



"No Fakes Pledge" Scheme Hearing Panel

Membership of Fu Yu Pharmacy Limited

(Address: Shop B, G/F, 59-63 Wan Chai Road, Wan Chai, Hong Kong)

under the "No Fakes Pledge" Scheme

Decision

Background of Member:

1. Fu Yu Pharmacy Limited ("the member company") is a member of the Hong Kong General Chamber of Pharmacy Limited ("the Chamber"). It was granted membership under the "No Fakes Pledge" Scheme 2022 ("the Scheme") by the Chamber on 28 December 2021.

Course of Event:

2. The Customs and Excise Department ("the Customs") conducted an anti-counterfeit operation against the member company on 3 August 2022 and seized a batch of suspected counterfeit mosquito repellents ("the goods involved") in its shop.
3. As the member company was suspected of having breached a condition stated in the Code of Practice of the Scheme, namely to refrain from selling or dealing in counterfeit and pirated goods, the Chamber was required to issue a notice to the member company on the intended suspension/termination of its membership under the Scheme.
4. The written notice was served on the member company on 16 August 2022, stating the reasons for the intended suspension/termination of its membership under the Scheme and that a hearing would be held on the case.
5. The hearing was scheduled for 9:30 a.m. on 19 August 2022.
6. The member company returned a completed reply slip to the Chamber on 16 August 2022, indicating that it would attend the hearing.

Hearing Panel:

7. A hearing panel was formed to consider the case on 19 August 2022. Members of the panel included Mr CHEUNG Tak-wing, Vice Chairman of the Chamber, and Ms Connie LAW, Assistant Principal Solicitor (Hearings) of the Intellectual Property Department (“the IPD”).

Representation by the Member Company:

8. Mr HUI Chun-kiu (許俊橋), representative of the member company, attended the hearing and made oral representations about the case.
9. The salient points of the oral representations related to the hearing made by the member company were as follows:
 - i. Mr HUI stated that the member company which he represented had placed orders with a reputable agent company for such goods for retail purposes since its start of business. When the member company purchased the batch in question of the goods involved in late July, the salesperson of the agent company said that there was no problem with that batch of the goods involved.
 - ii. To ensure that the goods offered for sale were genuine, Mr HUI had reconfirmed with the agent company that there was no problem with the goods he ordered from its salesperson and he was issued with an official receipt. There was no special discount on the purchase price of the goods involved.
 - iii. After the incident, Mr HUI immediately made an enquiry to the agent company and was informed that the agent company realised only after the incident that the allegedly infringing trade mark of the goods involved had been registered by a company. Mr HUI added that goods with the trade mark concerned had all along been on the market for sale in different packaging and the member company had been selling the goods involved since its start of business.

Decision of the Hearing Panel:

10. Consideration was given to the following factors:

Consideration 1:

11. The Customs seized the goods involved in the shop of the member company during an anti-counterfeit operation. No criminal prosecution against the member company has been initiated at this stage.

Consideration 2:

12. It is stipulated in Note 1 regarding the suspension and termination of “No Fakes Pledge” membership as shown in the leaflet of the Scheme that: *“If the issuing body and the IPD have reason to believe that the member company has failed to comply with the Code of Practice and other terms and conditions, or if any enforcement action is taken against such member company by the Customs, the issuing body may suspend or terminate the “No Fakes Pledge” membership of the relevant member company. The Customs has the right to seize and confiscate the stickers and tent cards as a result of the enforcement action taken against it.”*

Consideration 3:

13. The Scheme needs to maintain its public integrity and safeguard consumers’ confidence in buying genuine goods.

Outcome:

14. Upon careful consideration, the Hearing Panel reached a decision to suspend the membership of the member company for the year 2022.
15. The member company will have its membership resumed immediately if the Customs terminates its investigation or ceases prosecution, or if the member company is acquitted by the court of the offence of infringement in the prosecution.
16. The member company will have its membership terminated immediately if it is convicted by the court of the offence of infringement in the prosecution instituted by the Customs.

Signed by Connie LAW
(Member of the Hearing Panel)

Signed by CHEUNG Tak-wing
(Member of the Hearing Panel)

23 August 2022