"consumers will only be assisted by advertising if what they are told is true, otherwise it would be cheaper for them to make their own inquiries. True advertising will enable easy comparison of price and quality. But false advertising, first deceives and injures individual consumers. Secondly, it takes away customers from honest traders. Thirdly, it mis-allocates resources; it causes customers to buy products which do not match their wants, so that production is channeled into modes other than those which most efficiently meet consumer needs. Fourthly, it may weaken consumer confidence in producers generally so that overall levels of production of economic activity fall." ⁴

15. Many other governments, including that of Hong Kong, have legislation requiring accurate information be disclosed in many areas of the marketplace. Thus the way in which the advertiser provides information and the relevance of that information are areas that must be carefully scrutinised.

16. Realizing the power of advertising, the industries concerned in most jurisdictions have adopted voluntary codes to exercise control over advertising practices and sales promotion. Such codes are generally encouraged by governments as their scope is usually more extensive than the sanction imposed by law.

Current provisions relating to misleading and deceptive advertising

17. Hong Kong does not have a piece of comprehensive legislation to regulate advertising practice. However, there are a number of statutes and regulations affecting advertising and promotion and creating offences for the breaching of such provisions. They are (not exhaustive) summarised as follows:

(a) Under *the Trade Descriptions Ordinance*, it is a criminal offence to apply a false trade description to any goods or supply goods with false trade description. False and misleading trade descriptions of goods used in advertisements are also prohibited.

(b) *The Pharmacy and Poisons Regulations* provides that no person shall sell any pharmaceutical product or substance unless it is registered with the Pharmacy and Poisons Board. In dealing with an application for registration, the safety, efficacy and quality of the pharmaceutical product or substance will be taken into consideration.

(c) *The Undesirable Medical Advertisements Ordinance* prohibits advertisements relating to certain diseases and abortion.

(d) Under *the Public Health and Municipal Services Ordinance*, it is an offence for any person to give a label or to publish an

advertisement which falsely describes any food or drug or is likely to mislead as to the nature, substance or quality of any food or drug.

(e) *The Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation* prohibits false or misleading advertisements by licensed estate agents.

(f) Under *the Money Changers Ordinance*, a money changer has to display the current net rate of exchange for buying and selling.

(g) Under *the Money Lenders Ordinance*, a money lender who publishes an advertisement indicating the terms of interest has to show conspicuously the interest as a rate per cent per annum.

(h) *The Protection of Investors Ordinance* makes it an offence for any person to issue an advertisement for investment unless any one of the statutory requirements is met, one of which being the authorization of the Securities and Futures Commission.

(i) It is an offence, under *the Securities Ordinance*, to make any statement which is false or misleading with respect to any material fact for the purpose of inducing the sale of any securities.

(j) Under *the Banking Ordinance*, where the [Monetary Authority](#) is of the opinion that any advertisement issued by a bank or a deposit-taking company in connection with its business is false, misleading or deceptive, the Authority may require the institution to withdraw, remove or cease issuing such advertisement.

Regulation of advertising practices in the broadcast media

18. For obvious reasons, almost all governments have put the advertising practices in the broadcast media under stringent regulation than that in the non-broadcast media. Hong Kong is no exception. Under *the Broadcasting Authority Ordinance* and *the Television Ordinance*, the [Authority](#) may issue codes of practice to regulate standards relating to programmes and advertisements. The Authority has so far issued the following codes of practice relating to advertising:

- (a) Commercial TV Code of Practice on Advertising Standards;
- (b) Radio Code of Practice on Advertising Standards;
- (c) Satellite TV Code of Practice on Advertising Standards;
- (d) Satellite Radio Code of Practice on Advertising Standards;
- (e) Subscription TV Code of Practice on Advertising Standards; and
- (f) Programme Service Code of Practice on Advertising Standards

19. The principle for these codes is that all advertisements should be legal, clean, honest and truthful. So misleading advertisement is not allowed. Specifically these codes provide that:

- (a) No advertisement may contain any descriptions, claims or

illustrations which expressly or by implication depart from truth or mislead about the product or service advertised or about its suitability for the purpose recommended; and

(b) The licensee shall refuse the facilities of his station where he has good reason to doubt the integrity of the advertiser, the truth of the advertising representations, or the compliance of the advertiser with the spirit and purpose of all legal requirements that apply to the advertiser.

20. While there are comprehensive advertising codes of practice in the broadcast media to safeguard viewers/audience interest, some advertisers use the print media to bring messages not permissible on the broadcast media. The anomaly must not be allowed to continue to exist.

The voluntary advertising standards

21. The Association of Accredited Advertising Agents of Hong Kong (the 4As) administers a set of Standards of Practice to regulate the conduct of its members in advertising. The general principle of the Standards of Practice is that "all advertising shall be legal, decent, honest and truthful". The Standards of Practice further specify that "no advertisement shall contain any descriptions, claims, or illustrations which directly or by implication mislead about the product or service advertised".

22. Any member found guilty of a contravention or non-compliance with the provisions laid down in its Code of Advertising Standards will be penalized in accordance with the relevant Rules of the Association.

Deficiencies of the existing regulatory mechanism

23. The current provisions are not adequate to meet with today's challenges, the most prevalent reasons being:

(a) Deficiencies in existing laws that deal with misleading advertising on a piece-meal basis. e.g.

- The Trade Descriptions Ordinance does not cover misleading information on services, real property or prices.
- The Undesirable Medical Advertisements does not cover information or claims made in package inserts.
- There are no regulations under the Public Health and Municipal Services Ordinance to impose requirements as to advertising of health food and slimming food.
- There is no law to prohibit bait advertising [5](#).

(b) There is no authority responsible to policing and preventing misleading ads to be published in the non-broadcast media.

(c) The self-regulatory system administered by the industry is inadequate.

24. As a result, consumers may fall prey to misleading advertising on real property costing them their lifelong savings. Many consumers are attracted by irresponsible advertisements and go through expensive treatment courses which are detrimental to their health.

25. The adverse effects of bait advertising adopted by some retailers have raised much public concern, which runs counter with Hong Kong's extraneous efforts in reviving its attraction to tourists. The more common examples are found in the tourist districts where some retailers selling audio and visual equipment advertise attractive bargain price information in their shops. Having enticed their customers to place a deposit, then the shop would persuade the customer to switch to another brand of a much higher price under the pretext that the customer's preferred model is out of stock. Other examples are found in Mongkok where some ginseng and dry seafood shops advertise misleading price information for the purpose of deceiving unwary consumers. These malpractices are the subject of many consumer complaints that have severely damaged Hong Kong's good reputation and negated the [Hong Kong Tourist Association's](#) (HKTA) million-dollar promotional campaigns to attract tourists to Hong Kong.

26. The police is aware of the problem and the police officers have been extremely helpful in mediating complaints when called to the scene. However, the police have admitted that without proper legislative control over such bait and switch tactics, they cannot pursue the cases further and consumers will continue to fall prey to such malpractices.

27. In the past three years, complaints received by the Council against bait advertising continue to rise, i.e., 532 in 1996, 669 in 1997, 850 in 1998 and 510 for the first half of 1999, (statistics from HKTA and the police excluded). HKTA and the police force join the Council in proposing an effective measure to stop such malpractices in Hong Kong.

Proposed Reform

28. Advertising plays an important part in the economy of Hong Kong. Its annual advertising expenditure (adspend) has grown steadily in the recent years, e.g. from \$14 billions in 1994 to \$20 billions in 1998. ⁶ In 1997, Hong Kong ranked third in the world in terms of per capita adspend. ⁷ According to an ABN-Media Asian Advertising Industry Poll conducted in 1996, 61% of the respondents regarded Hong Kong as the advertising capital of Asia, followed by Tokyo (23%) and Singapore (9%).

29. Hong Kong has been striving hard to become the marketing and advertising capital of this region. In spite of its leading role in the field of advertising, it lags far behind many of the advanced economies in the development of both the legal and self-regulatory framework in the regulation of misleading advertising, particularly in the non-broadcast media. Moreover, double standard exists in the regulation of advertising the broadcast and non-broadcast media. This situation is not conducive to making Hong Kong the advertising capital of Asia. Thus there is an urgent need for Hong Kong to emphasize fair play by looking into how the existing regulatory mechanism should be improved.

30. To improve the situation, the Council has investigated a number of options. In putting forward those options, the Council has given due consideration to the

following factors:

- (a) The law should be able to protect the least informed consumers who are otherwise unable to recognise the traps or the excessive or misleading nature of an advertisement;
- (b) The implementation should allow active participation of the people in the advertising industry; and
- (c) The implementation must be cost effective.

31. In this Consultation Paper, the Council has set out the pros and cons of each option with a view to providing background information to the interested parties and to facilitating discussion. ***It should be noted that these options are not mutually exclusive. The desirable method may be a combination of two or more of these options or suggestions from outside sources.***

32. The Council welcomes any suggestions, comments and proposals. Such information should be very useful in preparing a final report on this issue to the Government.

Options

Option 1: Amending current legislation for effective regulation of advertising practices

33. As mentioned above, there are a number of ordinances and regulations with provisions that regulate advertisements and penalise breaches of such provisions. The efficacy of these provisions will be much improved if their deficiencies are remedied.

34. There is a growing tendency to provide regulation of advertising practices in individual pieces of legislation. A good example is found in the new Telecommunications Amendment Bill which states, inter alia, that "A license shall not engage in conduct which, in the opinion of the authority, is misleading or deceptive in providing... telecommunications networks... or services including... promoting, marketing or advertising the network... or service". A further example is the proposed legislation for the Sales Descriptions of Uncompleted Residential Properties which requires developers to provide specific information in their sales brochures.

35. The Council believes the Government should take immediate action to amend legislation in order to enable the enforcement authorities to exercise more effective control over the advertising practices in the relevant trades, as follows:

- the Trade Descriptions Ordinance (the TDO)

Purpose: to prohibit misleading information on services, real property or prices. Bait and switch tactics should be curtailed and traders must supply the product/service at the price advertised. Also, shops should not be allowed to attract customers

under the pretense of "closing down sales"

- the Unconscionable Contracts Ordinance

Purpose: (a) to prohibit advertising for supply of goods or services at a specified price if, taking into regard the nature of the market, there is no reasonable ground to believe that the goods or services can be supplied at that specified price for a reasonable period in reasonable quantities and (b) to prohibit the use of physical force or undue harassment or coercion in relation to the supply or possible supply of goods or services to consumers.

- the Undesirable Medical Advertisements Ordinance

Purpose: to cover information or claims made in package insert and to explore the possibility of covering those posted on the internet.

- the Public Health and Municipal Services Ordinance

Purpose: to impose requirements on advertisements of health food and slimming food.

36. Amendments for other legislation should also be taken at a later stage. A summary of the proposed amendments for the relevant legislation can be found at Appendix II.

Pros

- (a) The do's and don'ts are being set out for compliance.
- (b) There is no need to go through a lengthy process of drafting and enacting a new legislation.
- (c) The enforcement is more cost-effective as the new or amended provisions will be taken up by the existing enforcement agency.
- (d) The enforcement of the new and/or amended provisions will receive less resistance. Thus more ready compliance can be expected as the business sectors concerned are already familiar with most parts of the relevant laws.

Cons

- (a) It may take longer to go through all necessary reforms as different policy bureaux in the Government may have priority in deciding on the need for amendments of the laws under their jurisdiction.
- (b) Advertising practices are being regulated on a piece-meal basis

and thus cannot be standardized as they are enshrined in different laws.

(c) The laws may not be extensive enough to cover different aspects of the problems.

(d) There may be inconsistencies in the standards to be applied by different law enforcement agencies due to the lack of coordination among these agencies.

(e) There may be duplication of enforcement efforts, creating unnecessary confusion for the business sector.

(f) Amendments of the laws would have to go through a legislative process.

37. It may be desirable to accord a higher priority to the amendment of certain pieces of Ordinances ahead of others, e.g. the Trade Description Ordinance and the Unconscionable Contracts Terms Ordinance. This should have the positive effect of curbing the malpractice of bait and switch selling which has severely tarnished HongKong's image as a shopping centre in the Orient.

Option 2: Enacting a Control of Misleading Advertisements Ordinance

38. In many jurisdictions, such as countries in the European Community, there are specific laws to regulate advertising practices, particularly deceptive and misleading advertising. Examples are the UK Control of Misleading Advertisements Regulations 1988 and the Advertising Law of the People's Republic of China, 1994

(**中華人民共和國廣告法**).

39. The main purpose of this type of legislation is to protect consumers, people in the business, and the interests of the public in general against misleading advertising and its unfair consequences. It empowers a public officer to take action against the publication of misleading advertisements if he considers it is in the public's interest. The actions include, among other things, injunction and requirement of the publisher of an advertisement to substantiate the validity of any factual claims made in it.

Pros

(a) There will be one consistent standard that would control deceptive and misleading advertisements and a specific government agency to enforce and/or co-ordinate regulatory actions.

(b) The law sets out the standards and mandatory standards thereby deterring promulgation of misleading and deceptive advertisement in the non-broadcast media.

(c) The Public is protected by preventive measures.

(d) There is no need for each and every trade to set up its advertising standard as the law would cover all advertisements and

sanction any person responsible for publishing the advertisements.

(e) The law will facilitate more ready compliance as the general principle against misleading advertising would have been spelled out.

(f) The law provides the necessary legal authority for the advertising industry to adopt a more stringent Code of Practice for self-regulation.

Cons

(a) Additional public money has to be expended as the Government has to set up a new department to enforce the misleading advertising law.

(b) The general principles of the law might be too broad for certain trades as they lack implementation details.

(c) There might be a duplication of efforts between existing enforcement agencies and the enforcement agency set up for the purpose of maintaining compliance of the proposed advertising laws.

(d) The scope of the law is not extensive as it is being limited to misleading advertising only. To be effective, the law will have to be enforced in conjunction with the relevant advertising practices or standards set up by the industry.

(e) The Government might be accused of reversing its hands off policy.

(f) The Government might be accused of suppressing creativity and the freedom of expression through the advertising law.

Option 3: Enacting a Consumer Protection or Trade Practices Ordinance

40 Some jurisdictions incorporate the regulation of advertising practices under one comprehensive consumer protection or trade practices law. In the USA, the Federal Trade Commission, which is conceived to enforce the country's anti-trust laws, has also been assigned the task of policing advertising on the national level. In Australia, the Trade Practices Act deals with consumer protection, competition and fair trade. Part of this Act has provisions for specific prohibitions against unfair practices, misleading or deceptive conduct including misleading advertising.

Pros

(a) Consumers will no longer be susceptible to sharp trade practices and misleading/deceptive advertising.

(b) The regulatory mechanism on advertising becomes more transparent as the standards are being spelled out in the law.

(c) The regulatory function over sharp trade practices, including misleading advertising, can be more efficient and cost effective as they will be dealt with under one roof.

(d) The provisions of the law serve the purpose of providing comprehensive guidelines for the people in the trade.

(e) The enforcement body can act as coordinator to ensure the uniformity of advertising standards in different pieces of law.

(f) The enforcement body can make regulations or guidelines to deal with advertising practices in specific trades or under certain market situations. e.g. mail order advertising, 'sales' advertisements, 'switch' selling, etc.

(g) The law provides legal backup for the self-regulatory Codes of Conduct of the advertising industry.

Cons

(a) Foreign experience tells that the enactment of a piece of trade practices or fair trade law has to go through a very complicated process and will take a long time to complete.

(b) Additional public money has to be incurred as there will be a new enforcement agency.

(c) The operation of the government authority may not be flexible enough to cope with the changes in the marketplace.

(d) The Government might be accused of reversing its hands off policy.

(e) The Government might be accused of suppressing the freedom of expression through the provisions that regulate advertising.

Option 4: Maintaining a voluntary self-regulation system

41. Statutory regulation serves the public interest by compelling good advertising behaviour through judicial and administrative processes. However, it can be costly and rigid. In the face of increased government controls and growing consumer awareness, the advertising industry all over the world has taken positive steps to promote and organize self-regulation.

42. The Association of Accredited Advertising Agents of Hong Kong (the 4As) is administering a set of Standards of Practice for its 23 members. Membership of the Association is voluntary.

Pros

(a) It is good for maintaining the positive non-interventionist image of Hong Kong.

(b) Self-regulation is flexible as it can cope with the rapid changes in

the marketplace.

(c) The system is less expensive and will not incur any public funding.

(d) The voluntary codes of practice can maintain standards in an area of communication which defy legal definition - that of good manners and taste.

(e) Standards set up voluntarily by the people in the industry will meet with more ready compliance.

(f) The industry codes may complement the requirements in the law.

Cons

(a) The industry codes or standards are less transparent than those laid down in the law.

(b) The industry's voluntary codes or standards may not meet the expected standard of the authorities concerned.

(c) There is doubt whether the codes or standards could stand a test in the court.

(d) The sanctioning power of the self-regulatory body is limited and ineffective as there is no legal backup for the voluntary codes or standards.

(e) Non-member advertising agents are out of the reach of the voluntary codes or standards.

(f) The advertising media (e.g. the press) and the advertisers (i.e. the traders of the advertised goods) are out of the reach of the voluntary codes or standards.

Option 5: Establishing a statutory independent Advertising Standards Authority for industry-wide self-regulation

43. It is generally believed that an industry self-regulatory system would not be effective without the backup measures. The self-regulatory systems of many industries and professions in Hong Kong are in fact conducted under their respective legal frameworks. e.g. that for the legal practitioners, the medical profession, the accountants, the outbound travel industry and the insurance industry.

44. In many jurisdictions, self-regulation of the advertising industry goes hand-in-hand with some forms of statutory regulation. In UK, the self-regulatory system exercised by the Advertising Standards Authority (ASA) is recognized by the Government and has been examined by the judiciary. The legal backup provided for the work of ASA by the Control of Misleading Advertisements Regulations reinforces the system. The Director General of Fair Trading has power to consider a complaint made to him if he considers that the self-regulation body has not dealt with

the complaint adequately.

45. As can be seen from Option 4 above, the main drawback of voluntary self-regulatory system implemented on a voluntary basis is the limited coverage and lack of effective sanction against non-compliance. Further, there is no legislation to provide legal backup for the effective administration of a self-regulation system in the advertising industry. The Council therefore proposes that the Government should enact a piece of legislation to provide for the establishment of a Advertising Standards Authority to administer a self-regulation system. The ASA will work closely with but seek not to overlap with the Broadcasting Authority which carries a principle duty of monitoring advertisements in the electronic media. To be effective, the Authority should be empowered to:

- allow participation of all market players concerned;
- prescribe codes of practice for advertising and sales promotion;
- police non-compliance of the prescribed codes;
- investigate complaints and conduct research;
- rule whether an advertisement has breached the prescribed codes;
- take administrative proceeding to eliminate misleading advertising
- seek, if necessary, injunction from the court to restrain appearance of an advertisement or promotion that has been ruled by the Authority as misleading;
- levy surcharges on advertising to fund the operation of the Authority; and
- allow participation of independent persons in the Authority.

Pros

(a) It is a more structured self-regulatory system as it has the necessary legal backup.

(b) The system ensures universal participation of the market players concerned.

(c) The system allows better participation of organizations that represent the advertising, sales promotion and media businesses in the administration of self-regulation.

(d) The legal backup reinforces more effective policing and enforcement action.

(e) The credibility of the system is enhanced as it allows the participation of members unconnected with advertising business in its administration.

(f) The administration of the Authority provides a gradual control and saves the funding of an enforcement agency from public money.

Cons

(a) It might be necessary to go through a lengthy legislative process

for the enactment of the necessary legislation.

(b) There might be resistance from certain sectors when they are compelled to take part in the system as they would like to maintain the status quo.

(c) There might be difficulty in levying the surcharges from the industry to fund the administration of the system.

(d) It requires a strenuous effort to maintain the independence and impartiality of the industry self-regulatory body as it is funded by the industry.

(e) The Government might be accused of reversing its hands off policy in the advertising industry.

(f) The system only regulates advertisers, advertising agents and promoters. Media which publish the advertisements are out of its reach.]

E-Commerce

46. In light of recent developments in the use of electronic commerce, i.e. 'on-line shopping', the Council has been concerned that adequate measures are put in place to protect consumers from unfair trading practices, including but not restricted to, deceptive and misleading advertising claims. The Council considers that the best way forward to achieve some consumer safeguards in the short term, and to raise awareness of the possible need for legislation, is through attempting industry self-regulation. To this end, the Council has been conducting discussions with Government agencies and industry organizations with a view to facilitating a self-regulatory scheme for electronic commerce.

Comments from the public

47. The Consumer Council now invites members of the public and interested parties to comment on the options set out in this paper. The views gathered will be incorporated in the report, Ways to Improve the Regulation of Advertising, to be put forward by the Council to the Government later this year. Written views may be addressed to:

Consumer Council
22/F, K. Wah Centre
191 Java Road
North Point
Hong Kong

Views may also be sent to the Consumer Council by email at:

 cc@consumer.org.hk

The Consumer Council would like to receive the views before **31 October 1999**.

The text of this paper in both Chinese and English is available at the website of [the Consumer Council \(http://www.consumer.org.hk\)](http://www.consumer.org.hk).

Remarks

1. Advertising claims are considered questionable when they have deviated from the advertising standards laid down in the rules or codes of practices adopted by advertising industries or the relevant regulatory bodies in HKSAR, PRC, UK, USA and Singapore.
 2. Council Directive 84/450 of September 10, 1984 Relating to the Approximation of the Laws, Regulations and Administrative Provisions of the Member States Concerning Misleading Advertising
 3. 2 of Article 2 of the Council Directive 84/450 of September 10, 1984 Relating to the Approximation of the Laws, Regulations and Administrative Provisions of the Member States Concerning Misleading Advertising
 4. Dyson Heydon, Trade Practices Law Vol 2
 5. Bait advertising is an advertising practice where a trader advertises the sale of goods or services, without intention to supply them, at a bargain price to attract consumers who may later switch to buy other goods or services at a higher price under the trader's persuasion or other sales tactics.
 6. Sources: Media Adspend 1994 - 98 by AC Nielsen.
 7. Source: *Profile of Hong Kong's Major Services Industries* published by Hong Kong Trade Development Council. 1998
- * 1 of Article 2 of the Council Directive (of the European Community) 84/450 of September 10, 1984 Relating to the Approximation of the Laws, Regulations and Administrative Provisions of the Member States Concerning Misleading Advertising.



"創意無限！ 責任無限"

如何改善對廣告之監管

「〔廣告〕，以佔據現代主流的商業廣告而言，

是生產者與銷售業者爲了推銷商品或服務，

以非特定的消費者爲對象，
支付費用流傳情報的傳達手段。」*

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- [附錄 II：對現行法例之修訂建議](#)
-  [意見調查\(一九九九年十月三十一日截止\)](#)

問題所在

(一) 廣告有將產品及服務從供應商傳遞至消費者的功能。廣告提供資料及改變品味，它亦有擴展市場及建立形象的功能。

(二) 由於廣告是具創意的產物，有塑造意形態的功效，所以常被受投訴及批評。批

評者一般關注虛假失實的廣告內容對消費者所造成的傷害。

(三) 消費者委員會(消委會)向有接獲消費者及商界對廣告的投訴和查詢，這些廣告在廣播及非廣播媒介均有出現。投訴指廣告內容帶有欺騙及誤導成份。有意見認為政府應檢討現行對廣告的規管機制，特別是對非廣播媒介廣告的規管。

(四) 如何規管廣告，亦不時成為公眾議論的課題。消委會認為應就這問題提出公開討論。

(五) 本文件列出這問題的背景資料包括現行監管廣告行業的機制運作，同時提出對現行經非廣播媒介傳達的廣告加強規管的一些方案。消委會歡迎公眾就這些建議發表意見。

問題廣告的調查結果

(六) 為確定香港廣告的問題所在，消費者委員會進行了一項大型的調查。收集在一九九八年六月至八月及一九九九年一月至三月期間於香港報刊及廣播媒介出現。調查集中分析七類產品及服務的廣告，並以本地及外國既定標準及守則作出比較。分析結果頗為驚人，在抽查了的二百五十六個電視廣告中，發現五十八個(22.7%)含有問題的聲稱，而在一千七百七十七個刊於報章雜誌的廣告樣本中，九百一十三個(51.4%)，發現有問題 [11](#)。

(七) 調查的七類產品及服務中，以地產廣告(92%)內容含有問題的聲稱最多，其次順序為美容及健美(減肥)服務(85%)，藥物、健康食品及治療(84%)和化粧及美容用品(82%)，再其次是電訊產品及服務(46%)，補習和訓練課程(18%)及旅遊(12%)，此類廣告有問題聲稱撮要於 [附錄 I](#)。

(八) 從以上的問題聲稱，及接獲投訴，消委會認為需要情況必須改善，以維護消費者權益。這些問題包括：

- (a) 提供虛假資料，待消費者容易輕信，或缺乏經驗或對產品或服務缺乏認識；
- (b) 以不確、模糊、誇大或隱瞞資料的方法，誤導消費者；
- (c) 廣告聲稱缺乏客觀理據支持；
- (d) 假稱有真確鑒定，作出虛假認可聲明；
- (e) 不明確的價格資料或高估產品或服務的價值；
- (f) 與其他經營者或其產品作出不公平比較；
- (g) 聲稱不符法例的規定；和
- (h) 不能以宣傳或聲稱的價格提供貨品或以餌誘手法令消費者落訂然後游說轉買其他產品。

監管廣告的背後意義

(九) 管制廣告問題在法律上來說是挑戰性的工作。廣告的收益能維持自由及多元化的媒介的存在。

(十) 儘管如此，很多政府都認為有需要以某種形式監管帶誤導及欺騙成分的廣告。他們相信「買者各自負責」的原則已不適用於現今的市場。時至今日，推銷產品及服務的工作，皆由受過訓練的商業行政人員，以高度「專業性」的方式進行。未受過訓練的消費者，由於對產品沒有認識，就需要獲得保障以免受廣告誤導。

(十一) 歐盟委員會就監管誤導廣告發出有關的指令中確指廣告，無論最終能否促成合約(即完成交易)，都會影響消費者的經濟利益^[2]。另外，歐盟委員會認為，在某些情況下，誤導廣告應在未刊登前禁止。在推行其保障消費者及資料政策時，歐盟引用一套程序，提供適當措施對付誤導及不公平廣告。

(十二) 歐盟委員會對「誤導廣告」的定義為：「任何廣告，任何方面，包括其演譯方法，欺騙或可能欺騙任何此廣告接收之對象，或能接觸之對象，而基於廣告的欺騙成分，有可能影響他們的經濟行為，或基於這些因素，傷害或有可能傷害到其競爭對手。」^[3]

(十三) 以這定義為基礎，監管或控制誤導廣告是極其需要的，理由是：

- (a) 誤導廣告，妨礙公平競爭；及
- (b) 令消費者在購買貨品或房地產，或使用服務時，作出對自己不利的決定。

(十四) 在澳洲，政府實行監管廣告的理據(由澳洲的營商法例提供)Heydon 的營商手法法例一書撮錄如下：

「只有真實的廣告才可協助消費者，否則他們去查詢求問會確保取得較廉的貨品。真實的廣告能使消費者易於比較價格及質素。而虛假的廣告不單欺騙及傷害個別消費者，更把顧客從殷實商人手上搶走，及引致資源錯誤分配。此類廣告令顧客購買非他們所需之物品，以致市產的生產並非遵循最有效率迎合消費者需求的模式。再者，它可能普遍地削弱消費者對生產商的信心，而引致整體經濟活動的生產水平下降。」^[4]

(十五) 很多政府，包括香港在內，就不同的產品 / 服務領域立例規定要發放正確的資料。所以廣告客戶提供資料的方式及資料的相關性，是亟需注意的。

(十六) 由於廣告的效力是那麼大，很多地方的廣告行業，都採用自律守則，以控制廣告手法及銷售宣傳，這些守則通常涉及的範圍，往往比法例所制裁的更闊更廣，故得到眾多政府鼓勵採用。

現行法例對有誤導及具欺騙成分廣告的監管

(十七) 香港並沒有一套綜合性的法例監管廣告推銷手法。但有若干法規和規例涉及廣告宣傳，一旦觸犯，亦會構成罪行。這些規例概述如下(並未包括全部)：

- (a) 根據《商品說明條例》，將虛假商品說明應用於任何貨品或供應具虛假商品說明的貨品均是刑事罪行。宣傳品內所使用的虛假及具有誤導性的商品說明亦被禁止。
- (b) 《藥劑業及毒藥規例》規定任何人不得銷售任何藥劑製品或物質，除非該製品或物質已向藥劑業及毒藥管理局註冊。在處理註冊申請時，藥劑製品或物質的安全程度、效能及質素會被考慮。
- (c) 《不良醫藥廣告條例》禁止有關某些疾病及墮胎的廣告。
- (d) 根據《公眾衛生及市政條例》，任何人給予或發布對食物或藥物作出虛假說明的標籤或宣傳品、或給予或發布在食物或藥物的性質、物質或品質方面可能誤導他人的標籤或宣傳品，即屬犯罪。
- (e) 《地產代理常規(一般責任及香港住宅物業)規例》管制由持牌地產代理所發布的虛假或具誤導性的廣告宣傳。
- (f) 根據《貨幣兌換商條例》，貨幣兌換商必須展示當時買入和賣出的淨匯率。
- (g) 根據《放債人條例》，刊登廣告表明利息條款的放債人必須顯著地以年息百分率的方式列明擬收取的利息。
- (h) 根據《保障投資者條例》，任何人發出關於投資的廣告，即屬犯罪，除非符合其中一項法例規定，而證券及期貨事務監察委員會的認可是其中一項。
- (i) 根據《證券條例》，為誘使他人出售任何證券而就任何關鍵性事實作出任何屬於虛假或屬誤導性的陳述，即屬犯罪。
- (j) 根據《銀行業條例》，如[金融管理局](#)認為銀行或接受存款公司所發出與其業務有關的任何廣告是虛假、具誤導性或具欺騙性，金融局可規定該機構撤回、除去或停止發出該等廣告。

電子傳媒廣告的監管

(十八) 各地政府對監管電子廣播傳媒上的廣告推銷，均有嚴謹的規例，香港也不例外。根據《廣播事務管理局條例》和《電視條例》，廣播事務管理局得發布有關的實務守則，規管播放的節目和廣告。管理局曾經發布與廣有關的實務守則如下：

- (a) 商營電視業務守則 – 廣告標準
- (b) 電台業務守則 – 廣告標準
- (c) 衛星電視業務守則 – 廣告標準
- (d) 衛星電台業務守則 – 廣告標準
- (e) 收費電視業務守則 – 廣告標準
- (f) 節目服務業務守則 – 廣告標準
- (g) 主要為香港以外地區提供服務之電視業務守則 – 廣告標準

(十九) 這些守則的一般原則是規定所有廣告宣傳必須是合法、健康、誠實、真確，不容許有誤導成分。這些守則並特別強調：

- (a) 廣告不得以任何公然或隱含的方式作違背事實的描述、聲稱或說明；或對有關產品或服務，或其是否適用於所建議的用途，作出誤導的描述、聲稱或說明。
- (b) 如有充分理由懷疑廣告客戶的誠信及廣告內容的真實性，或懷疑客戶未有遵守所有法定規定的精神及目的，持牌人必須拒絕接受客戶的廣告。

(二十) 雖然廣播界有全面的廣告守則規管，保障觀眾 / 聽眾的利益，但有些廣告人把未能在廣播媒介宣傳的廣告，在印刷媒介發布。這雙重標準的情況實不容繼續下去。

自願的廣告守則

(二十一) 香港廣告商會有制訂一套標準實務守則，規管會員廣告宣傳的行為。該套標準實務守則的一般原則是規定「廣告必須合法、健康、誠實及真確」，並且指明「廣告之描述、聲明或說明不得直接或暗示性地誤導所推廣之產品或服務」。

(二十二) 任何會員如有違反該套廣告標準守則的規定，將會依照香港廣告商會有關的規則而受到處分。

目前監管制度有待改善

(二十三) 目前的監管制度有待改善，主要的理由是：

- (a) 現行有關誤導性廣告的法例是分割(piece meal)處理，例如：

* 《商品說明條例》未涵蓋服務、物業或價格方面的

誤導性資料。

* 《不良醫藥廣告例》未涵蓋包裝盒內附的說明資料和聲稱。

* 《公眾衛生及市政條例》並無規例規限健康食品及減肥食品的廣告宣傳。

* 餌誘式廣告傳 [15](#) 並無法律規管。

(b) 現行並沒有一個執法部門負責監督及防止刊於非廣播媒介之誤導性廣告。

(c) 現行業內的自律機制有所不足。

(二十四) 基於以上問題，消費者在購置物業時可能會受誤導性廣告所累，一生積儲付諸流水。也有不少消費者受不負責任的廣告吸引，參加昂貴的療程，足以危害身體健康。

(二十五) 餌誘式廣告宣傳的問題，引起大眾關注，這與香港積極吸引外地遊客、刺激經濟的努力，背道而馳。而餌誘式推銷手法在遊客區普遍的情況是：售賣影視器材的店舖以低價餌誘顧客，顧客付了訂金後，推說產品缺貨，再游說顧客購買其他牌子產品，從而牟取不當利潤。此外，在旺角區的蔘茸海味店，有多個例子是，店方在售價方面有意誤導大意的消費者。這些不當的經營手法，導致消費者不滿而提出投訴，嚴重影響香港的良好聲譽，旅遊協會為吸引外地遊客而花費數以百萬計的宣傳，形同白費。

(二十六) 警方對這些問題亦表示關注，遇有舉報，便立即派員到達現場調解。然而，警方也認為，若這種餌誘式的推銷術缺乏適當的法例管制，警方亦很難進一步對付不法商人，消費者將會繼續受騙。

(二十七) 過去三年，消委會接獲有關餌誘性推銷手法的投訴續有增加：一九九六年有五百三十二宗，一九九七年有六百六十九宗，一九九八年有八百五十宗，一九九九年首半年有五百一十宗(旅遊協會及警方提供接獲的投訴未計算在內)。旅遊協會和警方亦支持消委會建議，採取有效措施，遏止這種不當的營商手法。

改革建議

(二十八) 廣告在香港的經濟佔有一個重要的地位。每年用於廣告的費用(廣告費)在近幾年間不斷穩定地增長。例：由一九九四年的十四億，增至一九九八年的二十億 [16](#)。一九九七年，香港廣告費對資產總值的比率，是世界排行第三 [17](#)。根據一項於一九九六年進行的 ABN-Media 亞洲廣告行業的調查，61%被訪者認為香港是亞洲廣告之都，其次是東京(23%)及新加坡(9%)。

(二十九) 香港一直銳意發展為亞洲區內的产品推廣及廣告中心，但現行監管不良廣告的機制，尤其是在非廣播媒介方面，無論在法例或自律的層面上，卻遠遠落後於其他發達國家，這與香港在亞洲廣告市場所佔的領導地位並不相稱。再者廣播媒介與非廣播媒介廣告的監管亦出現雙重標準，這種情況不利於香港發展為區內廣告中

心。消委會因此希望急切研究如何改善現行的監察機制。

(三十) 為改善這情況，消委會有以下方案。提出這些方案前，消委會已考慮過的因素如下：

- (a) 法例應能保障最不知情的消費者，因他們不能洞悉廣告中過份渲染或誤導的性質和所設的陷阱；
- (b) 應積極讓廣告業界人士參與推行方案；
- (c) 方案的實施和執行，要符合成本效益。

(三十一) 在諮詢文件內，消委會提出各項建議方案的正反論據，目的是為有興趣人士提供更多背景資料，以供討論。值得注意的是，這些建議方案，不一定是個別獨立地實施，最理想的方法可能是兩個或以上方案的組合。

(三十二) 消委會歡迎任何意見、批評及建議。這些資料對消委會向政府提交的最後報告會有很大幫助。

建議方案

方案(一)：修訂現行法例以有效地管制廣告手法

(三十三) 上文提及，現行有多項條例及規則皆有管制廣告的條款，和對違規者的罰則。若能改善於有關條款不足之處，將會產生更大的實施成效。

(三十四) 目前較常見的是在特定範圍內，以個別法例列明對廣告手法的管制。一個很好的例子就是新的電訊修訂法案。其中規定「執照持有人，在提供...電訊網絡...或服務包括...宣傳，推銷或推廣該網絡...或服務...時，不得從事在管理局角度認為帶有誤導或欺騙成分的活動。」另外，草擬中的「未建成住宅物業售樓說明」條例，亦規定發展商在售樓說明書上提供指定的資料。

(三十五) 因此，為確保執法部門能有效地管制各行業的廣告手法，政府宜儘快修訂以下幾項條例：

* 商品說明條例(Trade Description Ordinance)

目的：限制經營者在服務提供、物業交易及在價格方面提供誤導資料，違法者須退回消費者繳交的款項，同時，不容商店以訛稱「結業」以招徠顧客。

* 不合情理合約條例(Unconscionable Contracts Ordinance)

目的：(i) 禁止經營者以超低價吸引顧客，即是指在一般市場情況下，經營者是無可能在一合理期間內以這價格，提供合理數量的產品或服務；(ii) 禁止經營者使用高壓及無理侵擾，迫使顧客購買或接受其貨品或服務。

* 不良醫藥廣告條例

目的：使內藏於藥物包裝盒內的資料受到條例的監管及研究在互聯網上的廣告監管。

* 公眾衛生及市政條例

目的：監管有關健康及減肥食品的廣告。

(三十六) 其他有關條例稍後亦需要修訂，修訂建議的撮要見於附錄 II。

贊成論據：

- (a) 明文規定可做與不應做的地方。
- (b) 毋須經過冗長的草擬及立法程序。
- (c) 新的或修訂的條款，可由現行執法部門負責執行，更符合成本效益。
- (d) 業內人士熟識有關條例的大部份內容，預期他們更易於遵守新的及 / 或修訂條款，執行方面亦會遇到較少問題。

反對論據：

- (a) 政府的不同決策部門，在決定是否需要修改其管轄範圍的法例時，可能有先後程序，若要完成必要的改革，可能需時較久。
- (b) 監察廣告手法的工作，只能零碎地進行，難達統一的標準。
- (c) 有關法例未必能夠顧及各問題的不同層面。
- (d) 不同的執法機關若欠缺協調，執法的標準將有參差的情況。
- (e) 執法工作可能重疊，造成不必要的混淆。
- (f) 法例的修訂要經立法程序。

(三十七) 某些法例或需要優先修訂，例如商品說明條例和合情合理合約條例，竭止以「餌誘式」欺騙消費者的不當手法，以這手法經營的商戶嚴重影響香港的聲譽。

方案(二)：制定專門的法例管制有欺騙及誤導成分廣告

(三十八) 在很多地區如歐盟國家等，都有專為管制廣告手法而設的法例，特別是針對有欺騙及誤導成分的廣告手法。英國的 "管制誤導性廣告規例(Control of Misleading Advertisements Regulations 1998)" 及中華人民共和國廣告法是很好的例子。

(三十九) 法例的主要目的是維護消費者，商界人士，及普羅大眾的利益，使他們不

致受廣告誤導引致不公平的損失。法例賦予執法人員權力可在合乎公眾利益的原則下，對刊登誤導性廣告採取行動，包括禁制令及要求刊登廣告者提供理據，以確定廣告聲稱是否屬實。

贊成論據：

- (a) 對於有欺騙及誤導成分廣告的管制，會有劃一的標準，而執行或協調管制工作，亦將由一個特定的政府部門進行。
- (b) 由於法例列明標準和強制性的標準，可防止帶有誤導及欺騙成分的廣告，在非廣播媒介泛濫的情況。
- (c) 預防的措施可保障公眾利益。
- (d) 由於法例已包含所有廣告在內，不同的行業毋須各自制定標準，並對刊登誤導成分廣告人士作出制裁。
- (e) 法例應已列明對付誤導廣告的大致原則，因此遵從法例亦較容易。
- (f) 法例將提供廣告行業所需的法定權力，使能採納更嚴格的自律守則。

反對論據：

- (a) 政府設立一個新部門執行管制誤導性廣告的法例，要動用額外的公帑。
- (b) 對某些行業來說，法例的大致原則太廣泛，沒有列明實行的細則。
- (c) 現行的監察組織與將來為執行建議中的廣告法例而設的部門，兩者的工作可能會有重疊的地方。
- (d) 法例只限於管制誤導性廣告，所以未能全面。有效的方法是，與行內所訂的守則及標準同時推行。
- (e) 政府或會被指為改變一貫的不干預政策。
- (f) 政府或會被指責以廣告法例壓制創作思想和表達自由。

方案(三)：制定一項保障消費者或營商手法例

(四十) 在外國管制廣告手法是被納入一項全面的營商法例之內，美國為執行反壟斷法例而設立的聯邦貿易委員會亦被委以執行管制全國廣告的任務。在澳洲營商法例 "Trade Practices Act" 是一項保護消費者競爭及公平貿易的法例。其中部份條文亦涉及禁止不公平的商營手法與，包括誤導性或欺騙性廣告或行為等。

贊成論據：

- (a) 消費者不再受到取巧的商營手法及誤導/欺騙性廣告所影響。
- (b) 由於法例列明標準，監管廣告機制的透明度將會增加。
- (c) 取巧的商營手法，及誤導性廣告將會同時受一條法例限制，管制工作可更有效及更符合經濟效益地執行。
- (d) 法例的條文可為行內人仕提供全面而具體的指引。
- (e) 執用法例的部門，可扮演協調的角色，確保取得不同條例中有一致的廣告標準。
- (f) 執用法例的部門，可針對個別行業，或一些市場情況，而制定條例或守則。例如郵購廣告，大減價的宣傳或餌誘銷售手法等。
- (g) 法例可為廣告業的自律守則，提供法定的依歸。

反對論據：

- (a) 根據外國的經驗，商營手法或公平貿易法例的制定，是要經過非常繁複的程序，並需要一段長時間完成。
- (b) 需要成立一個新的執用法例機構，動用額外公帑。
- (c) 這新設的政府部門運作未必有足夠的彈性，以適應市場的變化。
- (d) 政府有可能被指改變一貫的不干預政策。
- (e) 政府可能會被指責，在執行管制廣告的法例時，表達自由受到限制。

方案(四)：自律模式

(四十一) 立例管制，可透過法律及行政程序，規定業界奉行良好的廣告手法。不過，這可能會耗資相當大和缺乏彈性。隨著政府的加強管制及消費者權益意識的增加，全世界的廣告行業，已經採取積極的措施，推廣及組織自律機制。

(四十二) 香港廣告商會(4A)的二十三個成員，現在奉行一套廣告手則，加入商會是基於自願性質的。

贊成論據：

- (a) 可維持香港的不干預政策。

- (b) 自律的形式彈性，可以應付市場的迅速變化。
- (c) 自律模式費用不大，而且毋須動用公帑。
- (d) 在一些不宜立法規管的範圍，例如教養和品味，由「自律守則」訂定標準較為合適。
- (e) 業內的自律守則，較易為業界人士接納奉行。
- (f) 業內的守則可補法例規定之不足。

反對論據：

- (a) 業內的守則或標準的透明度比法例為低。
- (b) 業內的自律守則或標準未必符合有關當局所預期的標準。
- (c) 這些守則或標準能否經得起法庭的考驗仍是疑問。
- (d) 由於自律守則或標準沒有法律依據，自律監管組織的約束力是有限度而偏低的。
- (e) 非會員接觸不到這些自律守則或標準。
- (f) 廣告媒介(如報社)和廣告客戶(指刊登廣告的商人)不受廣告行業自律守則或標準所監察。

方案(五)：成立具法定地位的廣告業自律組織(廣告標準委員會)，推行全面性的自律

(四十三) 一般來說，行業的自律機制，若沒有法律的支援措施，效力是受到極大限制的。其實，香港許多行業和專業的自律機制有其各自的法律去支持的，例如法律、醫療界、會計師、外遊旅遊業及保險業等。

(四十四) 在其他許多國家，廣告行業的自律機制大都與某種形式的法例規管並行的。在英國，廣告標準委員會(ASA)奉行的自律制，除獲政府認可外，亦曾經司法機構所審核。而管制誤導廣告法規 (Control of Misleading Advertisements Regulations)所提供的法律依據，更有加強施行自律制度的作用。(Director General of Fair Trading)公平貿易總監有權處理他認為自律監管機制處理不當的投訴。

(四十五) 如以上方案四所述，現行以自願為基礎的自律制度有其嚴重不足之處，不單祇對非會員沒有約束力，且對違規的會員也難以施加制裁。由於現在沒有廣告法例作為有效管理該行業自律制的法律依據，消委會建議政府制訂新法例，成立一個具法定地位的廣告業自律組織(例如，廣告標準委員會)，協助業內人士建立機制以推行全面性的自律。電子傳媒廣告的監察仍然是[香港廣播事務局 \(Broadcasting Authority\)](#)的專責範圍，但新設立廣告業全面自律組織將與廣管局緊密合作。為確保有效運作，該組織須獲授權：

- * 接受所有與廣告業有關者加入自律組織；
- * 訂立有關廣告及推銷手法的自律守則；
- * 執行有關守則的規定；
- * 接受及調查投訴及進行研究；
- * 評定廣告內容是否違反守則；
- * 採取行政措施遏止誤導性廣告的傳播；
- * 若委員會裁定某廣告有誤導成分，可向法庭申請禁制令以阻止有關廣告或誤導行為繼續出現；
- * 徵收廣告附加費，作為組織的運作經費；及
- * 容許獨立人仕參與委員會的工作。

贊成論據：

- (a) 由於具備所需的法律依據，這是一個較有系統的自律形式。
- (b) 可確保所有與廣告有關者更全面參與。
- (c) 容許代表廣告、推銷和傳播業的組織，充分參與自律制的實行。
- (d) 由於有法律依據，可加強執行監察行動的效率。
- (e) 由於非廣告界人仕可參與推行工作，這機制的公信力因此提高。
- (f) 法定廣告標準組織，可對廣告業按步就班監管，政府可省卻成立執法部門的支出。

反對論據：

- (a) 有關的立法工作或要經過冗長的法律程序。
- (b) 可能遇到一些希望維持現狀不變的人仕反對。
- (c) 若向業內徵收附加費，以作為推行制度的經費，可能會遇到困難。
- (d) 由於該自律組織的經費是來自廣告業本身，若要維持其獨立與公正，須要倍加費力。
- (e) 政府或會被指責對廣告業改變政策。
- (f) 自律機制只監管廣告代理和宣傳者，未能針對刊登廣告的媒介。

電子交易

(四十六) 關於最近發展迅速的電子交易，即「網上購物」，消委會一直均有關注是否有足夠措施，可以保障消費者，免因不公平交易而受到損失，這些不公平手法包括具欺騙和誤導成分的廣告宣傳在內。消委會認為在短期內，最適當的解決辦法是透過業者自律，除了可以讓消費者得到一定程度的保障，也是以喚起有關方面研究日後是否需要制訂法律。為此，消委會已開始和政府部門及業界組織商議，以期促成電子交易的自律機制。

公眾諮詢

(四十七) 消委會邀請公眾人士及有關團體，就本文件發表意見。蒐集的意見將會列入「如何改善對廣告的監管」報告內，由消委會於今年稍後期間呈交政府。書面意見可往：

- 消費者委員會
香港北角渣華道 191 號
嘉華國際中心 22 字樓

有關意見亦可透過電子郵遞方式表達：

 cc@consumer.org.hk

消委會希望於一九九九年十月三十一日前收到各界意見。

本文件的中、英文版本可在消委會網址查閱：<http://www.consumer.org.hk>

備註：

- 1 有問題的廣告聲言，是指那些不符合香港特別行政區，中華人民共和國，英國，美國和新加坡廣告業或有關的監管組織在規例或守則上所訂明的標準。
 - 2 一九八四年九月十日歐盟委員會指令編號八四 / 四五〇內，有關成員國在誤導廣告方面制定的法例，規則及條款的釋義。
 - 3 一九八四年九月十日歐盟委員會指令編號八四 / 四五〇內，有關成員國在誤導廣告方面制定的法例，規則及條款的釋義(第二章第二節)。
 - 4 Dyson Heydon 的商營手法法例第二版。
 - 5 餌誘式推銷手法是指，店方首先推介一些價錢相宜的貨品或服務，然後游說或用其他推銷技倆，促使消費者轉購其他貨品或服務。
 - 6 資料來源：傳媒廣告一九九四至九八年 — AC Nielsen 註。
 - 7 資料來源：香港貿易發展局出版的「香港主要服務行業的概況」。
- * 「中文百科大辭典」，讀者文摘版，百科文化事業股份有限公司，1993 年 6 月八版