

## Appendix I

### Exhibitors' Brief on the Protection of Intellectual Property Rights at TDC Exhibitions

The Hong Kong Trade Development Council (referred to below as "**TDC**", "**Organizer**", "**we**", "**our**" or "**us**"), 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 on-call 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 legal advisors will be on-call during the opening hours of our trade fairs and will attend our office within a reasonable time upon notification by us to handle any complaint filed in accordance with the Exhibitor's Brief. 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 ("**Exhibitors**") is drawn to Clause 43 of conditions of participation, setting out rights and obligations of exhibitors at TDC exhibitions, which is set out below for ease of reference:

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 howsoever 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 Organizer 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 Organizer 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 TDC Exhibitions" ("**Exhibitors' Brief**") that the Organizer 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 Organizer shall have the sole and absolute discretion to ban the Exhibitor and any of its representatives, parent, associate, affiliated and/or subsidiary companies from any or all future TDC exhibitions and/or to further ban any representatives of the Exhibitor in question from entering the venue of the current TDC Exhibition in which the Exhibitor is participating.

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

## 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 on-call Fair Legal Advisor engaged by HKTDC (the "**Fair Legal Advisor**"). The Fair Legal Advisor will be on-call during the opening hours of HKTDC's trade fairs and will attend the HKTDC's office within a reasonable time upon notification by the HKTDC to handle any complaint filed in accordance with the Exhibitor's Brief.
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 Legal Advisors on site will specify the kind of documents and other evidence necessary to support a complaint.
4. If the 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 Exhibitor's product or material in dispute at the Fair, a TDC Fair Official will visit the booth involved.
5. The Fair Legal Advisor will also visit the HKTDC's website ([www.hktdc.com](http://www.hktdc.com)) to check whether the product or any material in dispute is displayed on the said website. If so, the HKTDC has the sole and absolute discretion to disable the link or otherwise take down / remove the disputed product or material from the Organizer's website in accordance with the HKTDC's *Terms & Conditions for Printed Advertisement & Online Promotion* without further notice.
6. As Fair Organizer, TDC has the power to immediately take at least 3 photographs of the product or any material in dispute.
7. 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 Fair unless he/she can adduce evidence to show to the satisfaction of the Legal Advisors 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 TDC for its records.
8. If the TDC 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.
9. If the Exhibitor fails or refuses to co-operate with TDC under paragraphs 6 and/or 7 and/or 8 above, TDC shall have the right and power, in its sole and absolute discretion, to ban the Exhibitor and any of its representatives, parent, associate, affiliated and/or subsidiary companies, from any or all future TDC exhibitions.
10. TDC staff will visit any booth in respect of which a complaint has been received and accepted by TDC'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, TDC shall have the right and power, at its sole and absolute discretion, to immediately terminate the right of participation in the Fair in question of the Exhibitor and any of its representatives, parent, associate, affiliated and/or subsidiary companies without any refund of the participation fee already paid , and to ban the Exhibitor and any of its representatives, parent, associate, affiliated and/or subsidiary companies from any or all future TDC exhibitions.

## Penalties

An Exhibitor and/or any of its representatives, parent, associate, affiliated and/or subsidiary companies may, in the sole and absolute discretion of the TDC, be banned from any or all future participation in TDC exhibitions if:

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

OR

- 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 TDC and allowed TDC 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 TDC 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 TDC shall, in addition, be entitled to immediately terminate the Exhibitor's 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 any Complainant(s) during two consecutive fair periods, notwithstanding that the Exhibitor has cooperated with TDC 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 Legal Advisors:
- 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, or any service supplied or offered to be supplied to a consumer;
- (ii) supplies or offers to supply any goods, or any services to consumers, 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.

Further, any person who engages in relation to a consumer any unfair trade practices (including but not limited to any commercial practice that is a misleading omission, or is aggressive, or constitutes bait advertising, bait and switch, or wrongly accepting payment) 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.

## Documents Required as Evidence of Subsistence and Ownership of Intellectual Property Rights

### A. Copyright

**Option 1:** An affidavit of copyright ownership and subsistence made by the owner of the copyright work pursuant to Section 121 of the Copyright Ordinance (Cap. 528 of Laws of Hong Kong) - for reference purposes, a template affidavit is available for download at: [\[http://tpwebapp.hktdc.com/fair/Multi\\_fairs/pdf/Copyright/2.pdf\]](http://tpwebapp.hktdc.com/fair/Multi_fairs/pdf/Copyright/2.pdf)

OR

**Option 2:** If the Complainant owns and provides its original evidence for all of the below items 4-6 as evidence, and provide information and evidence of **all** of the following:-

1. date and place that the copyright work was first made or first published;
2. name of the author of the copyright work;
3. name of the owner of the copyright work;
4. **original** copyright work (e.g. design drawings, sketches, etc) - **NOTE:** copies, including photocopies or computer copies will **not** be accepted;
5. **original** evidence on proof of ownership of the copyright work - for example, in the event the author of the copyright work is an employee of the Complainant, that employee's contract of employment; or in the event the author of the copyright work is not the Complainant nor its employee, copyright assignment evidencing the assignment of copyright from the author to the Complainant; and
6. **original** evidence of the date of (i) the first sale of the product/article to which the copyright work relates (e.g. invoices, shipping documents, etc) or (ii) the first publication of the copyright work, and such evidence must clearly identify the product/article in question

For any complaint made under Option 2, complainants will also be required to complete, provide and confirm **all** the above information and evidence in a standard-form checklist (which is available for download at [\[http://tpwebapp.hktdc.com/fair/Multi\\_fairs/pdf/Copyright/1.pdf\]](http://tpwebapp.hktdc.com/fair/Multi_fairs/pdf/Copyright/1.pdf) or to be provided by TDC at the time of the complainant's filing of the complaint). If any of the required information and/or evidence is missing or otherwise incomplete, or if any of the information and/or evidence provided are, in TDC's opinion, unreliable, conflicting, false or inaccurate in any manner, the relevant complaint will not be processed or will be rejected.

### 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 (**NOTE:** foreign registrations will **not** be accepted).

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 (**NOTE:** foreign registrations will **not** be accepted).

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 (**NOTE:** foreign registrations will **not** be accepted); and
2. A written opinion from the complainant's Hong Kong patent agent or legal advisor that the Hong Kong patent is valid and infringed by the display of the Exhibitor's product or material in dispute during the Fair with clear and specific reference to the alleged infringing product in question.

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

## 附件一

### 香港貿易發展局展覽會保護知識產權措施：參展商須知

香港貿易發展局(以下簡稱為「本局」、「主辦機構」)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。本局於展覽會開放期間備有法律顧問候命，如投訴人/參展商根據參展商須知向本局作出侵權投訴，本局之法律顧問將於收到本局有關通知後的合理時間內抵達本局之辦事處協助處理有關投訴。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(「參展商」)，必須遵守貿易發展局展覽會參展規則第43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，在任何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《香港貿易發展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代表、母公司、有聯繫公司、相關聯公司及/或附屬公司參加香港貿易發展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(「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。

## 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候命的法律顧問(「法律顧問」)將會處理有關投訴。法律顧問將於展覽會開放期間候命，如投訴人/參展商根據參展商須知向本局作出侵權投訴，法律顧問將於收到本局有關通知後的合理時間內抵達主辦機構辦事處協助處理有關投訴。
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. 法律顧問亦會檢查有關涉嫌侵權展品或任何具爭議的物品有否於本局的網站(www.hktdc.com)上顯示。若有該等發現，本局有全權絕對酌情決定權根據本局之網上推廣條款及條件 停止顯示涉嫌侵權的產品之連結或以其他方式從本局的網站取下/刪除涉嫌侵權的展品以及其有關物品，恕不作另行通知。
6. 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。
7. 除非有關參展商能提出使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。
8. 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。
9. 假若有關參展商拒絕合作或違反上述第6及/或第7及/或第8項條款，本局有權利及權力，按其唯一及絕對之酌情權，禁止該等參展商及其任何代表、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。
10. 本局職員會定期到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，本局有權利及權力，按其唯一及絕對酌情權，即時取消該等參展商及其任何代表、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，並禁止其及其任何代表、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任何其中一種情況，決定是否禁止參展商及/或其任何代表、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。
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，被超過一名投訴人就不同的知識產權或被同一名投訴人就不同產品或物品的權利作出四宗或以上的侵權投訴，而該等投訴均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或應用於向消費者提供或要約提供的服務；
- (ii) 供應或要約供應已應用虛假商品說明的貨品、或向消費者提供或要約提供已應用虛假商品說明的服務；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。

另外，任何商戶如就任何消費者作出任何不良營商手法（包括但不限於任何屬誤導性遺漏的營業行為、具威嚇性的營業行為、構成餌誘式廣告宣傳的營業行為、構成先誘後轉銷售行為的營業行為、或構成不當地就產品接受付款的營業行為），即屬犯罪。

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。

## 證明知識產權的存在及擁有權的所需文件

### A. 版權

途徑1: 版權作品的版權擁有人根據香港法例第528章《版權條例》第121條所作出證明 其版權的存在及擁有權之誓章 - 誓章之樣本可於以下網頁下載，以供參考：

[\[http://tpwebapp.hktdc.com/fair/Multi\\_fairs/pdf/Copyright/2.pdf\]](http://tpwebapp.hktdc.com/fair/Multi_fairs/pdf/Copyright/2.pdf)

或

途徑2: 若投訴人為版權擁有人並能提供下列第4-6項證據的正本作舉證，投訴人需提交下列所有的資料及證據：

1. 作品的首次創作或首次出版的日期和地點；
2. 作品的作者名稱；
3. 作品的擁有者名稱；
4. 版權作品的原作正本，例如設計圖樣及草圖等 - 註：任何副本，包括影印本或電腦印列本，均不接受；
5. 作品擁有權證明的正本。倘若有關作品的作者是投訴人的僱員，則須提供僱聘合約；或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；及
6. 發票、貨運文件或其他文件的正本，而該等文件可證明(1)首次出售有關該版權作品保護之產品或物品之日期，或(2)首次發布有關版權作品之日期，而該證據必須清楚指明該產品/物品。

以途徑 2 作出之投訴，本局將向投訴人提供一份文件證據清單，而投訴人需要在該清單填寫、提供及確認上述所有資料及證據。證據清單可於以下網頁下載 [[http://tpwebapp.hktdc.com/fair/Multi\\_fairs/pdf/Copyright/1.pdf](http://tpwebapp.hktdc.com/fair/Multi_fairs/pdf/Copyright/1.pdf)] 或於呈交投拆時向本局索取。若缺少任何資料及/或證據、或任何資料及/或證據不完整、或倘若本局認為任何提交之資料及/或證據為不可信、具任何矛盾、虛假或不準確的情況，有關投訴將不被處理或將被拒絕。

#### 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（註：任何非香港的註冊均不接受）。

#### 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（註：任何非香港的註冊均不接受）。

#### 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（註：任何非香港的註冊均不接受）；及
2. 由投訴人之專利代理或法律顧問發出之書面意見書，清楚指明有關涉嫌侵權之展品或物品的詳情，並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。

以及任何由法律顧問因應實際情況要求提供的任何其他證據。