

Jade crafts shop owner convicted of supplying fake jade with false trade descriptions

A jade crafts shop owner was sentenced to imprisonment for two weeks suspended for one year and was ordered to offer \$10,000 in compensation to a victim today (November 21) at Eastern Magistrates' Courts for supplying fake jade with a false trade description, in contravention of the Trade Descriptions Ordinance (TDO).

Hong Kong Customs earlier received information alleging a jade crafts shop in Sheung Wan made a false claim and sold a jade product which was claimed to be a specific type of jade.

After examination, it was confirmed that the product was man-made glass, different from what had been declared.

Customs reminds traders to comply with the requirements of the TDO and consumers to procure goods from reputable shops.

Under the TDO, any person who supplies goods with a false trade description in the course of trade or business, or is in possession of any goods for sale with a false trade description, commits an offence. The maximum penalty upon conviction is a fine of \$500,000 and imprisonment for five years.

Members of the public may report any suspected violations of the TDO to Customs' 24-hour hotline 2545 6182 or its dedicated crime-reporting email account (crimereport@customs.gov.hk).

LCQ17: The work and performance of the Joint Office

Following is a question by the Hon Paul Tse and a written reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (November 21):

Question:

In 2006, the Buildings Department and the Food and Environmental Hygiene Department (FEHD) set up a Joint Office (JO) dedicated to handling reports on water seepage in buildings. It is learnt that for over a decade, members of

the public have incessantly criticised JO's work efficiency and effectiveness. The following situation occurred whenever officials of JO attended on invitation district seminars concerning water seepage problems in buildings: members of the public who were not satisfied with the officials' explanations surrounded the officials to air grievances and lodge complaints on the spot. Despite the initiative taken by the Audit Commission and the Office of The Ombudsman (The Ombudsman) to investigate the work of JO and put forward improvement proposals, public grievances on JO's poor performance are still increasing steadily. Recently, some staff members of FEHD have even unexpectedly complained to the Public Complaints Office (PCO) of this Council about JO's low efficiency due to its poor system and administration. From 2016 to September this year, The Ombudsman received a total of 360 complaints against JO's failure to properly handle water seepage problems. Among the over 100 000 reports JO received from 2015 to 2017, only 17 per cent of the cases had the source of water seepage identified. It is learnt that whilst JO relies mainly on the colour water test in identifying the source of water seepage, the practice is so ineffective that some cases have remained unresolved for as long as a decade. Even though JO is aware of a number of technologies, measures and methods for identifying the source of water seepage, its work efficiency has not been improved so far. Quite a number of members of the public consider that JO's performance is extremely poor and its operating cost is high, and they question why the Government has not ceased the operation of JO and used the full amount of the funds originally earmarked for its operating expenditure to directly engage or subsidise members of the public to engage private water seepage investigation companies to take up the relevant work instead. In this connection, will the Government inform this Council:

- (1) of the total number of reports on water seepage received by JO in the past three years, together with a breakdown of the figures and their percentages by the testing method adopted for handling the cases (i.e. (i) colour water test, (ii) infrared camera scanning and (iii) microwave tomography scanning);
- (2) of the respective average unit costs of the aforesaid three testing methods;
- (3) given the significant increase in the expenditure of JO year on year in recent years, with its 2018-2019 estimates of expenditure standing high at \$108 million, whether the Government has reviewed why it still significantly increased the estimates of expenditure for JO under the circumstances of many members of the public having criticised JO for its work efficiency and the Audit Commission and The Ombudsman having taken the initiative to investigate the work of JO;
- (4) as I have learnt that, in response to the complaints lodged by some FEHD staff members to PCO of this Council about the poor system and administration of JO, the Government will form a high-level inter-departmental group to thoroughly investigate the situation, of the progress of the relevant work;
- (5) as it has been reported that while JO has still failed to identify the

source of water seepage at the ceiling of a residential unit in To Kwa Wan after conducting investigations by means of colour water test for six years, the private water seepage investigation company hired by the newspaper organisation concerned has taken only half an hour to identify the source of water seepage by making use of infrared camera scanning device and the method of water quality test, whether the Government will approach the newspaper organisation and residential unit concerned to gain an understanding of the case, and study why there is such a huge difference between the testing efficiency of JO and that of the private water seepage investigation company; and

(6) whether it will, from the perspectives such as cost effectiveness and target orientation, consider ceasing the operation of JO in an orderly manner, and use the funds originally earmarked for its operating expenditure to engage private water seepage investigation companies to take up the relevant work instead; if not, of the reasons for that?

Reply:

President,

Proper management and repair of buildings, including resolving water seepage problems, are the responsibilities of building owners and occupiers. However, when the water seepage condition concerned has caused health nuisance, risk to the structural safety of the building or waste in water supplied, the Government will intervene according to the power given under the Public Health and Municipal Services Ordinance (Chapter 132), the Buildings Ordinance (Chapter 123) and the Waterworks Ordinance (Chapter 102) respectively. To strengthen the handling of water seepage condition in buildings, the Government has set up a joint office (JO) between the Food and Environmental Hygiene Department (FEHD) and the Buildings Department (BD) in 2004 to handle public reports on water seepage.

Generally speaking, JO's investigation of water seepage cases is carried out in three stages. JO staff are responsible for the investigation at Stage I (confirmation of water seepage condition) and Stage II (initial investigation includes colour water test of drainage pipes or reversible pressure test for water supply pipes). If the source of seepage could not be identified during Stage II investigation, Stage III investigation (professional investigation) would be pursued. At Stage III, the JO will engage outsourced consultants to assist in carrying out detailed investigation including moisture monitoring at seepage locations, ponding test for floor slabs, water spray test on walls as well as reversible pressure test for water supply pipes to identify the source of water seepage. If the source of seepage can be identified in any stage of investigation, the JO will issue "nuisance notice" in accordance with the Public Health and Municipal Services Ordinance to the responsible party demanding abatement of the nuisance within a specified period.

The JO is facing many challenges in recent years, including the record high number of water seepage reports, difficulties in gaining co-operation

from owners or occupants and the limitations of tests. In face of various challenges, the JO is pressing ahead with various tasks including reviewing comprehensively on its operations, arranging full use of new technological methods for testing in pilot districts to accumulate experience for extension to all districts in the territory, as well as setting up four regional joint offices to rationalise the workflow and strengthen communication between the staff of the two departments with a view to enhancing the overall efficiency of the JO and services to the public.

In consultation with the Food and Health Bureau (FHB), FEHD and BD, the Development Bureau (DEVB) provides a consolidated reply to the six parts of the question as follows:

(1) The current conventional testing methods for the JO to investigate water seepage cases include moisture monitoring at seepage locations, colour water test of drainage pipes, ponding test and water spray test for floor slabs and walls as well as reversible pressure test for water supply pipes. Depending on the seepage situations, each case may involve one or more testing methods mentioned above.

To improve the success rate of identifying sources of water seepage, since August 2013, the JO has commissioned a consultant to pilot the use of infrared thermography and microwave tomography. The purposes of these new testing technologies are the same as those of the use of colour water in conducting ponding and water spray test for floor slabs and walls, which are mainly applicable to the investigation of seepage on floor slabs. However, the conventional test of moisture monitoring at seepage locations, as well as colour water test of drainage pipes and reversible pressure test for water supply pipes as needed, are still required for cases using the new testing technologies. From 2015 to 2017, the purpose of applying the new testing technologies was to confirm its technical feasibility, so they were only used in a small number of complicated cases in the past three years.

The statistics required are provided as follows:

Number of Cases (Note 1)	2015	2016	2017
(a) Reports received	29 617	36 376	36 002
(b) Reports handled	25 093	29 148	30 605
(i) Cases screened out (Note 2)	12 000	13 196	14 732
(ii) Cases investigated (all cases had undergone conventional tests)	13 093	15 952	15 873
– Cases investigated by new testing technologies	18	37	27
(c) Seepage ceased during investigation	4 920	5 385	5 448
(d) Source of water seepage identified	4 679	6 846	6 253

(e) Source of water seepage could not be identified and investigation terminated	3 494	3 721	4 172
(f) Success rate of sources of water seepage identified amongst cases investigated [(d)/(b)(ii)]	36%	43%	39%
(g) Success rate of sources of water seepage identified amongst cases where investigation was completed [(d)/((d)+(e))]	57%	65%	60%

Note 1: Figures in (a) to (g) do not correspond to the number of reports received in the same year

Note 2: These include unjustified cases and withdrawn cases

Since the second half of June 2018, the JO has confirmed to fully apply the new testing technologies in Stage III of the water seepage investigation in three pilot districts (i.e. Kowloon City, Wan Chai and Central and Western). Nonetheless, the new testing technologies have their limitations and cannot be effectively applied under some circumstances, for example, when there is spalling of concrete ceiling at the locations of water seepage, when there is blockage of pipes and other facilities, when there are tile finishes on ceilings. For such cases, the JO has to continue to employ the conventional tests.

From the second half of June to the end October 2018, the JO has applied the new testing technologies in some 70 cases. With the experience and data obtained through wider application of such methods in the pilot districts, the JO will evaluate the effectiveness of the new testing technologies and refine the technical guidelines and procedures relating to the use of the testing methods. The JO will consider whether to extend such methods to all districts of the territory in the second quarter of 2019.

(2) Professional tests are conducted by contract consultants commissioned by the JO for Stage III investigation. Taking an ordinary domestic flat with one kitchen and one toilet as an example, the cost for conducting conventional tests is around \$3,500 per case while the cost for adopting the new testing technologies for similar cases is around \$9,000 in general. The cost does not include the overall staffing and operating expenditure of FEHD and BD at the JO.

(3) to (6) Since its establishment, the JO has endeavored to enhancing the overall efficiency, improving the success rate of investigation and providing better service to the public. In 2016, the Audit Commission conducted a value-for-money audit on the JO and made a series of recommendations. DEVB and FHB have been following up with the two departments to actively implement the various improvement measures.

In fact, the success rate of investigation has improved since the

establishment of the JO. Among the 609 cases of water seepage reports received in total by FEHD for Sham Shui Po district in 2004 before the establishment of the JO, 97 cases were screened out; as for the 512 cases with investigation concluded, only 73 cases could identify the source of water seepage, rendering a success rate of 14 per cent. In 2017, the successful rate among cases where investigations were conducted by the JO was 39 per cent.

The Government has been scrutinising the manpower and expenditure situation of the JO. To cope with the record high number of cases (increased from over 17 000 cases in 2007 to over 36 000 cases in 2017), the JO has to expand its staff establishment and increase its expenditure to engage consultants to provide assistance in carrying out Stage III professional investigation. In addition, we would like to point out that besides investigating the source of water seepage, once the source of seepage could be identified and the case of nuisance established, the JO will issue "nuisance notice" to the person concerned under the Public Health and Municipal Services Ordinance and instigate prosecution against cases not complying with the "nuisance notice". In case access to premises for investigation is denied, the JO has to duly observe the relevant provisions and procedures of the Ordinance in order to gain entry into the concerned premises for investigation. For complicated cases, JO staff will have to conduct different, ongoing or repeated tests and monitoring. The time required for investigating a water seepage case varied due to the complexity of the case and whether the relevant parties are co-operative.

JO's investigation and evidence collection work is conducted in accordance with the standards of executing criminal proceedings (for example, the JO must ensure that the evidence collected is admissible to court). The standard is different from that of a water seepage investigation conducted by a private consultant firm engaged by an individual for the purposes of identifying the repair works needed or instituting civil proceedings. The two cannot be compared in the same light.

To further improve the handling of water seepage cases, in addition to actively exploring the feasibility of fully implementing the new testing technologies, a task force comprising representatives from FHB, DEVB, FEHD, BD and Water Supplies Department and convened by the management levels of FEHD and BD was formed early this year. The task force is currently conducting a comprehensive review of the operation of the JO, including streamlining the work procedures and continuing to implement various recommendations of the 2016 Audit Report. The review is expected to complete in three years.

LCQ20: Food safety issues concerning online food ordering platforms

Following is a question by the Hon Jimmy Ng and a written reply by the Secretary for Food and Health, Professor Sophia Chan, in the Legislative Council today (November 21):

Question:

In July this year, the Centre for Health Protection announced that seven persons had fallen ill after consuming takeaway food from a food premises. It was reported that the food in question was bought from that food premises by an online food ordering platform upon receiving orders from its customers, and then collected by the customers within a specified time at a designated pickup point set up by the platform on the street. Some members of the public are concerned that as online food ordering platforms are currently not subject to regulation, it is difficult to ensure that the food is stored at a proper temperature and free from contamination during transportation and while awaiting collection. In this connection, will the Government inform this Council:

(1) whether it has compiled statistics on the respective current numbers of (i) operators selling non-prepackaged food online without physical premises and (ii) online food ordering platforms;

(2) of the number of complaints received by the Government in the past three years concerning the quality of food sold by online food ordering platforms;

(3) given that currently food factories selling restricted food online must obtain relevant permits, and the licensing conditions include certain regulations about food safety (e.g. the food must be obtained from lawful sources and stored at a proper temperature at all times, and the permittees must take measures to prevent the food from cross-contaminating during transportation), whether the Government has plans to expand the scope of such permit system to cover (i) online food ordering platforms and (ii) the various types of non-prepackaged foods in order to ensure food safety; if so, of the details; if not, the reasons for that;

(4) whether it will use the Measures for the Supervision and Administration of Food Safety in Online Catering Services promulgated by the China Food and Drug Administration as a blueprint for regulating issues relating to food safety of online food ordering platforms; if so, of the details; if not, the reasons for that; and

(5) given that currently various online food ordering platforms have posted on their websites limitation of liability clauses (e.g. they are not liable for the quality of food supplied by a third party, and the amount of compensation payable to a customer is capped at the value of the order),

rendering it difficult for customers to seek reasonable compensation, whether the Government will consider establishing a mechanism to protect the consumer rights and interests of those customers; if so, of the details; if not, the reasons for that?

Reply:

President,

E-commerce is getting more and more popular, including food transaction through the Internet, mobile applications or social media platforms (hereafter referred to as "online food sale").

Currently, food safety and food trade operations are regulated in various aspects under the laws of Hong Kong. Any person who undertakes business relating to producing, trading, importing or distributing food must meet the requirements of relevant legislation, irrespective of whether the business is conducted in physical premises, or through any means of transactions (including face-to-face, phone, electronic media, etc.).

The Public Health and Municipal Services Ordinance (Cap. 132) stipulates that all food for sale for human consumption in Hong Kong, whether imported or locally produced, must be fit for human consumption.

Under the Food Business Regulation (Cap. 132X) (the Regulation), any person who carries on any business which involves the preparation of food for sale for human consumption outside the premises, including online sale of the food concerned, must obtain a food factory license issued by the Food and Environmental Hygiene Department (FEHD). In addition, depending on the circumstances, modes of operation and the types of food for sale, operators of online food sale business must obtain relevant licenses or permits issued by FEHD. Any person operating online food sale business shall not sell any restricted food specified in the Regulation (including sashimi, sushi, oysters to be eaten in raw state, etc.) unless the Director of Food and Environmental Hygiene has granted written permission to the person to do so.

FEHD currently adopts the following licensing requirements to further safeguard the food safety of online food sale:

(a) FEHD requires that, with effect from February 2016, operators who do not have physical premises have to apply for permits if they sell restricted food online. Permits are issued on the conditions that the operators must provide particulars, such as the permit number, the type(s) of restricted food permitted for sale and the business address, on their websites and printed promotional materials for consumers' reference and verification on FEHD's website. In addition, the restricted food must be obtained from lawful sources and prepackaged by the suppliers before delivering to customers, the packages shall not be tampered with during transportation to prevent cross-contamination, and the food shall be stored at a safe and proper temperature at all times; and

(b) Operators of food premises which are holders of food business licenses or permits (except for Factory Canteen License, Cold Store License, Fresh Provision Shop License with endorsement(s) for sale of live poultry and/or processed fresh poultry carcasses and offal, and Permit to Sell Food by means of Vending Machine) must comply with the conditions stated in paragraph (a) above if they also carry out online food sale.

The list of food premises issued with food business licenses or permits, as well as operators without physical premises issued with permits for online sale of restricted food, are available on FEHD's website for public inspection.

Our reply to the various parts of the question is as follows:

(1) As at October 31, 2018, FEHD has issued 351 permits for online sale of restricted food. FEHD does not keep statistics on food premises issued with food business licenses or permits which are also involved in online food sale.

FEHD has been closely monitoring online food sale activities, including online traders that are not involved in food production and do not have physical premises. If FEHD suspects that any online food sale activity involves unlicensed business, or has doubts on the source and safety of the food concerned, it will conduct investigations, including decoy operations to collect evidence and information, and take appropriate actions.

(2) From 2016 to October 31, 2018, the Centre for Food Safety (CFS) of FEHD has received seven food complaints concerning ordering food through mobile applications and two cases of food poisoning referred by the Centre for Health Protection of the Department of Health concerning ordering food through mobile applications. CFS has taken follow-up actions immediately, including seizing food exhibits, taking food samples for testing, and taking appropriate actions.

(3) and (4) As mentioned above, food safety and food trade operations are regulated by the laws of Hong Kong in various aspects. We will continue to make reference to the practices of other places in monitoring and regulating online food sale, and consider further improving our regulation of online food sale platforms.

(5) According to the Commerce and Economic Development Bureau, existing laws in Hong Kong already impose controls on contracts relating to consumer transactions. For instance, section 7(1) of the Control of Exemption Clauses Ordinance (Cap. 71) stipulates that a person cannot by reference to any contract term or any notice given to persons generally or particular persons, exclude or restrict his liability for personal injury or death resulting from negligence. In addition, the Supply of Services (Implied Terms) Ordinance (Cap. 457) (the Ordinance) imposes terms to be implied in contracts for the supply of services. For example, section 5 of the Ordinance provides that where the supplier is acting in the course of a business, the supplier shall carry out the service with reasonable care and skill. Section 8(1) of the

Ordinance stipulates that if a party to a contract is a consumer, the other party cannot, by reference to any contract term, exclude or restrict any of his liability arising under the contract by virtue of that Ordinance. Depending on the actual circumstances of the cases concerned (including contract terms), consumers may lodge claims under the contract law and/or any other relevant laws.

Consumers may also seek assistance from the Consumer Council. The Consumer Council acts as a conciliator in handling disputes between consumers and traders. It assists traders and complainants to resolve their disputes, for instance, by trying to contact the traders with a view to helping both parties reach a mutually satisfactory settlement through conciliation.

LCQ12: Hospital accreditation programme

Following is a question by the Professor Hon Joseph Lee and a written reply by the Secretary for Food and Health, Professor Sophia Chan, in the Legislative Council today (November 21):

From April 2009 to January this year, the Hospital Authority (HA) had implemented a hospital accreditation programme (the accreditation programme) by phases in public hospitals, with a view to enhancing the accountability of hospitals for service quality and safety. In this connection, will the Government inform this Council whether it knows:

(1) the (i) expenditure incurred and (ii) manpower resources deployed (including the respective numbers of staff members and working hours involved, broken down by staff grade) in each of the past five years by public hospitals for implementing the accreditation programme, with a tabulated breakdown by name of hospital and the cluster to which the hospital belonged; and

(2) the service quality improvement initiatives identified, by HA in each of the past five years, during the implementation of the accreditation programme, and whether HA allocated, in respect of such initiatives, additional financial and manpower resources to the various public hospitals; if HA did, of the details with a tabulated breakdown by name of hospital and the cluster to which the hospital belonged; if not, the reasons for that?

Reply:

President,

My reply to the various parts of the question raised by the Professor

Hon Joseph Lee is as follows:

(1) The Hospital Authority (HA) has implemented in phases a hospital accreditation programme in public hospitals of all clusters since 2009, with a view to enhancing the quality of hospital services and patients' safety. Hospital accreditation is one of the HA's continuous quality improvement programmes. The recurrent funding for implementing the hospital accreditation programme and related continuous quality improvement programmes in the clusters is currently about \$60 million per year. The funding is mainly used for commissioning an internationally recognised accrediting organisation to conduct a series of independent and objective assessments of hospital performance, developing territory-wide accreditation standards, providing staff training, providing support for hospital clusters in their accreditation and improvement work, and funding daily expenses, etc. The hospital accreditation programme covers areas such as clinical services, logistics support and institutional management, and is a cross-cluster and inter-departmental continuous quality improvement programme that engages staff of various grades. Staff involved in the hospital accreditation programme are also engaged in other healthcare services. Hence, the HA does not have a breakdown of the relevant grades, number of staff and working hours involved in the programme.

(2) Hospital accreditation is one of the HA's continuous quality improvement programmes. The HA has put in place an established mechanism, under which hospital clusters are allocated additional funding each year through the annual planning exercise for increasing manpower and improving services according to the needs of individual clusters, which are determined by factors such as the population growth of the catchment districts, and manpower and service arrangements of hospitals. The HA does not have a breakdown of additional resources and manpower deployed for implementing the hospital accreditation programme.

LCQ21: Implementation of Trade Descriptions Ordinance

Following is a question by the Hon Holden Chow and a written reply by the Secretary for Commerce and Economic Development, Mr Edward Yau, in the Legislative Council today (November 21):

Question:

The Customs and Excise Department has been adopting a three-pronged approach (i.e. compliance promotion, law enforcement, as well as publicity and education) for implementing the Trade Descriptions Ordinance (Cap 362) (the Ordinance). Some frontline staff members have relayed that the Ordinance

has an extensive scope and the relevant workload is heavy, but the manpower for implementing the Ordinance has not increased in the past three and the current financial years, which has been maintained at 190 persons. As a result, their work pressure has been increasing day by day. In this connection, will the Government inform this Council:

(1) on law enforcement for the Ordinance, of the respective numbers of (i) prosecutions and (ii) convictions during the period from October last year to October this year;

(2) of the respective manpower currently deployed for performing work on (i) compliance promotion, (ii) law enforcement and (iii) publicity and education, in respect of the Ordinance; and

(3) whether it has plans to increase, in the next financial year, the staffing establishment for implementing the Ordinance?

Reply:

President,

The Government attaches great importance to protecting consumer rights. The Trade Descriptions Ordinance (Cap 362) (the Ordinance) prohibits specified unfair trade practices deployed by traders against consumers, including false trade descriptions, misleading omissions, aggressive commercial practices, bait advertising, bait-and-switch and wrongly accepting payment. The Customs and Excise Department (C&ED) is the principal agency to enforce the Ordinance. It has been adopting a three-pronged approach in enforcing the Ordinance proactively, which include conducting briefings for and visits to traders to tender advice and guidance to them on the legal requirements under the Ordinance and measures that should be taken for compliance; taking necessary and timely enforcement actions to combat unfair trade practices; and launching extensive publicity and education programmes to raise consumers' awareness of unfair trade practices through joint efforts with the Consumer Council.

My reply to the three parts of the question is as follows:

(1) Between October 2017 and October 2018, C&ED initiated 90 prosecutions under the Ordinance, among which 66 cases resulted in convictions, while court proceedings are in progress for 14 other cases.

(2) At present, 190 officers of C&ED are responsible for the enforcement of the Ordinance. Depending on the actual circumstances, C&ED will deploy manpower flexibly for compliance promotion, enforcement action as well as publicity and education work to implement the Ordinance. It is difficult to quantify the manpower deployed for each task separately.

(3) As the Ordinance covers a wide range of goods and services, in order to facilitate traders' compliance and optimise the use of enforcement resources, C&ED adopts a risk-based approach under which priority is accorded to handling cases that may have significant implications on consumers, the trades or the community at large. C&ED will review the manpower establishment

from time to time in view of the implementation situation of the Ordinance, and will ensure that the Ordinance is enforced effectively through manpower redeployment or application for additional resources according to established procedures when necessary.