

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS AT HKTDC EXHIBITIONS

Exhibitors' Brief

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 have on-the-spot procedures at our trade fairs for handling any complaint that a product on display infringes someone else's intellectual property rights. **These complimentary procedures are not the only way in which complainants can file complaints. Complainants can also file complaints with Hong Kong Customs and Excise Department and/or the Courts of Hong Kong.**

These procedures, carried out with our legal advisor, 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 exhibitors to be promptly cleared of unfounded complaints as it is to uphold their obligation to respect the intellectual property rights of others.

In this respect, the attention of all exhibitors is drawn to Clause 42 of the conditions of participation, setting out rights and obligations of exhibitors at HKTDC exhibitions:

The Exhibitor warrants that the exhibits and packages thereof and the Publicity Material or any other part of the display on the Stand do not in any way whatever violate or infringe any third party's rights including all intellectual property rights including but not limited to trade marks, copyright, designs, names, and patents whether registered or otherwise. The Exhibitor agrees to fully indemnify the Organiser and its agents, representatives, contractors and employees against all costs, expenses and damages arising from any third party's claim of infringements by the Exhibitor and/or the Organiser and/or the latter's agents, representatives, contractors or employees of such third party's rights.

The Exhibitor agrees that it shall comply with any "Exhibitors' Brief on the Protection of Intellectual Property Rights at HKTDC Exhibitions" ("**Exhibitors' Brief**") that the Organiser may issue from time to time, including abiding by any complaint procedures and penalties stated in the Exhibitors' Brief, whether as a complainant of infringement of intellectual property right or as a party subject to any such complaint. If the Exhibitor fails or refuses to abide by any of the terms and conditions of the Exhibitors' Brief, the Organiser shall have the sole and absolute discretion to ban the Exhibitor and any of its parent, associate, affiliated and/or subsidiary companies from any or all future HKTDC exhibitions and / or to further ban any representatives of the Exhibitor in question from entering the venue of the current HKTDC Exhibition in which the Exhibitor is participating.

If a complainant/an Exhibitor ("**complainant**") files a complaint with the Organiser in accordance with the Exhibitors' Brief and requests the Organiser to take action against an Exhibitor, the complainant agrees to hold the Organiser, 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 Organiser, 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 Organiser, 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.

通告

香港貿發局展覽會保護知識產權措施

參展商須知

香港貿發局是專責促進香港對外貿易的法定機構，對於推動原創設計以及保護知識產權不遺餘力。

本局訂有一套處理展覽現場侵權投訴的程序，並聘有駐場法律顧問，以確定侵權投訴是否理據充足，協助有關方面決定採取進一步行動抑或從速解決糾紛。**這些免費的投訴程序不是投訴人唯一的投訴方法，投訴人也可以向香港海關和/或香港法院提出投訴。**

訂定這套程序的目的，是提醒參展商尊重他人的知識產權，並同時盡快澄清無理投訴以保障參展商的權益。

茲促請所有參展商，必須遵守香港貿發局展覽會參展規則第 42 項有關參展商權利與責任的條款，內容如下：

參展商保證展品及產品包裝，以及宣傳品或攤位的任何展示部分，在各方面均沒有違反或侵犯任何第三者的權利，包括所有知識產權，其中包括但不限於已註冊或未註冊的商標、版權、外觀設計、名稱及專利；並同意悉數賠償主辦機構以及其代理、代表、承包商和僱員因第三者指控參展商及/或主辦機構及/或後者的代理、代表、承包商和僱員侵權而招致的費用、開支及索償。

參展商，無論是投訴他人侵權或被人指控侵權者，同意遵守主辦機構不時發出的任何《香港貿發局展覽會保護知識產權措施：參展商須知》（「參展商須知」），包括其中所列的處理投訴程序和侵權罰則。假若參展商違反或拒絕遵守《參展商須知》的任何條款及條件，主辦機構有唯一及絕對酌情權禁止參展商及其任何母公司、有聯繫公司、相關聯公司及/或附屬公司參加香港貿發局以後舉辦的任何或所有展覽會，及/或進一步禁止其代表進入參展商當時正在參展的展覽會場。

假若有投訴人/參展商（「投訴人」）按照《參展商須知》向主辦機構提出投訴，並要求主辦機構對其他參展商採取行動，投訴人必須同意免除主辦機構以及其代理、代表、承包商和僱員（包括但不限於所述各方的法律顧問）的所有責任，同時悉數賠償上述各方由於依據有關投訴或有關投訴人所作出的其他要求、指示或指令而採取的行動所招致的任何責任、損失、費用（包括但不限於法律費用）、開支和賠償；投訴人並同意不會就有關投訴及被指控侵權事件對主辦機構以及其代理、代表、承包商或僱員（包括但不限於所述各方的法律顧問）採取任何法律行動、或提出任何索償或要求。

Procedures

1. If you have any complaint involving infringement of your intellectual property rights, this should be reported to the Fair Management Office, where it will be handled by HKTDC Fair Officials and the Fair Legal Advisor engaged by HKTDC.
2. If you receive a complaint at your booth, you should refer the complainant to the Fair Management Office.
3. Both the documents attached to the Exhibitors' Brief and the Fair Legal Advisor on site will specify the kind of documents and other evidence necessary to support a complaint.
4. If the Fair Legal Advisor is satisfied, on the basis of the documents provided, that the complainant's intellectual property rights are valid and have been infringed by the display of the Exhibitors' product or material in dispute at the Fair, a HKTDC Fair Official will visit the booth involved.
5. As Fair Organizer, HKTDC has the power to immediately take at least 3 photographs of the product or any material in dispute.
6. The exhibitor will be asked to remove the product or material in dispute immediately from display and not to trade in it for the remainder of the exhibition unless he/she can adduce evidence to show to the satisfaction of the Fair Legal Advisor that he/she has the right to deal in such product or material. He/she will also be required to sign an undertaking immediately to this effect. A copy of the signed undertaking and one copy of the photograph will be given to the complainant and the Exhibitor. A further copy of the signed undertaking together with one copy of the photograph will be retained by the HKTDC for its records.
7. If the HKTDC is notified by the Customs and Excise Department that it is investigating possible violation of copyright and/or trademark by an Exhibitor at the Fair, the Exhibitor will be required to immediately remove the product or material which is under investigation for the remainder of the fair.
8. If the exhibitor fails or refuses to co-operate with HKTDC under paragraphs 5 and/or 6 and/or 7 above, HKTDC shall have the power, in its sole and absolute discretion, to ban the Exhibitor, or any parent, associate, affiliated and / or subsidiary company, from any or all future HKTDC exhibitions.
9. HKTDC staff will visit any booth in respect of which a complaint has been received and accepted by HKTDC's legal advisors, in order to reconfirm that the disputed product or material is no longer on display and is not being traded. If the Exhibitor is found to have breached its undertaking not to display or deal with the product or material in dispute during the remaining period of the Fair, HKTDC shall have the power, at its sole and absolute discretion, to immediately terminate the Exhibitors' right of participation in the Fair in question without any refund of the participation fee already paid by the Exhibitor and to ban the Exhibitor or any parent, associate, affiliated and / or subsidiary company from any or all future HKTDC exhibitions.

Penalties

An exhibitor or any parent, associate, affiliated and / or subsidiary company may, in the sole and absolute discretion of the HKTDC, be banned from any or all future participation in HKTDC exhibitions if :

- a. after HKTDC has received and accepted a complaint against the Exhibitor, the Exhibitor fails or refuses to:
 - allow HKTDC to immediately take 3 photographs of the product or material in dispute;
 - sign an undertaking immediately in favour of HKTDC in a form provided by HKTDC, indicating its decision whether to remove or continue to display the product or material in dispute;

OR

處理投訴程序

1. 假若閣下欲提出有關侵犯閣下知識產權的投訴，請向主辦機構辦事處報告，本局的負責人員以及派駐現場的法律顧問將會處理有關投訴。
2. 假若閣下在攤位被人指控侵權，應轉介有關投訴到主辦機構辦事處提出投訴。
3. 隨附《參展商須知》的資料文件以及駐場法律顧問，均會指明侵權投訴所需的文件及其他證據。
4. 假若駐場法律顧問根據投訴人提供之文件，認為投訴人之知識產權有效，而且被有關參展商之展品或物品侵權，本局負責人員會前往涉嫌侵權參展商攤位處理該投訴。
5. 本局作為主辦機構，有權即時為涉嫌侵權展品或任何具爭議的物品拍照最少三張。
6. 除非有關參展商能提出使駐場法律顧問認為滿意的證據顯示其有權經營該等涉嫌侵權的展品或物品，否則會被要求立即收回有關產品或物品以及不得在展覽會舉行期間經營所涉產品，同時須立即簽字作出承諾，而承諾書副本及一張相片則會交予被投訴人及有關參展商。本局會保留一份承諾書副本及一張相片作為紀錄。
7. 假若本局獲悉有參展商因涉嫌侵犯版權及/或商標而被香港海關調查，本局將要求該參展商立即收回所涉產品或物品。
8. 假若有關參展商拒絕合作或違反上述第 5 及/或第 6 及/或第 7 項條款，本局有唯一及絕對之酌情權禁止該等參展商或其任何母公司、有聯繫人士、相關聯公司及/或附屬公司參加本局以後舉辦的任何或所有展覽會的權利。
9. 本局職員會定期到駐場法律顧問認為涉嫌侵權的攤位視察，以確保有關參展商不再展示或經營所涉產品或物品。假若發現參展商違反承諾，本局有唯一及絕對酌情權即時取消該等參展商或其任何母公司、有聯繫公司、相關聯公司及/或附屬公司的參展資格，毋須退還已收取的參展費，並禁止其或其任何母公司、有聯繫公司、相關聯公司及/或附屬公司參加本局以後舉辦的任何或所有展覽會。

侵權處罰

本局有唯一及絕對酌情權就下列其中一種情況，決定是否禁止參展商或任何母公司、有聯繫公司、相關聯公司及/或附屬公司參加本局以後舉辦的任何或所有展覽會：

1. 在本局受理的侵權投訴中，涉嫌侵權的參展商沒有或拒絕：
 - 立即讓本局職員為涉嫌侵權的產品或物品拍三張照片；或
 - 應本局要求立即簽署本局提供的承諾書，註明是否願意收回或是決定繼續展示有關展品或物品。

b. if the Exhibitor refuses to remove from display the product or material in dispute and a legal action brought against the Exhibitor in relation to the display of the product or material in dispute is upheld by a Court in Hong Kong, notwithstanding that the Exhibitor has signed an undertaking in favour of HKTDC and allowed HKTDC to take photographs of the product or material in dispute during the Fair;

OR

c. the Exhibitor removes the product or material in dispute immediately from display and signs an undertaking provided by HKTDC not to display or deal with any such item for the rest of the Fair period, but is subsequently found to be in breach of such an undertaking; in which case the HKTDC shall, in addition, be entitled to immediately terminate the Exhibitors' right of participation for the rest of the Fair period without refund of any participation fee already paid by the Exhibitor;

OR

d. there are two or more court rulings from a Court in Hong Kong against the Exhibitor confirming its infringement of intellectual property rights of the complainant(s) during two consecutive fair periods, notwithstanding that the Exhibitor has cooperated with HKTDC during the Fairs by removing the disputed product or material from display;

OR

e. within two consecutive fair periods there are four or more valid complaints filed against the same exhibitor and which have been accepted by the Fair Legal Advisor:
- by more than one complainant in respect of different intellectual property rights; or
- by the same complainant in respect of different products or material items

OR

f. the Exhibitor is accused or convicted of any criminal offence relating to infringement of intellectual property rights or violation of intellectual property-related laws and regulations.

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 goods 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.

- (2) 參展商雖然應本局要求簽署承諾書及讓本局職員為涉嫌侵權的展品或物品拍照，但拒絕收回涉嫌侵權的展品或物品，及有關展品或物品其後被香港法庭裁定侵權。
- (3) 參展商雖然立即收回涉嫌侵權的展品或物品，並簽字承諾在展覽會舉行期間不再展示或經營所涉產品，但其後被發現違反承諾。在此情況下，本局有權即時取消有關參展商的參展資格，同時毋須退還已收取的參展費。
- (4) 參展商雖然在展覽會舉行期間與本局合作收回涉嫌侵權的展品或物品，但遭香港法庭最少兩度裁定在連續兩屆展覽期中侵權。
- (5) 參展商在連續兩屆展覽會中，
- a. 被超過一名投訴人作出四宗或以上牽涉及不同知識產權的有據投訴；或
 - b. 被同一名投訴人投訴最少有四項不同產品或物品侵權；
- 而該等投訴為駐場法律顧問所接納
- (6) 參展商被控或被判觸犯任何有關侵犯知識產權或違反知識產權有關法律或法規之罪行。

有關知識產權刑事罪行之刑罰

版權條例 (香港法例第 528 章)

任何人製造或處理侵犯版權之物品即屬犯罪。版權條例已詳細列明可構成該等刑事罪行之各類行為。任何干犯有關罪行之人士可就每份侵犯版權複製品被處罰款港幣五萬元及監禁四年或處罰款港幣五十萬元及監禁八年，視乎有關行為之性質而訂。

商品說明條例 (香港法例第 362 章)

根據商品說明條例，任何人士：

- (i) 將虛假商品說明應用於任何貨品；
- (ii) 供應或要約供應已應用虛假商品說明的貨品；或
- (iii) 管有任何已應用虛假商品說明的貨品作售賣或任何商業或製造用途，即屬犯罪。

再者，任何人如偽造任何註冊商標或將任何商標或任何與某一商標極為相似而相當可能會使人受欺騙的商標以虛假方式應用於任何貨品，亦屬犯罪。

任何干犯商品說明條例中有關罪行之人士可被：

- (a) 一經循公訴程序定罪，可被處罰款港幣五十萬元及監禁五年；及
- (b) 一經循簡易程序定罪，可被處罰款港幣十萬元及監禁兩年。

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

A. Copyright

1. date and place that the work was first made;
2. name of author and name of owner of the work;
3. original 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 works is an employee of the complainant, contract of employment;

in the event the author of the works is not the complainant nor an employee of the
5. complainant, copyright assignment evidencing assignment of copyright from author to complainant;

invoice, shipping document or other documents evidencing the date of (i) first sale of
6. 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.

B. Trade Mark

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

C. Registered Design

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

D. Patent

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

A written opinion from the complainant's Hong Kong patent agent or legal advisor that
2. the Hong Kong patent is valid and infringed by the display of the Exhibitor's product or material in dispute during the Fair.

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

通告

證明知識產權的存在，擁有權及被侵權的所需文件

A. 版權

1. 作品的創作日期和地點；
2. 作品的作者名稱及擁有者名稱；
3. 原作正本或核證副本，例如設計圖樣及草圖等；
4. 作品擁有權證明。倘若有關作品的作者是投訴人的僱員，則須提供僱聘合約；
5. 倘若有關作品的作者並非投訴人或投訴人的僱員，則須提供證明作者向投訴人轉讓版權的版權轉讓書；
6. 發票、貨運文件或其他文件，而該等文件可證明(1)首次出售有關該版權之產品或物品之日期；或(2)首次發布有關版權作品之日期。
7. 或根據版權條例第一二一條所作之誓章。

B. 商標

1. 有效的香港商標註冊證書正本或核證副本，包括續期證書或證明。

C. 外觀設計

1. 有效的香港外觀設計註冊證書正本或核證副本，包括續期證書或證明。

D. 專利

1. 有效的香港專利權證書正本或核證副本，包括續期證書或證明。
2. 由投訴人之專利代理或法律顧問發出之書面意見書，證明投訴人於香港之專利權有效，而且被有關參展商之展品或物品侵權。

以及任何由駐場法律顧問因應實際情況要求提供的其他證明文件。

*** 本頁內的資料如有任何改動，恕不另行通知。**