

LCQ21: Regulation of online second-hand trading platforms

Following is a question by the Hon Yung Hoi-yan and a written reply by the Secretary for Commerce and Economic Development, Mr Algernon Yau, in the Legislative Council today (January 8):

Question:

It has been reported that online second-hand trading platforms (second-hand platforms) have been gaining popularity in recent years, but related disputes have also increased. Regarding the regulation of second-hand platforms, will the Government inform this Council:

(1) of the following information on the cases of complaints and requests for assistance involving second-hand platforms in the past five years:

(i) the number of complaints received by the Government and the number of complaints substantiated, as well as the respective highest amounts involved in the disputes in each of the years, with a breakdown by the type and content of the cases; and

(ii) the number of requests for assistance received by the Police and the number of successful prosecutions, as well as the respective highest amounts involved in the disputes in each of the years, with a breakdown by the type and content of the cases;

(2) whether it has plans to step up the regulation of second-hand platforms by, for example, studying the establishment of a licensing regime for second-hand platforms, requiring second-hand platforms to put in place a check mechanism and a return mechanism related to infringing or counterfeit products, as well as imposing penalties for the failure of second-hand platforms to fulfil such requirements, so as to reduce disputes involving second-hand trading and combat the use of second-hand platforms for fraudulent activities; if so, of the details; if not, the reasons for that;

(3) whether it has plans to step up efforts to combat the trading of illegal or objectionable products (including products involving infringement or counterfeiting, controlled prescription drugs, cigarette cartridges prohibited by enacted legislation, objectionable game products, etc.) on second-hand platforms by, for example, drawing up a clear list of prohibited items and making it mandatory for second-hand platforms to prohibit such trading; if so, of the details; if not, the reasons for that; and

(4) whether it has plans to step up the regulation of the collection of personal data by second-hand platforms, so as to minimise users' provision of unnecessary personal data; if so, of the details; if not, the reasons for that?

Reply:

President,

In consultation with the Security Bureau, the Health Bureau and the Constitutional and Mainland Affairs Bureau, our reply to the four parts of the question is as follows:

(1) and (2) Currently, various laws in Hong Kong protect consumers' rights and interests. Among others, the Trade Descriptions Ordinance (Cap. 362) covers goods and services, prohibiting traders from subjecting consumers to certain unfair trade practices, including false trade descriptions, misleading omissions, aggressive commercial practices, bait advertising, bait-and-switch and wrongly accepting payment, which is applicable to the trade practices of both physical and online traders. The Customs and Excise Department (C&ED), as the principal enforcement agency of the Trade Descriptions Ordinance, proactively combats unfair trade practices by means of enforcement actions, compliance promotion and publicity and public education. The C&ED will continue to strengthen the enforcement actions which, coupled with the sentences imposed by the court on prosecution cases, impose a deterrent effect on unscrupulous traders. At the same time, compliance promotion will continue to be carried out to enhance traders' understanding of the legal requirements and the measures that should be taken for complying with the Trade Descriptions Ordinance, with a view to combatting unfair trade practices at source. The C&ED will adjust corresponding strategies for the protection of consumers' rights and interests, having regard to the relevant complaint and enforcement statistics.

On copyright and trademark infringement activities, the C&ED also enforces the provisions of the Trade Descriptions Ordinance, the Copyright Ordinance (Cap. 528) and the Prevention of Copyright Piracy Ordinance (Cap. 544) and conducts criminal investigations and prosecutions to protect the legitimate rights and interests of intellectual property rights owners and legitimate traders. To combat online infringement crimes, the C&ED has been monitoring the latest trends constantly, taking action according to the law and reviewing enforcement effectiveness in a timely manner, including:

(i) having an Anti-Internet Piracy Team in place specifically responsible for conducting online investigations;

(ii) arranging training from time to time to enhance the Anti-Internet Piracy Team members' investigative capabilities;

(iii) operating a big data analytics system and other automated online monitoring systems to conduct 24-hour online patrols and detect online infringing activities; and

(iv) establishing notification mechanisms with certain second-hand trading platforms. When the sale of infringing items on these platforms is confirmed,

the C&ED will request the removal of posts involving infringing activities from the platforms.

From 2019 to 2024 (as at end September), the number of complaints received, enforcement actions taken by the C&ED regarding suspected unfair trade practices and copyright and trademark infringement activities on online second-hand trading platforms (for goods and services), and the relevant amounts involved, are listed by year as follows:

Offence category	Case category	2019	2020	2021	2022	2023	2024 (as at end September)
Unfair trade practices	complaints received #	107	273	221	231	409	292
	cases with investigations initiated*	3 (\$95,500)	1 (\$478)	8 (\$380,000)	4 (\$13,890)	2 (\$352,310)	5 (\$2,600)
	convicted cases*	1 (\$700)	1 (\$48,000)	1 (\$478)	1 (\$230)	1 (\$11,000)	0 (\$-)
Copyright and trademark infringements	complaints received #	618	834	970	890	1 193	834
	cases with investigations initiated*	145 (\$63,080)	47 (\$50,300)	49 (\$493,100)	48 (\$821,090)	68 (\$959,320)	58 (\$1,021,200)
	convicted cases*	101 (\$204,700)	95 (\$30,650)	35 (\$93,000)	41 (\$493,100)	56 (\$367,810)	37 (\$1,021,200)

The C&ED does not maintain statistics on the highest total value of goods involved for the complaints received.

* The number in brackets represents the highest total value of goods involved in that category of cases.

At the same time, the Hong Kong Police Force (HKPF) has been actively combatting online shopping fraud (including cases on second-hand trading platforms) through a multi-pronged approach. Measures taken include:

(i) conducting regular cyber patrols, encouraging the public to report suspicious trading websites and maintaining close communication with online platforms;

(ii) requesting online platforms to remove the content concerned of suspicious webpages or accounts relating to online shopping fraud;

(iii) launching an upgraded version of "Scameter+" with newly added functions such as website detection and public intelligence platforms in February 2024 ; and

(iv) launching the Suspicious Account Alert in collaboration with the Hong Kong Monetary Authority and financial institutions. During fund transfers, if the payee's account matches with the record in the database of the "Scameter", an alert message will be sent from the system.

Between January and September 2024, the HKPF requested online platforms to remove more than 9 000 suspicious webpages or accounts.

From 2019 to 2024 (as at end September), the number of online shopping fraud cases (including cases that took place on social media and second-hand trading platforms) received by the HKPF and the amounts involved are listed by year as follows:

	2019	2020	2021	2022	2023	2024 (as at end September)
Number of online shopping fraud cases @	2 194	6 678	6 120	8 735	8 950	8 405
Amount involved @ (\$ million)	27.3	122.3	71.5	74.1	190.5	299.1

@ The HKPF does not maintain figures for the number of successful prosecution or the highest amount involved.

(3) In addition to the above-mentioned regulation on infringing or counterfeit products, relevant laws are also available in Hong Kong currently to regulate obscene or indecent articles, pharmaceutical products and smoking products.

The Control of Obscene and Indecent Articles Ordinance (Cap. 390) aims to regulate publication or public display of obscene or indecent articles in Hong Kong, including images and content published on the Internet. If the web page of a second-hand platform contains Class II (Indecent) content, the relevant images or pictures must first be treated with pixelisation or blurring effect, or even completely obscured or removed, before they can be viewed by ordinary internet users. Otherwise, the relevant content should be added with a prescribed warning notice and can only be viewed by internet users aged 18 or above. The Control of Obscene and Indecent Articles Ordinance also stipulates that publication of Class III (Obscene) articles is not allowed. The Office for Film, Newspaper and Article Administration and the HKPF will inspect the content published on the Internet from time to time and if Class II (Indecent) or Class III (Obscene) content is found, the relevant platforms will be requested to take follow-up actions, or enforcement actions will be carried out in accordance with the Control of Obscene and Indecent Articles Ordinance.

On pharmaceutical products, according to the Pharmacy and Poisons Ordinance (Cap. 138), any products falling within the definition of "pharmaceutical products" must satisfy the criteria of safety, efficacy and quality, and must be registered with the Pharmacy and Poisons Board of Hong Kong before they can be sold or distributed in Hong Kong. Pharmaceutical product containing Part 1 poison listed under the Pharmacy and Poisons Regulations (Cap. 138A) can only be sold at the registered premises of an Authorized Seller of Poisons (commonly known as pharmacy) under the supervision of a registered pharmacist. Furthermore, Part 1 Schedule 3

poisons listed under Cap. 138A (i.e. prescription drugs) can only be sold by pharmacies under the authority of a doctor's prescription. Illegal possession or sale of Part 1 poisons or prescription drugs is a criminal offence and the maximum penalty for each offence is a fine of \$100,000 and two years' imprisonment upon conviction.

The Department of Health (DH) has an established mechanism to monitor the sale of pharmaceutical products in the market, including those through the Internet. If it is found that the drug related legislation has been contravened, the DH will promptly investigate. If necessary, the DH will refer cases to relevant law enforcement departments for follow up, or to conduct joint operations with other law enforcement departments. At the same time, the DH has been reminding the public, through publicity and education including various online materials such as "General Knowledge on the Use of Medicines" and "Be Cautious when Buying Medicines on Internet", to refrain from purchasing or using products with unknown or dubious ingredients, or from unknown sources, for the protection of public health.

On smoking products, with effect from April 30, 2022, no person may import, promote, manufacture, sell, or possess for commercial purposes alternative smoking products, including electronic smoking products, heated tobacco products and herbal cigarettes in accordance with the Smoking (Public Health) Ordinance (Cap. 371) and the Import and Export Ordinance (Cap. 60). Any person who contravenes the prohibition will be prosecuted by the Tobacco and Alcohol Control Office (TACO) of the DH on sufficient evidence. Besides, no person shall distribute any smoking product advertisement (including online placements). TACO conducts regular cyber patrol, and will promptly request relevant internet service providers and social media platforms to remove any content found to be violating the law. From January 2023 to November 2024, TACO successfully removed over 2 900 web pages, social media accounts or posts involved in advertising smoking products. TACO will continue to take stringent enforcement actions against violations of the Smoking (Public Health) Ordinance, and will appropriately adjust its enforcement strategies according to the actual circumstances from time to time.

(4) In June 2023, the Office of the Privacy Commissioner for Personal Data (PCPD) published the report titled "Privacy Protection in the Digital Age: A Comparison of the Privacy Settings of 10 Online Shopping Platforms", recommending online shopping platforms (including second-hand trading platforms) to allow users to shop as guests, and reminding the platforms to only collect necessary personal data when processing transactions. The PCPD will continue to monitor the personal data collection practices of such platforms to ensure their compliance with the Personal Data (Privacy) Ordinance.

Relevant Government bureaux/departments will continue to monitor closely the development of online second-hand trading platforms, and adjust or strengthen the relevant enforcement strategies and work, having regard to the actual circumstances. In the process, due consideration will also be given to the various suggestions raised in parts (2), (3) and (4) of the question with

a view to providing appropriate protection for the public.