

**Consumer Council**

- (b) The Consumer Council Ordinance (Cap. 216) does not empower the Council or the court to impose any penalty or sanction on those who place advertisements with misleading information.

The Consumer Council received 69, 113 and 68 complaints respectively in 2003, 2004 and 2005 about advertisements with misleading or misrepresented information. The advertisements complained of were found in both the printed and electronic media as well as on the street or displayed/posted by the shops. Depending on the media involved, some complaints were referred to the relevant authorities for action or information as appropriate, some to the relevant companies for reply or clarification, and some filed for future reference as requested by the complainants.

- (c) The Consumer Council acts on misleading or misrepresented advertisements when complaints are lodged by members of the public. Apart from making referrals to the relevant authorities, the Council may also conduct surveys and tests, and publish the results to assist consumers in making informed choices. The Consumer Council will continue to render assistance to aggrieved consumers and help consumers make informed choices.

**Non-local Courses Registry (NCR) of**  
**the Education and Manpower Bureau (EMB)**

- (b) Section 34 of Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493) sets out the restriction on advertisement relating to a regulated course. It aims at preventing any advertisement from inducing enrolment in any non-exempted or non-registered regulated course; from falsely describing any regulated course; or from misleading the public as to the nature, purpose, quality of the course, or the award to which the course is claimed to lead. Any person who contravenes Section 34 commits an offence and is liable on conviction to a fine at level 4 (\$25,000) and to imprisonment for two years.

Section 40(1)(a) of the Ordinance further provides the Secretary for Education and Manpower to make rules providing for the regulation of advertisement relating to regulated courses. The Non-local Higher and Professional Education (Regulation) Rules impose restrictions in the areas of course status, course recognition and course information in the publication of advertisements. Any person who contravenes these restrictions commits an offence and is liable on conviction to a fine at level 3 (\$10,000) or level 4 (\$25,000) and to imprisonment for six months.

The NCR received six complaints on course advertisements in 2003, four in 2004 and seven in 2005.

If the NCR considers a complaint justified, i.e. the advertisement appears to have contravened the legislative requirements, it will issue a letter to the course operator specifying the areas of probable contravention and seeking explanation/clarification. If the operator fails to provide an explanation/clarification, or make appropriate amendments, or ignores the legislative requirements with the intention to continue releasing the same “problematic” advertisement, the NCR will seek the Department of Justice’s advice on the possibility of initiating prosecution. So far, the response to the NCR’s monitoring actions has been positive and no prosecution has been instituted against the offenders.

- (c) The NCR checks course advertisements published in two popular local newspapers on a daily basis. It also acts on complaints.

EMB considers the existing monitoring efforts sufficient. The response the NCR has been receiving from its monitoring actions has so far been positive.

**School Registration and Compliance Section (SRCS) of  
the Education and Manpower Bureau (EMB)**

- (b) For schools that require registration under the Education Ordinance (Cap. 279), the power to control false advertisements is provided under Section 86A and 86B of the Ordinance. Any person who contravenes Section 86A or 86B is liable to a fine at level 6 (\$100,000).

The SRCS has not received any complaint on false advertisements over the past three years.

- (c) EMB will conduct investigation upon receipt of complaints or upon detection of malpractice of false advertising during school inspections. Should a case of false advertising be established, EMB will require rectification from the person(s) concerned and will initiate prosecution action if the malpractice continues.

In addition to taking enforcement actions against offenders, EMB has taken measures to monitor malpractice by stepping up consumer education and enhancing the transparency of schools. For instance, the following information has been uploaded onto the EMB Homepage for public reference:

- (i) a list of schools registered or provisionally registered under the Education Ordinance, including the basic registration particulars of schools such as the registered school premises and the permitted classroom accommodation; and
- (ii) the records of convictions of schools having contravened the Ordinance or its subsidiary legislation.

### **Securities and Futures Commission (SFC)**

(b)&(c) Under Section 38B of the Companies Ordinance (Cap. 32), it is unlawful for a person to publish an advertisement in relation to a prospectus or proposed prospectus offering shares or debentures to the public unless its publication has been authorized by the SFC or exempted. The general principle is that no advertisement that is false, biased, misleading or deceptive can be made. The civil and criminal liability provisions relating to prospectus in Section 40 and 40A of the Ordinance apply to advertisements in relation to untrue statements as if such publications were a prospectus.

Under Section 103 in Part IV of the Securities and Futures Ordinance (Cap. 571), an advertisement, invitation or document containing an invitation to the public to enter into an agreement to acquire or dispose of securities or a regulated investment agreement, or to participate in a collective investment scheme, is prohibited unless its issue is authorized by the SFC under Section 105 or exempted. Again, the general principle is that no advertisement that is false, biased, misleading or deceptive can be made. Where an advertisement contains a misrepresentation, civil and criminal liability may apply under Section 108 and 107 of the Ordinance, depending on the nature of such misrepresentation.

The SFC received two complaints each on advertisements with misrepresented information in 2003, 2004 and 2005.

All complaints are carefully assessed to determine if the allegations are legitimate and whether further regulatory action is warranted. To ensure consistency in treatment, all complaints are first reviewed by the SFC's Complaints Control Committee which consists of senior executives from various SFC departments. Out of the 6 complaints received, one has resulted in successful prosecution, one is still under active review, and the other four were found to be unsubstantiated.

SFC operates a complaint hotline and monitors press reports on a daily basis. SFC considers the existing monitoring system adequate.

**Transport Complaints Unit (TCU) of**  
**the Environment, Transport and Works Bureau**

- (b) There is no specific regulation governing transport-related advertisements with misrepresented information.

The TCU received one complaint in 2003, three in 2004 and none in 2005. The complaints were referred to the Transport Department (TD) or relevant transport operators for follow-up actions. Of these four cases, rectification had been made for one case by removing the advertisement away from its original position inside the bus compartment as requested by the complainant. For the remaining three, TD or the operators concerned had taken note of the complainants' concern for future reference.

- (c) The TCU does not monitor advertisements, and will take follow-up actions with the relevant departments/public transport operators upon receipt of complaints.