

Circular 14

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS AT HKTDC EXHIBITIONS

Exhibitors' Brief

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 (the “**Fairs**” or “**TDC exhibitions**”) for handling any complaint against any exhibitor (“**Exhibitor**”) and/or advertiser (“**Advertiser**”) that:

- (i) a product, item or material published, displayed, and/or placed by an Exhibitor at the Fairs, or
- (ii) any advertisement published, displayed and/or placed by us for and/or on behalf of an Exhibitor or Advertiser, including but not limited to in (a) our publications (in any media, medium, form and format, whether online and/or offline) (“**Publications**”), (b) our websites, applications, platforms and/or social media accounts (including but not limited to www.hktdc.com and any and all other websites, applications, platforms and/or social media accounts that we may from time to time operate, manage or use) (“**Websites**”), (c) our showcases (including but not limited to (i) printed and/or digital materials, (ii) LED advertisements such as but not limited to lightboxes, TV walls, Exhibitor Location Systems, and lifts and escalator advertisements, (iii) banners and posters, and/or (iv) any other means or manner of advertising, whether online and/or offline, whether existing now or in the future) (“**Showcases**”), and/or for or relating to (d) any products, services or materials featured or promoted in any such Publications, Websites and/or Showcases (as the case may be) (where, for the ease of reference, each of the foregoing items in categories (a) to (d) above will be referred to herein as “**Advertisement**”);

allegedly infringes someone else's intellectual property rights in relation to or in connection with TDC exhibitions.

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 advisors (“**Legal Advisors**”), 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 and Advertisers concerned to be promptly cleared of unfounded complaints as it is the responsibility of the Exhibitors and Advertisers to uphold their obligations to respect the intellectual property rights of others.

In this respect, the attention of all Exhibitors is drawn to Clause 43 of the 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 attention of all Advertisers is drawn to Clauses 2 and 3 of the terms and conditions enclosed in the HKTDC Advertising Order Contract, pursuant to which the Advertiser, amongst other things, warrants and undertakes that no third party intellectual property rights will be infringed as a result of the publication of any Advertisement, and it has obtained all necessary consents and licenses for the Advertisement. The Advertiser also undertakes and agrees to fully and unconditionally indemnify and hold TDC and its partners, agents, affiliates, directors, representatives, contractors, officers, employees and users harmless against any allegations, claims, damages, penalties, losses, costs, fees (including legal fees) or any expenses howsoever incurred as a result of or in connection with, amongst others, any breach or alleged breach of representation, warranty or undertaking given by the Advertiser, any infringement or alleged infringement of intellectual property rights, including but not limited to patents, registered designs, copyrights or trade mark infringement arising as a result of the publication of any Advertisement, and/or any third party claims whatsoever arising in or derived from or as a direct or indirect result of the publication of any Advertisement by the Advertiser, including without limitation in relation to its goods and/or services.

The Exhibitor and/or Advertiser each agree that it shall comply with the then effective version of the "Exhibitors' and Advertisers' Brief on the Protection of Intellectual Property Rights at TDC Exhibitions" ("**Exhibitors' and Advertisers' Brief**") that the Organizer may issue and update from time to time, including but not limited to abiding by any complaint procedures and penalties stated in the Exhibitors' and Advertisers' Brief, whether as a Complainant of infringement of intellectual property right or as a party subject to any such complaint. If the Exhibitor or Advertiser fails or refuses to abide by any of the terms and conditions of the Exhibitors' and Advertisers' Brief, the Organizer shall have the sole and absolute discretion to:

- (a) 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; and/or
- (b) decline to publish, or suspend, alter/amend or remove any Advertisements and/or prohibit the Exhibitor or Advertiser concerned from placing, displaying or publishing Advertisements on any Publications, Websites and/or Showcases at or in connection with any TDC Exhibition.

If a complainant ("**Complainant**") files a complaint with the Organizer in accordance with the Exhibitors' and Advertisers' Brief and requests the Organizer to take action against an Exhibitor or Advertiser, 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 in connection with, and/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 Exhibitor, Advertiser and Complainant each agree 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 or arising out of such complaint and any actual or alleged infringement of intellectual property rights.



Procedures

A. Item displayed or exhibited by an Exhibitor at a TDC exhibition

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 TDC Fair Officials and the Legal Advisors engaged by TDC.
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' and Advertisers' Brief and the Legal Advisors on site will specify the kind of documents and other evidence necessary to support a complaint.
4. If the TDC and the Legal Advisors are 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 TDC and the Legal Advisor will also visit the Website to check whether the product or any material in dispute is displayed on the said Website. If so, the TDC 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 TDC's *Terms & Conditions for Printed Advertisement & Online Promotion* without further notice.
6. As the organizer of the TDC exhibitions, 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 TDC and 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 and the 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.

B. Materials featured in any Advertisement displayed and/or published at a TDC exhibition, the TDC's Publications, Websites and/or Showcase for, in relation to or in connection with the TDC exhibition

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 TDC Fair Officials and the Legal Advisors engaged by TDC.
2. If you are also an Exhibitor and receive a complaint at your booth, you should refer the Complainant to the Fair Management Office.
3. Both the documents attached to the Exhibitors' and Advertisers' Brief and the Legal Advisors on site will specify the kind of documents and other evidence necessary to support a complaint.
4. If the TDC and the Legal Advisors are satisfied, on the basis of the documents provided, that the Complainant's intellectual property rights are valid and have been infringed by the Advertisement in dispute at the TDC exhibition, the Advertiser will be notified.
5. As organizer of the TDC exhibitions, TDC has the power to immediately take at least 3 photographs of the any material in dispute.
6. The Advertiser will have the opportunity to adduce evidence to show to the satisfaction of the TDC and the Legal Advisors that it has the right to place, display or publish the Advertisement complained of within 24 hours from the time of such notification. If the Advertiser fails to do so and/or if the TDC and the Legal Advisors are not satisfied that the Advertiser has the right to place, display or publish the Advertisement complained of, TDC shall have sole and absolute discretion to determine the appropriate course of action, including but not limited to the immediate removal, take-down, suspension and/or altering (e.g. by covering up the materials featured in the Advertisement which are alleged to be infringing in the complaint) of the Advertisement complained of.
7. The Advertiser 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 Advertiser. 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 Advertiser at the Fair, the TDC will be required to immediately remove the Advertisement and any other relevant material which is under investigation for the remainder of the Fair.
9. If the Advertiser fails or refuses to co-operate with TDC under paragraphs 6 and/or 7 above, TDC shall have the right and power, in its sole and absolute discretion, to prohibit the Advertiser and any of its representatives, parent, associate, affiliated and/or subsidiary companies from placing, displaying or publishing Advertisements on the TDC website and in any publications displayed or published at any or all future TDC exhibitions, and/or to further terminate the HKTDC Advertising Order Contract with no refund payable.
10. If the Advertiser is found to have breached its undertaking not to display, publish and/or otherwise deal in or with the advertising material(s) 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 to advertise in the Fair in question of the Advertiser and any of its representatives, parent, associate, affiliated and/or subsidiary companies without any refund of the advertising fee already paid; to ban the Advertiser and any of its representatives, parent, associate, affiliated and/or subsidiary companies from advertising and/or participating in any or all future TDC exhibitions; and to further terminate the HKTDC Advertising Order Contract with no refund payable.

Penalties

An Exhibitor and/or Advertiser 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 (including but not limited to the right to advertise) in TDC exhibitions if:

- a. after TDC has received and accepted a complaint against the Exhibitor or Advertiser, the Exhibitor or Advertiser fails or refuses to:
 - allow TDC to immediately take 3 photographs of the product, material or Advertisement in dispute;
 - sign an undertaking immediately in favour of TDC in a form provided by TDC:
 - (i) indicating its decision whether to remove or continue to display the product or material in dispute; or
 - (ii) in the case of an Advertisement, acknowledging TDC's right to remove the Advertisement in dispute, or adducing evidence to the TDC to show to the satisfaction of the TDC and the Legal Advisors that it has the right place, display or publish the Advertisement complained of;

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 and/or the Advertiser signs the undertaking to acknowledge the TDC's right to remove the Advertisement in dispute, 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 and/or Advertiser's right of participation and/or advertisement for the rest of the Fair period without refund of any participation and/or advertisement fee already paid by the Exhibitor and/or Advertiser;

OR

- d. there are two or more court rulings from a Court in Hong Kong against the Exhibitor and/or Advertiser confirming its infringement of intellectual property rights of any Complainant(s) during two consecutive fair periods, notwithstanding that the Exhibitor and/or Advertiser has cooperated with TDC during the Fairs, amongst others, 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 TDC and 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. within any one year period there are two or more valid complaints filed against the same Advertiser and which have been accepted by the TDC and the Legal Advisors;

OR

- g. the Exhibitor and/or Advertiser 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) dated within one (1) year of the date of the complaint - for reference purposes, a template affidavit is available for download at: 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 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); and
2. An up-to-date printout of the Trade Mark Records as available on the Hong Kong Intellectual Property Department's Online Search System, showing the registration details of the trade mark and printed within one (1) week of the date of the complaint.

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); and

2. An up-to-date printout of the Register of Designs as available on the Hong Kong Intellectual Property Department's Online Search System, showing the registration details of the registered design and printed within one (1) week of the date of the complaint.

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);
2. If the patent relied on is a short-term patent, either one of the following in respect of the patent:
 - a) Original or certified copy of a Certificate of Substantive Examination in Hong Kong;
 - b) Original or certified copy of a request for substantive examination filed with the Hong Kong Registrar of Patents, together with a written confirmation that the request has not yet been determined, rejected or terminated; or
 - c) Original or certified copy of a certificate granted by the Hong Kong court certifying that the claims of the patent sought to be relied on by the Complainant is valid.
3. A written opinion from the following individual(s) stating 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:
 - a) A certified or registered patent agent or attorney so certified or registered in a jurisdiction outside Hong Kong and providing patent agency services in Hong Kong; and/or
 - b) Hong Kong qualified lawyer experienced in the patents field.

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

Documents Required as Evidence of the Advertiser's Right to Place, Display or Publish the Advertisement Complained of

1. Documents required as evidence of subsistence and Advertiser's ownership of the relevant intellectual property rights (see the requirements for each type of intellectual property rights in A, B, C and/or D above (as applicable)); or
2. Original or certified copy of valid agreement(s) or license(s) from the intellectual property rights owner authorizing or granting the Advertiser the right to use, publish, display and/or otherwise deal in or with the relevant works, marks, designs, and/or patents featured in the Advertisement(s) complained of.

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

* The TDC reserves the right to amend any contents in the Exhibitor's and Advertisers' Brief (including without limitation the documents required for filing a complaint) at any time without prior notice.

In the event of any differences between the English and Chinese versions of this document, the English version shall prevail.

通告 14

香港貿發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**」或「**主辦機構**」)是專責促進香港對外貿易的法定機構，致力推動原創設計及保護知識產權。

本局訂有一套在展覽會(「**展覽**」或「**本局展覽**」)現場內，即場處理任何針對參展商及/或廣告商、有關本局展覽或與之有關聯的侵權投訴的程序，而該等投訴須針對：

- (i) 參展商在展覽中發布、展示及/或放置被指稱侵犯他人知識產權的產品、物品或物料；或
- (ii) 本局為參展商或廣告商，或以他們的名義，發布、展示及/或放置，而被指稱侵犯他人知識產權的廣告，包括但不限於在(a)在本局的刊物(不論任何媒體、媒介、形式及格式，亦不論線上或線下)(「**刊物**」)的廣告、(b)在本局的網站、應用程式、平台及/或社交媒體帳戶(包括但不限於www.hktdc.com，以及本局可能不時營運、管理及使用的任何及所有其他網站、應用程式、平台及/或社交媒體帳戶)(「**網站**」)的廣告、(c)在本局的展示物(包括但不限於(i)印刷品及/或數碼檔案、(ii)LED 廣告，例如但不限於燈箱、電視幕牆、參展商位置系統，以及在升降機內或於扶手電梯上的廣告，(iii)橫幅及海報，及/或(iv)不論線上或線下、現存或將來、以任何其他方法或方式進行的廣告宣傳)(「**展示物**」)內的廣告、及/或(d)為了於任何上述刊物、網站及/或展示物內(視情況而定)，被列為精選推廣或宣傳的任何產品、服務或物料，或與之有關的廣告(為便於參考，以上類別(a)-(d)所述的每項物品將於本須知中稱為「**廣告**」)。

此免費的投訴程序並不是投訴人唯一的投訴方法。投訴人亦可以向香港海關及/或香港法院提出投訴。

此投訴程序由本局的駐場法律顧問(「**法律顧問**」)處理，務求幫助確立被投訴人是否須就有關投訴作出答辯，繼而決定有關投訴應否被繼續跟進，還是被從速解決。

本局訂定這套程序的目的是為了協助有關參展商及廣告商從速清理毫無根據的投訴，致力保障他們的權利，因為履行尊重他人的知識產權的義務，是參展商及廣告商的責任。

茲促請所有參展商必須遵守《貿易發展局展覽會參展規則》中的第 43 條。該條列明參展商於本局展覽中的權利與責任；為便於參考，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。」

所有廣告商須注意《香港貿易發展局廣告訂購合約》內條款及條件中的第 2 及 3 條。根據這些條款，

廣告商所提供的各項保證及承諾包括其保證及承諾任何廣告的發布不會侵犯任何第三方的知識產權，以及它已經取得該廣告所需的所有同意及許可。廣告商亦承諾及同意保證本局及其合夥人、代理、聯屬成員、董事、代表、承辦商、人員、僱員及用戶免受因任何違反或被指稱違反廣告商所作出的陳述、保證或承諾、任何侵犯或被指稱侵犯知識產權（包括但不限於因出版任何廣告而引致的專利、註冊外觀設計、版權或商標的侵犯）所引致，及/或因廣告商出版任何廣告（包括但不限於有關其貨物及/或服務的廣告）所引起、衍生、或直接或間接地導致的第三方申索，或與之有關聯的任何指稱、申索、損害、罰款、損失、成本、費用（包括法律費用）及不論如何招致的開支所損害，並承諾及同意對上述各方就上述損害作出完全及無條件的彌償。

每位參展商及/或廣告商同意，他們須遵守當時生效的《香港貿易發展局展覽會保護知識產權措施：參展商及廣告商須知》（「**本須知**」）（而主辦機構可能會不時發出新的須知及更新現行須知），包括但不限於遵守於本須知內列明的任何投訴程序及侵權罰則，不論該參展商或廣告商是作為知識產權被侵犯的投訴人，或是作為被投訴人。假如參展商或廣告商未能或拒絕遵守本須知內的任何條款及條件，主辦機構有唯一及絕對的酌情權：

- (a) 以禁止參展商及其任何代表、母公司、相聯公司、聯屬公司及/或附屬公司參加參加本局以後所舉辦的任何或所有展覽，及/或進一步禁止該參展商的任何代表進入參展商當時正在參展的展覽會場；及/或
- (b) 以拒絕發布、暫停展示、修改/修訂或移除任何廣告，及/或禁止有關參展商或廣告商於本局展覽內或與之有關的任何刊物、網站及/或展示品上，放置、展示或發布廣告。

假如投訴人（「**投訴人**」）按照本須知向主辦機構提出投訴，並要求主辦機構對參展商或廣告商採取行動，投訴人必須同意保證主辦機構、其代理、代表、承包商及僱員（包括但不限於他們的法律顧問）免受任何損害，並對上述各方每位因依據或基於投訴人所提出的投訴、或投訴人根據該投訴所作出的任何其他要求、指示或指令而採取行動，進而導致、與之有關聯及/或不論如何引起的任何性質的任何及所有責任、損失、費用（包括但不限於法律費用）、開支及損害賠償。

每位參展商、廣告商及投訴人同意，不會向主辦機構及其代理、代表、承包商或僱員（包括但不限於他們的法律顧問）採取任何與有關投訴及任何實際或被指稱侵犯知識產權的事件相關、或由之引致的法律行動，或提出任何索償或要求。

處理投訴程序

A．參展商於本局展覽內展示或展覽的物品

1. 假如閣下欲提出有關侵犯閣下知識產權的投訴，閣下須向主辦機構的展覽管理辦事處報告，而本局的展覽負責人員及所聘請的法律顧問將會處理有關投訴。
2. 假若閣下在攤位內收到投訴，閣下應轉介該投訴人到展覽管理辦事處提出有關投訴。
3. 本須知隨附的資料文件及駐場法律顧問皆會指明支持侵權投訴所需的文件種類及其他證據。
4. 假如本局及法律顧問基於投訴人所提供的文件，信納投訴人的知識產權為有效，而且被參展商

在展覽內所展示的涉事產品或物料所侵犯，本局展覽負責人員會前往涉事攤位視察。

5. 本局及法律顧問亦會瀏覽本局的網站，檢查受爭議的產品或任何物品有否於上述網站上展示。如有發現，本局擁有唯一及絕對的酌情權，根據本局之《網上推廣條款及條件》，在不作另行通知的情況下，停用該網址，或將受爭議的產品或物品從主辦機構的網站下架/移除。
6. 作為展覽的主辦機構，本局有權即時為受爭議的產品或任何物品拍攝最少三張照片。
7. 除非有關參展商能向本局及法律顧問提出證據，以顯示他/她有權就有關產品或物料進行交易，並使他們信納，否則該參展商會被要求立即將正在展示中的受爭議產品或物品移除，並禁止在餘下展期展示有關該產品/物料。參展商亦須立即簽字為上述事宜作出承諾。本局會將已簽署的承諾書及照片的副本交予有關的投訴人及參展商，並會自行保留一份已簽署的承諾書及照片的副本作為記錄。
8. 假如本局收到香港海關通知，指香港海關正在調查有關在展覽內的參展商的懷疑侵犯版權及/或商標案件，本局將要求該參展商立即移除正接受調查的產品或物品，並不得在餘下展期內展示它們。
9. 假如有關參展商未能按上述第 6、7 及/或 8 條與本局合作，或拒絕與本局合作，本局有權利及權力，按其唯一及絕對的酌情權，禁止該參展商及其任何代表、母公司、相聯公司、聯屬公司及/或附屬公司參加本局以後所舉辦的任何或所有展覽。
10. 本局職員會定期前往被投訴（而有關投訴被本局及法律顧問所接納）的攤位視察，以再次確保有關參展商不再展示或就受爭議的產品或物品進行交易。假如參展商被發現違反承諾（即於餘下展期內不再展示或處理受爭議的產品及物料），本局有權利及權力，按其唯一及絕對的酌情權，即時取消該參展商及其任何代表、母公司、相聯公司、聯屬公司及/或附屬公司是次展覽的參展權，並毋須退還已收取的參展費，並禁止該參展商及其任何代表、母公司、相聯公司、聯屬公司及/或附屬公司參加本局以後所舉辦的任何或所有展覽。

B．於任何爲了本局展覽，或與之有關或有關聯，而在本局展覽、刊物、網站及/或展示品內展示或發布的廣告中出現的物品

1. 假如閣下欲提出有關侵犯閣下知識產權的投訴，閣下須向主辦機構的展覽管理辦事處報告，而本局的展覽負責人員及所聘請的法律顧問將會處理有關投訴。
2. 假若閣下同時是參展商，並在閣下的攤位內收到投訴，閣下應轉介該投訴人到展覽管理辦事處提出有關投訴。
3. 本須知隨附的資料文件及駐場法律顧問皆會指明支持侵權投訴所需的文件種類及其他證據。
4. 假如本局及法律顧問基於投訴人所提供的文件，信納投訴人的知識產權為有效，而且被受爭議的廣告所侵犯，廣告商會收到通知。
5. 作為展覽的主辦機構，本局有權即時為受爭議的任何物品拍攝最少三張照片。
6. 廣告商在收到上述通知起的 24 小時內，享有向本局及法律顧問提出證據的機會，以顯示它有權放置、展示或發布被投訴的廣告，並使其信納。假如廣告商未能在時限內提出證據，及/或本局及法律顧問並不信納廣告商有權放置、展示或發布該廣告，本局擁有唯一及絕對的酌情權去決

定合適的行動，包括但不限於即時移除、下架、暫停展示及/或修改被投訴的廣告（例如將該廣告內被指稱侵權的物品遮蓋）。

7. 廣告商亦須立即簽字為上述事宜作出承諾。本局會將已簽署的承諾書及照片的副本交予有關的投訴人及廣告商，並會自行保留一份已簽署的承諾書及照片的副本作為記錄。
8. 假如本局收到香港海關通知，指香港海關正在調查有關在展覽內的廣告商的懷疑侵犯版權及/或商標案件，本局將要求該廣告商立即移除該廣告及任何其他正接受調查的相關物品，並不得在餘下展期內展示它們。
9. 假如有關廣告商未能按上述第 6 及/或 7 條與本局合作，或拒絕與本局合作，本局有權利及權力，按其唯一及絕對的酌情權，禁止該廣告商及其任何代表、母公司、相聯公司、聯屬公司及/或附屬公司，於本局網站，以及本局以後所舉辦的任何或所有展覽內展示或發布的任何刊物，放置、展示或發布廣告，及/或進一步終止《香港貿易發展局廣告訂購合約》，並毋須退還已收取的費用。
10. 假如廣告商被發現在餘下展期內違反其承諾（即不再展示、發布及/或以其他方式處理受爭議的廣告宣傳物），本局有權利及權力，按其唯一及絕對的酌情權，即時取消該廣告商及其任何代表、母公司、相聯公司、聯屬公司及/或附屬公司是次展覽的廣告宣傳權，並毋須退還已收取的廣告費，並禁止該廣告商及其任何代表、母公司、相聯公司、聯屬公司及/或附屬公司在本局以後所舉辦的任何或所有展覽中進行廣告宣傳，及/或參加該些展覽，及進一步終止《香港貿易發展局廣告訂購合約》，並毋須退還已收取的費用。

侵權處罰

本局能按照其唯一及絕對酌情權，在下列任何一種情況下，禁止參展商及/或廣告商，及/或其任何代表、母公司、相聯公司、聯屬公司及/或附屬公司參加本局以後所舉辦的任何或所有展覽（包括但不限於廣告宣傳的權利）：

- a. 在本局收到及接納針對參展商或廣告商的侵權投訴後，該參展商或廣告商未能或拒絕：
 - 立即容許本局職員為受爭議的產品、物料或廣告拍攝三張照片；或
 - 應本局要求立即簽署本局提供的承諾書：
 1. 註明它決定移除或決定繼續展示受爭議的產品或物料；或
 2. 如果該投訴涉及廣告，承認本局移除該受爭議廣告的權利，或向本局提出證據，以顯示它有權放置、展示或發布被投訴的廣告，並使本局及法律顧問信納該些證據；

或

- b. 該參展商雖然已應本局要求簽署承諾書，以及讓本局職員在展覽期間為受爭議的產品或物品拍照，但它拒絕移除正在展示中的受爭議產品或物料，而當該參展商因展示該受爭議產品或物料而被控告時，香港法庭裁定申索成功；

或

- c. 參展商雖然立即移除正在展示中的受爭議產品或物料，並已簽署本局提供的承諾書，承諾在餘下展期不再展示或處理該物品，及/或廣告商已簽署承諾書承認本局移除該受爭議廣告的權利，但該參展商或廣告商其後被發現違反承諾。在此情況下，本局更有權即時終止該參展商及/或廣告商在餘下展期內參加展覽及/或進行廣告宣傳的權利，並毋須退還已從該參展商及/或廣告商收取的參展費及/或廣告費；

或

- d. 參展商及/或廣告商雖然在展覽舉行期間與本局合作，包括但不限於移除正在展示中的受爭議產品或物料，但該參展商及/或廣告商在連續兩屆展期中，遭香港法庭最少兩度裁定侵犯了任何投訴人的知識產權；

或

- e. 同一名參展商在連續兩屆展覽期中，最少四度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投訴，而該些投訴皆為有效及被本局及法律顧問所接納；

或

- f. 同一名參展商在任何一年內，最少兩度被投訴，而該些投訴皆為有效及被本局及法律顧問所接納；

或

- g. 參展商及/或廣告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的刑事罪行。

有關知識產權的刑事罪行之刑罰

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，或被處罰款港幣五十萬元及監禁八年，視乎有關侵權行為的性質而定。

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：

1. 將虛假商品說明應用於任何貨品或任何向消費者提供或要約提供的服務；
 2. 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
 3. 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，或將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、或構成餌誘式廣告宣傳、先誘後轉銷售行為或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：

1. 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



2. 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證據

A. 版權

途徑 1：版權作品的版權擁有人在被投訴前的一年內，根據版權條例（香港法例第 528 章）的第 121 條所作出，並證明有關版權的存在及其擁有權之誓章。誓章的範本可於 http://tpwebapp.hktdc.com/fair/Multi_fairs/pdf/Copyright/2.pdf 下載，以供參考

或

途徑 2：若投訴人擁有並能提交下列第 4-6 項的所有證據正本作舉證，以及提交下列所有資料及證據：

1. 版權作品的首次創作或首次發表的日期和地點；
2. 版權作品的作者名稱；
3. 版權作品的擁有人名稱；
4. 版權作品的原作正本（例如設計圖樣、草圖等）- **註：**任何副本，包括影印本或電腦副本，均不會被接受；
5. 證明版權作品之擁有權的證據正本 – 例如若版權作品的作者是投訴人的僱員，則須提供僱傭合約；或倘若版權作品的作者並非投訴人或其僱員，則須提供證明作者向投訴人轉讓版權的版權轉讓書；及
6. (1)可證明首次出售有關版權作品的產品/物品之日期的證據正本（如發票、貨運文件等），或
(2)可證明首次發布有關版權作品之日期的證據正本，而該證據必須清楚指明該產品/物品。

就途徑 2 作出之投訴而言，投訴人亦須在文件證據清單（可於 http://tpwebapp.hktdc.com/fair/Multi_fairs/pdf/Copyright/1.pdf 下載，或於投訴人呈交投訴時，由本局提供）上填寫、提供及確認上述所有資料及證據。假如任何所需資料及/或證據有所缺失或不完整、或倘若本局認為任何所提交的資料及/或證據是在任何方面不可信、相互矛盾、虛假或不準確，有關投訴將不被處理或被拒絕。

B. 商標

1. 有效的香港商標註冊證書正本或核證副本，包括續期證書或續期證明（**註：**任何非香港的註冊均不會被接受）。
2. 香港知識產權署網上檢索系統上最新的商標記錄列印本，而該列印本須顯示該商標的註冊詳情，及於投訴日前的一（1）星期內打印。

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，包括續期證書或續期證明（註：任何非香港的註冊均不會被接受）。
2. 香港知識產權署網上檢索系統上最新的外觀設計註冊記錄列印本，而該列印本須顯示該外觀設計的註冊詳情，及於投訴日前的一（1）星期內打印。

D. 專利

1. 有效的香港專利證書正本或核證副本，包括續期證書或續期證明（註：任何非香港的註冊均不會被接受）；
2. 假如投訴人的投訴所依據的專利是短期專利，下列任何一項有關該專利的證據：
 - a) 於香港進行的實質審查證明書正本或核證副本；
 - b) 向香港專利註冊處處長提交、有關對該專利進行實質審查的請求，連同一份書面確認，指該請求尚未被終結、拒絕或終止；或
 - c) 由法院批給的證明書正本或核證副本，核證法院裁斷投訴人所依據的專利申索是有效的。
3. 由下列人士所發出的書面意見書，指投訴人於香港的專利為有效，而且因參展商透過展示受爭議的產品或物品，而被侵犯；而該意見書清楚及明確地指明被指稱侵權的產品或物品之詳情：
 - a) 已於香港以外的管轄區核證或註冊，並在香港提供專利代理服務的核證或註冊專利代理人；及/或
 - b) 於專利方面有經驗的香港合資格律師。

以及由本局或法律顧問因應案件的實際情況而要求提供的任何其他證據。

證明廣告商放置、展示或發布被投訴的廣告的所需文件證據

1. 證明有關知識產權的存在及廣告商的擁有權的所需文件證據（見上述 A，B，C，D 部中每類知識產權的要求（如適用））；或
2. 有效合約或許可正本或核證副本，以證明知識產權擁有人已授權，或授予該廣告商使用、發布、展示，及/或以其他方式交易或處理在被投訴的廣告中展示的相關作品、商標、外觀設計，及/或專利的權利。

以及由本局或法律顧問因應案件的實際情況而要求提供的任何其他證據。

*本局保留在不作另行通知的情況下，不時修改本須知內的任何內容（包括但不限於提交侵權投訴時所需的文件）。

若本須知的英文版本與中文版本有任何抵觸之處，則以本須知的英文版本為準。
