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電話 TEL. : (852) 2867 4790

電郵 E-MAIL: crenq@cr.gov.hk

網址 WEBSITE: www.cr.gov.hk

QUEENSWAY GOVERNMENT OFFICES
15TH FLOOR, 66 QUEENSWAY
HONG KONG.

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COMPANIES REGISTRY EXTERNAL CIRCULAR NO. 4/2011

Shadow Companies

This circular is to alert you to the problem of shadow companies and provide information on steps being taken by the Companies Registry to address the problem.

Shadow Companies

2. In recent years, there have been reports of companies incorporated in Hong Kong with names which are very similar to existing and established trademarks or trade names of other companies. These companies, which are commonly referred to as “shadow companies”, wrongfully pose as representatives of the owners of such trademarks or trade names to produce counterfeit products outside Hong Kong.

3. In Hong Kong, like all comparable major common law jurisdictions, company name and trademark registrations are governed by two completely separate and independent statutory regimes. It should be noted that if an adopted company name infringes the intellectual property rights of a third party, the company may face legal action by that third party. Infringement of the intellectual property rights of others may attract criminal or civil sanctions, either in Hong Kong or elsewhere. The registration of a company name with the Companies Registry does not confer any trademark rights or any other intellectual property rights in respect of the company name or any part thereof. Applicants should, therefore, ensure that they do not adopt a company name which resembles a registered trademark or trade name or is “too like” the name of another company.

Actions Taken by the Companies Registry

4. To address the problem of shadow companies, the Registrar of Companies (“the Registrar”) has been and will continue to take the following actions and measures in appropriate cases:

- (a) issuing direction to change name under section 22(2) and section 22(3B) of the Companies Ordinance where the name is the same as or too like either (i) a name appearing (or which should have appeared) in the Registrar’s index of company names or (ii) a body corporate incorporated or established under any ordinance; or upon receipt of an order made by a Hong Kong court restraining the company from using the name or any part of the name;

- (b) where a company fails to comply with the Registrar's direction to change name,
 - (i) taking prosecution action against the company and / or its officers;
 - (ii) replacing the company name with the company registration number under section 22AA(2);
 - (iii) posting the List of Companies in Default on the "Statistics" – "Non Compliance with Directions to Change Name / Replacement of Company Name by Company Registration Number" section on the Companies Registry's website at www.cr.gov.hk so as to alert members of the public to the identities of those companies which are in default; and
 - (iv) striking the name of the company off the register pursuant to section 291 if there is reasonable cause to believe that the company in question is not carrying on business or in operation;
- (c) pursuant to section 20(2A), not permitting a company to register with a name which is the same as that for which a direction has previously been given; and
- (d) posting weekly lists of newly registered companies on the "Statistics" – "Lists of Newly Registered Companies (Weekly)" section on the Registry's website to facilitate reference by owners of trademarks or trade names.

5. Non-compliance with a change of name direction may result in the prosecution of the company and / or its officers. The maximum penalty for failure to comply is a fine of HK\$100,000 and imprisonment of 6 months, as well as a daily default fine of HK\$700 for continuing default.

6. The Companies Registry maintains ongoing dialogue with mainland authorities to promote awareness of the differences between company name registration and trademark registration. Apart from including a warning statement in the certificate of incorporation, the Companies Registry will, in appropriate cases, issue an official notice to relevant mainland authorities confirming that registration of a company name in Hong Kong does not confer any rights to the use and ownership of any trademark or trade name that may be included in a company name.

Enquiries

7. Enquiries concerning this circular should be directed to Ms. Fanny Lam, Assistant Registry Manager (New Companies), at Tel: (852) 2867 4790 or email: fannylam@cr.gov.hk.

Ms Ada LL CHUNG
Registrar of Companies