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Hong Kong Sar, China: Law and Practice
& Trends and Developments

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Angus Forsyth & Co

HONG KONG SAR, CHINA

Law and Practice

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Contents

Angus Forsyth & Co offers services in commercial and company, mergers and acquisitions, intellectual property in trade marks, registered design, copyright, information technology, advertising law and all relevant coverage in issues of personal data privacy, immigration matters, and commercial and residential tenancies. The firm also acts in matters of wills, trusts, probate of Hong Kong estates, powers of attorney, and a wide range of notarial certification and obtaining of apostilles.

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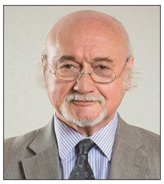

Angus Forsyth was admitted as a solicitor in England in 1970 and in Hong Kong in 1971. He co-founded the well-established Hong Kong law firm of Stevenson, Wong & Co in 1978 and was senior partner between 1991 and 2012 before becoming a consultant to the firm. On retiring from this consultancy in 2017, he established the sole proprietorship of Angus Forsyth & Co. Angus is Chairman of the Board of Governors of Musica Viva Limited (opera and music production) and legal adviser to New Life Psychiatric Rehabilitation Association, Friends of Hong Kong Museum of Art and Hong Kong International Film Festival Society Limited.

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1. Legal Framework and Regulatory Bodies

1.1 Primary Laws and Regulation

There is no single legislated controlling enactment governing advertising practices in Hong Kong SAR. Hong Kong has no Advertising Standards Authority. In a variety of ordinances there are restrictions and controls applying to the public market. The Communications Authority established under the Broadcasting Ordinance licences the functions of television and radio broadcast with specific dedicated code requirements, respectively, under the Broadcasting Ordinance for television and the Telecommunications Ordinance for sound broadcasting upon advertising on television and radio. The broadcasting licensees are responsible for ensuring that advertisers comply with these licensing regulations under the Trade Descriptions Ordinance. The Customs and Excise Department will prosecute false trade descriptions applicable to trade in goods or services.

1.2 Enforcement and Regulatory Authorities

The Communications Authority enforces adherence to the advertising standards required by the respective television and radio Codes of Practice that broadcast licensees must observe. These Codes of Practice specifically prohibit inclusion of a specified number of types of products and services.

The Personal Data (Privacy) Commissioner is empowered under the Personal Data (Privacy) Ordinance to arrange for prosecution of offences against outreach of commercial advertising in contravention of the direct selling restrictions under the Personal Data (Privacy) Ordinance without the prior written consent of the addressee.

The Licensing Office Authority administers due compliance with outreach by duly licensed service providers in their advertisement of trade promotion competitions.

The Customs and Excise Department will prosecute false advertisements under the Trade Descriptions Ordinance.

1.3 Liability for Deceptive Advertising

The Trade Descriptions Ordinance imposes controls upon extravagant and deceptive advertising in all media.

The Broadcast Codes prohibit any misleading claim or implication that the product or service being advertised or any ingredient of it has some special feature or composition that is in fact not clearly available and comprehensible in public access. Care should be taken not to mislead viewers or listeners and actively to present results of research surveys or tests relating to the advertised produce or service. Data and scientific jargon which are not relevant to a specific product or service should not be used to make claims appear to have a scientific basis that they do not actually possess or clearly associate with.

The Trade Descriptions Ordinance provides that a false trade description (which can extend to include an oral statement), whether applied to goods or communicated in respect of the provision of services, is defined as meaning "a trade description that is false to a material degree, or a trade description which, though not false, is misleading, that is to say, likely to be taken for a trade description of a kind that would be false to a material degree".

As an example, a cream that contains synthetic materials, such as preservatives, should not be described as "100% natural" and a beauty consultant should not tell a consumer that a slimming product has been acquired by a celebrity for their personal use with good results if that celebrity has never acquired nor agreed to acquire the product.

Misleading omissions can be just as likely to constitute a false trade description as a misleading positive statement where the result of the misleading omission does not clearly give consumers sufficient material information about the goods or services as is necessary for the consumer to make a fully informed transactional decision.

By way of example, the use of small fine print to state a unit of quantity of goods (even if the price is given in a clear manner) or the unit of quantity is so small that an average consumer could not read it in a readily comprehensible manner; and, where a duty group promotes a stem cell transfusion service which it states to be performed by a medical practitioner without disclosing the risk of the medical treatment, omission of such disclosure is itself misleading.

Further prohibited by the Trade Descriptions Ordinance is any aggressive commercial practice, which is defined as:

"a practice that significantly impairs or is likely significantly to impair the freedom of choice of the average consumer or where conduct in relation to the goods or services concerned involves in any way the use by the Seller or service provider of harassment, coercion or undue influence which causes or is likely to cause a consumer to make a decision that in the absence of such blandishment he or she would not have made a decision to buy the goods or the services concerned".

1.4 What Is Advertising?

"Advertisement" is defined in the Trade Descriptions Ordinance as including "a catalogue, a circular and a price list". This Ordinance prohibits false trade descriptions, defined as a trade description which is false to a material degree or a trade description which, though not false, is misleading – ie, likely to be taken for a trade description of a kind that would be false to a material degree. This Ordinance further penalises forgery of trade marks and prohibits false trade descriptions in respect of services as well as goods.

The Television and Radio Codes of Practice define an advertisement as:

"any material included in a licensed TV or radio service which is designed to advance the sale of any particular product or service or to promote the interests of any organisation, commercial concern or individual whether by way of words and/or sound effects (including music) and whether in the form of direct announcement, slogans, descriptions or otherwise and includes any promotional reference to any products or services in the course of a TV or radio programme".

1.5 Pre-Approvals

Pre-approval is required by the Home Affairs Department for the content of any advertisement for any competition arranged under and subject to the Licensing Authority requirements for a trade promotion competition, for it to be exempted from the game of chance competition prohibition under the Gambling Ordinance.

1.6 Intellectual Property and Publicity Rights

Use of intellectual property is subject to the rights of the author in copyright to restrain unauthorised use of copyright material. The Personal Data (Privacy) Ordinance regulates the use of the name, picture, voice or likeness as personal data in advertising of any data subject without the prior written consent of the data subject.

The Personal Data (Privacy) Ordinance further prohibits direct selling to a prospective customer without providing for express consent of the target with a communicated formula provided by the approaching data user for consent confirmation of the addressee to the solicited target addressee.

1.7 Self-Regulatory Authorities

The basic self-regulatory authority governing advertising practices is the Association of Accredited Advertisers. It is a self-regulatory body to which all advertising agencies and advertisers belong, and imposes certain quality control upon advertising practices.

1.8 Private Right of Action for Consumers

Any person, firm or company being the subject of negative advertising practices can take private legal action against the advertiser for publication of personal data without consent of the owner. Action lies in the civil courts for damages, which must be proved.

1.9 Regulatory and Legal Trends

The past 12 months have not seen significant trends and/or cases regarding deceptive advertising. However, in mid 2023 an education centre with five tenanted branches around Hong Kong had provided pre-paid tutorial programmes mostly registered under the Education Ordinance as private schools offering non-formal curriculum. Attendance was under prepaid tuition fees. The five branches closed and the Customs and Excise Department (as the responsible controlling authority under the Trade Descriptions Ordinance) investigated whether the service provider wrongly accepted pre-payment from its attending students in circumstances where there was no possibility of providing the purchased courses, all in contravention of the Trade Descriptions Ordinance.

1.10 Taste and Cultural Concerns

The Broadcasting Codes require adherence to general principles of good taste in advertising.

1.11 Politics, Regulation and Enforcement

On 30 June 2020, the Standing Committee of the National People's Congress validly enacted the National Security Law as a preventative measure against the then immediately prior practices of secession of Hong Kong from China whether or not by force or threat of force, subversion against the government of China, terrorism and, lastly, collusion with foreign organisations. This law enables authorities to detain and search suspected infringers and requires publishers, hosting services and internet service providers to remove content in violation of any one or more of these four crimes. It further mandates the government of Hong Kong to strengthen matters concerning national security including the media and the internet. This new law expressly does not have antecedent or retroactive effect and since its enactment there have been only a very limited number of cases of infringement. The National Security Law expressly provides for carefully enacted re-statement of the continued application of existing Hong Kong law adopting the International Covenant on Civil and Political Rights and freedom of expression under Hong Kong's Basic Law.

2. Advertising Claims

2.1 Deceptive or Misleading Claims

The applicable standards to identify deceptive or misleading claims are principally identified in the Trade Descriptions Ordinance.

The Broadcast Codes prohibit any misleading claim or implication that the product or service being advertised, or any ingredient of it, has some special feature or composition that is incapable of being established as the truth. Care should be taken not to mislead the viewers or listeners as the case may be; and results of research surveys or tests of an advertised product or service should not be deployed to dress up claims with an apparent scientific basis which it does not possess. The Trade Descriptions Ordinance provides that a false trade description, whether written or oral and however communicated and whether applied to goods or communicated in respect of the provision of services, means a trade description that is false to a material degree or which, although not false, is misleading.

For example, a cream that contains synthetic materials, such as preservatives, should not be described as "100% natural". If a beauty consultant addressing a consumer or potential consumer states that a named celebrity has personal use of a specific product with good results but such celebrity has never acquired or agreed to acquire the product, then the trade description involving the celebrity and the product is false. Factors available to help identify a false trade description are:

- form and content;
- time, place, manner and frequency of publication; and
- any other relevant matters.

Misleading omissions can be as likely to constitute a false trade description as a misleading positive statement where the result does not give consumers sufficient material information about the goods or services as is necessary for them to make a fully informed transactional decision in respect of the product or service.

2.2 Regulation of Advertising Claims

See **2.1 Deceptive or Misleading Claims** for the Trade Descriptions Ordinance provisions relating to claims that are false to a material extent. Claims for specifically identified benefits should be supported by independent verification such as specific quality research findings, published benchmark standards and reports.

2.3 Substantiation of Advertising Claims

Support for advertising claims can be provided by way of thoroughly credible market survey and specific third-party confirmation by expert reports as justification of what would otherwise be matters of unsupported opinion only. The Broadcast Codes require that all false claims and best-selling claims should be capable of substantiation either by research or by testing by the advertiser or independently audited sales figures standard in the particular trade.

2.4 Product Demonstrations

The Broadcast Codes and the 4As Code contain specific restrictions upon advertising content for product performance and there are specific controls and prohibitions upon performance claims provided under the Trade Descriptions Ordinance.

2.5 Endorsements and Testimonials

Testimonials in advertising are required to comply with the Trade Descriptions Ordinance and false or misleading testimonials can be restrained by action for misrepresentation. They may also induce reliance by a consumer upon the testimonial, which if false or misleading can found legal action by an injured consumer for damages and possibly for injunction.

2.6 Environmental Claims

Major government or privately promoted decisions on projects of land or environmental development are best supported by an environmental assessment impact report.

2.7 Disclosures

There are no general rules governing the use of disclosures in advertising. There are specific rules upon the nature, emphasis and boastful content under the Trade Descriptions Ordinance.

2.8 Other Regulated Claims

Hong Kong is a signatory to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and accordingly prevents inclusion of geographical indicators in trade mark applications in Hong Kong.

3. Limitations and Special Laws

3.1 Representation and Stereotypes in Advertising

There are no special laws or regulations that address stereotyping in advertising or inclusion, diversity and equality more generally.

3.2 Children

There are various statutes and codes, including the Broadcast Codes and the Code of Practice of the Association of Accredited Advertising Agencies of Hong Kong. In relation to children, there are restrictions on the following:

- tobacco advertising;
- alcohol advertising;
- food nutritional value advertising without sound scientific evidence;
- timing of broadcast advertising; and
- product labelling.

The Broadcast Codes prohibit a wide range of advertisements and participation in advertisement, and the showing of and timing of advertisements with or to children. They also prohibit transmission of infringing advertisements at times within – or in close proximity to – programmes targeting children.

3.3 Dark Patterns

There are no special laws or guidance in Hong Kong relating to “dark patterns” in advertising, except that it is now internationally established that dark patterns can be represented by “bait and switch”, which is defined under the Trade Descriptions Ordinance as coupling an invitation to purchase a product or service at a specified price (followed by a refusal to show or demonstrate that product) with the demonstration of a defective example, with the intention of promoting an actual different product (the “switch”).

3.4 Sponsor Identification and Branded Content

The Code of Practice on Television Advertising Standards, published on 15 December 2023, requires sponsorship to be clearly identified in the form of sponsor identification at the beginning and/or end of the programme and/or within the programme by way of title sponsorship, front and/or end sponsor credits or sponsorship references. The sponsor identification may include references to a sponsor’s name, their house/trade/brand/product/service name, trade mark/logo, advertising slogan and attribute of the sponsor as well as other sponsor’s items such as product image, virtual product and QR code all clearly identifiable as sponsor identification in terms of presentation or by context.

The display of sponsor identification within programmes is subject to the following:

- sponsor identification should not contain superlative claims (unless they are capable of substantiation), prize information and indirect exhortations to the viewing public to purchase, rent or use the sponsor's products or services;
- viewers should not be subject to hidden editorial influence; and
- sponsor identification within a programme should not be too frequent or distraction that might affect the viewing pleasure of an outreach view.

Title of a programme or a programme segment/programme feature is allowed and sponsor identification may be incorporated into sponsored programme titles, programme segment titles and programme feature titles subject to the basic ground rules set out above.

There are specific sponsorship considerations for specific types of programme such as children's programmes, educational programmes and current affairs programmes.

3.5 Special Rules for Native Advertising

Native advertising is paid promotional content designed to match the visual design, style and function of non-paid content on the platform where the native advertising appears. Accordingly, it provides a seamless and non-disruptive user experience effectively integrating and branding the native advertised material such that the whole looks and feels like the surrounding organic content. Specifically, advertising of this category, with the look and feel of editorial or entertainment content, must be identified as such in order to constitute an honest and explicit connection to the specific editorial or entertainment content being communicated.

4. Comparative Advertising and Ambush Marketing

4.1 Specific Rules or Restrictions

The 4As Code expressly does not permit its members to engage in "disparaging" advertisement, which is defined as "Advertisement that seeks to compare a product or service to a similar or other product and service in a way that is misleading, derogatory or false in implication or in fact."

The Broadcast Codes require that advertising matter should contain no claims intended to disparage competitors, competing products or other industries, professions or institutions. The Code of Practice (the 4As Code) does not permit its members to indulge in disparaging advertisement, defined as advertisement that seeks to compare a product or service to similar or other products and services in a way that is misleading, derogatory or false in implication or in fact.

4.2 Competitor Copyrights and Trade Marks

Action lies against an advertiser for the tort of passing off by way of the use of the name of a competitor or trade mark of a competitor or like packaging of a competitor without the authority of the genuine third-party owner. The Broadcast Codes require that advertising matter should contain no claims intended to disparage competitors, competing products or other industries, professions or institutions. The Code of Practice published by the 4As does not permit its members to publish disparaging advertisement, which is in this context defined as "advertisement that seeks to compare a product or service with or to similar or other products and services in a way that is misleading, derogatory or false implication or in fact". An extension to this Code prohibits any implication that a competitive product is not fit for purpose.

The author as defined in the Copyright Ordinance is able to restrain unauthorised use of the copyright of the author.

Regarding trade marks, the Trade Descriptions Ordinance provides that any person forging, that is applying falsely to any goods or making related dies or blocks of any trade mark, commits an offence unless proving that he acted without intent to defraud.

4.3 Challenging Comparative Claims Made by Competitors

Action can be raised to restrain a comparative advertising claim. As stated in **4.1 Specific Rules or Restrictions**, it is entirely possible for "disparaging" advertisement to be objectionable to the disparaged competitor. Both in regard to the 4As Code in respect of a specific member of the Association of Accredited Advertising Agencies and in conformity with the requirements of the Broadcast Codes where there is a breach of any of these applicable requirements by an advertiser and its claim, it is possible for the competitor provider of goods or services to make appropriate complaint to the Association or the Communications Authority in relation to the Broadcast Codes for appropriate review and examination by each of these authorities of the matter complained of. Additional action can be taken by the Customs and Excise Department in relation to the Trade Descriptions Ordinance if the comparative claim constitutes a false trade description.

4.4 Ambush Marketing

Ambush marketing is the marketing of the activity of an entity that is not an organiser or an official sponsor of an event, constituting an active attempt simply to use or to create an erroneous and false impression of association with the event and taking a free-rider advantage of the reputation and outreach of the event, without the permission of the event owner/organiser and without incurring any or a small amount of the substantial sponsorship cost involved with official sponsorship of the particular event. There is no current specific Hong Kong ambush marketing legislation to protect Hong Kong-centred or Hong Kong sponsorship expenditure. Common law provides right infringement remedies in certain circumstances – such as passing off, trade mark or copyright violation or misrepresentation, or registering fake similar domain names – but the rights to take these actions are personal to the alleged infringed sponsor and, in the absence of specific contractual entitlement, they are not automatically and generally available across the board either to restrain or to entitle marketing participators, as the case may be.

5. Social/Digital Media

5.1 Special Rules Applicable to Social Media

The Broadcasting Ordinance expressly provides that the internet is not to be regarded as a television programme service and matter communicated by way of social media on the internet is therefore not of itself subject to regulation by the government.

5.2 Liability for Third-Party Content

The posting by others on the site or social media channels of an advertiser is not the liability of the advertiser provided that the advertiser had no responsibility for the editorial content of the third party posting content.

5.3 Disclosure Requirements

As stated above, online disclosures and disclosures in social media as the internet communication forum is not a television programme service.

5.4 Requirements for Use of Social Media Platforms

Hong Kong does not prohibit social media platforms and all available social media platforms can communicate without restrictions on content except in relation to the normal rights of third parties in common law or statute such as breach of copyright, breach of trade mark and personal data privacy restrictions.

5.5 Influencer Campaigns and Online Reviews

5.5.1 Special Rules/Regulations on Influencer Campaigns

Hong Kong has no special rules or regulations that apply to the use of influencer campaigns, and such campaigns are subject to application of the general law and specific legislation relative to content.

The influencer can, of course, benefit the product subject of the influencer output and to that extent could be regarded as an advertiser. To put both at ease, the influencer should require the execution of a comprehensive release by the producer.

5.5.2 Advertiser Liability for Influencer Content

There is no such legally imposed duty but an advertiser is best advised to monitor the content posted by an influencer in order to ensure no breach of the general law or liability to specific audiences applicable to the content being posted.

5.5.3 Consumer Reviews
There are no special rules or regulations applicable to the solicitation and use of consumer reviews save that under normal common law principles misrepresentation of consumer reviews can be actionable at the instance of any third party.

6. Privacy and Advertising

6.1 Email Marketing
The Personal Data (Privacy) Ordinance provides prohibition against direct selling by an advertiser or seller to any person without the express prior consent of the addressee, which must also be provided with a workable response channel for communicating the consent. Liability is provided by way of fine and/or imprisonment.

6.2 Telemarketing
Please see **6.1 Email Marketing**. Furthermore (as provided at **5.1 Special Rules Applicable to Social Media**), the Broadcasting Ordinance expressly provides that the internet is not to be regarded as a television programme service and matter communicated on the internet is therefore not of itself subject to regulation by the government.

6.3 Text Messaging
There are no specific rules applicable to text messaging as such.

6.4 Targeted/Interest-Based Advertising
"Consumer data" can be seen as falling into the definition of "personal data" for the purposes of the Personal Data (Privacy) Ordinance, which contains observance of specific scheduled personal data principles.

6.5 Marketing to Children
The Personal Data (Privacy) Ordinance applies to the collection by a data user of any data subject information, whether adult or child.

The Broadcast Codes prohibit a wide range of advertisements, participation in advertisements and the showing of advertisements with or to children, and prohibit transmission of these advertisements at times within or in close proximity to programmes targeting children.

6.6 Other Rules
There are no other important privacy rules specifically related to advertising in the jurisdiction of the Hong Kong SAR.

7. Sweepstakes and Other Consumer Promotions

7.1 Sweepstakes and Contests
There are two main pieces of gambling-related legislation in place in Hong Kong – the Gambling Ordinance (Cap. 148) and the Betting Duty Ordinance (Cap. 108).

The government has also issued Codes of Practice for the Conduct of Football Betting and Lotteries to give guidance on how the licensing conditions for football betting and lotteries may be complied with. Under these Codes, licensees should not advertise the football betting and lotteries in, or in close proximity to, educational and training institutions for juveniles nor place advertisements or promotional materials on billboards or other outdoor displays that are directly adjacent to such institutions.

Under the Gambling Ordinance, advertisements to promote or facilitate bookmaking and betting-related services are prohibited and it is illegal for any person to advertise offshore bookmaking in Hong Kong.

7.2 Contests of Skill and Games of Chance
The Gambling Ordinance prohibits "gambling", which is defined to include gaming, betting and bookmaking. "Gaming" is defined to be the playing of or at any game for winnings in money or other property whether or not any person playing the game is at risk of losing any money or other property.

"Game" is defined to mean a game of chance and the game of chance and skill combined and a pretended game of chance or chance and skill combined, and also means any game whatever in which a bank is kept by one or more players exclusively of the others;

or the chances of the game are not equally favourable to all the players, including among the players, the banker or other person by whom the game is managed or against whom the players stake, play or bet. A specific legislated exception to the absolute prohibition under the Gambling Ordinance is provided for a "trade promotion competition", defined to mean a competition or other scheme promoted, conducted or managed for the purpose of promoting a trade or business or the sale of any product.

It is further provided by the Gambling Ordinance that "gaming" is lawful if the game is (inter alia) a trade promotion competition, the organisation and conduct of which is authorised by licence issued by a public officer to authorise the organisation and conduct of a trade promotion competition by a person engaged in trade or business.

7.3 Registration and Approval Requirements

As stated above, any game of chance is illegal under the Gambling Ordinance with the one exception of the authorisation by a public officer of a trade promotion competition whose rules and identity of promoter must be lodged with the public officer for prior approval.

7.4 Free and Reduced-Price Offers

The Trade Descriptions Ordinance prohibits any free or reduced-price offers which are false.

The Broadcast Codes require that visual and verbal presentations of advertisements indicating price, price comparisons or reductions or any pricing element must be accurate and must not be misleading by undue emphasis or distortion.

The Trade Descriptions Ordinance further provides that trade descriptions are specifically prohibited if there are false and misleading representations concerning the price of goods or of services. The word "free" has been clearly identified for special attention as a word that should be handled with very great care and it is accordingly reasonably clear that "free" from the consumer viewpoint means absolutely free of charge or cost.

7.5 Automatic Renewal/Continuous Service Offers

The Consumer Council established under the Consumer Council Ordinance carries out surveys and issues announcements on consumer protection but has no statutory force in obliging compliance with its findings. However, the Consumer Council has circulated the following: contract terms stipulating that the subscription for services will be automatically renewed on expiry of a commitment period are considered to be unfair if there is no accompanying term requiring the supplier to give a clear and conspicuous written reminder to the consumer at a reasonable time before the contract expires together with notice of any increase in fees or limitation of service.

The Industry Code of Practice for Telecommunications Service Contracts requires a contract to specify whether the service will continue to be provided to the customer after the expiry date. If the service is to continue after the expiry of the contract term, the contract must specify the charges as well as whether the provision of the service will have any changes. Unless otherwise agreed by a customer, the contract should not be automatically renewed upon expiry and should provide customers with a right of termination even if the customer has indicated consent for automatic contact extension or renewal.

However, the Office of the Communications Authority has published an advisory relating to expiry of a contract with a fixed term and termination of a telecommunications service. The Communications Authority has announced that before the expiry of the contract term or switching to another operator, a customer should examine in detail the arrangement under the existing or new contract in relation to the expiry of the fixed term.

It is clear that where a customer does not require service termination upon the expiry of the fixed term, the service will not be terminated automatically but will continue to be provided to the customer on a month-to-month basis with the relevant monthly fee.

The advantage of this practice is that the existing telecommunication service will not be terminated abruptly upon expiry of the fixed term, thereby causing inconvenience to the customer who has not contacted the operator in advance of the expiry of the fixed term. The Communications Authority advice here is that if the customer wishes to continue using the service provided by the same operator after the expiry of the fixed term, then the customer should consider renewing the contract or signing a new service contract with the operator concerned.

8. Artificial Intelligence

8.1 AI and Advertising Content

There are no rules or guidance related to the use of artificial intelligence in connection with the development of advertising content apart from the generally applicable coverage of advertising content as indicated.

8.2 AI-Related Claims

There are no special rules or guidance related to making claims that a product is developed through the use of AI, is powered by AI or has AI-related capabilities.

8.3 Chatbots

There are no special rules or guidance related to the use of chatbots.

9. Web 3.0

9.1 Cryptocurrency and Non-Fungible Tokens (NFTs)

Special rules or regulations in the jurisdiction of the Hong Kong SAR are as follows.

Advertising, Marketing or Sale of Cryptocurrency

Advertisement is generally allowed on social media service provider advertisements provided that the advertiser is promoting a cryptocurrency that is compliant with cryptocurrency service provider requirements under the law. Dealers in cryptocurrency and other crypto-related products are normally kept aware of the development of legal controls and modify their terms and conditions accordingly, noting generally that advertisers are required to comply with relevantly applicable rules, regulations and guidelines. Such advertisement generally requires the written consent of the service provider channel concerned.

Internet service provider sites allow advertisement for the promotion of complex speculative virtual financial products provided the advertiser is duly licensed by the Securities and Futures Commission of Hong Kong to provide automated trading services and a virtual asset trading platform licensed under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance.

The digital payment system constituted by cryptocurrency is established by digital entries to an online database recording cryptocurrency funds transfer on the blockchain public ledger. Certain cryptocurrencies are not backed by any authorised currency system. An exception is the stablecoin or fiat-referenced stablecoin, which is pegged to a fiat currency such as the pound sterling or the US dollar. The service providers of the trading operations of virtual assets in Hong Kong are required to be registered by the Securities and Futures Commission of Hong Kong.

Some cryptocurrencies trading in Hong Kong are classified as securities and therefore are required to be regulated by the Securities and Futures Commission (SFC); in the event of any breach of the SFC regulations on the trading concerned, aggrieved parties can seek assistance from the SFC regulator. There is currently no advertisement restriction at law upon the activity of cryptocurrency advertisement but very careful examination of a cryptocurrency advertisement may enable an investor to take action or report an offence under the Trade Descriptions Ordinance.

The Financial Action Task Force, which is a body responsible for administering international standards aimed at preventing money laundering and terrorist financing, has issued an updated guidance for a risk approach to Virtual Assets and Virtual Asset Service Providers.

The Virtual Asset can be represented as a digital value such as a “digital token”. If the digital token is a security token representing a security under the Securities and Futures Ordinance, then the operating trader in the security token requires a licence for Type 1 (dealing in securities) and Type 7 (providing automated trading services), both as regulated activities.

With effect from 1 March 2023, the Securities and Futures Commission has administered a new licensing regime for Virtual Asset Service Providers (VASP). If a VASP operates in Hong Kong in active marketing to the public of the services of a VASP that is not licensed in Hong Kong, this is an offence punishable on conviction on indictment to a fine of HKD5 million and to imprisonment for seven years and, in the case of a continuing offence, to a further fine of HKD100,000 for every day during which the offence continues.

The new regulation empowers the Secretary for Financial Services and the Treasury to prescribe by notice published in the Hong Kong Government Gazette whether a particular asset is to be considered as a virtual asset under the Anti-Money Laundering Ordinance (AMLO).

Non-Fungible Tokens (NFT)

The NFT is a representation of a different form of digital files ranging from photos, videos (and films) and digital art. The blockchain is used to store the NFT in a digital ledger as an encrypted and duplicated asset system on a chain of consecutively linked blocks. The NFT is a unique and secured certificate which is evidence that the holder is entitled to a certified ownership of the NFT as a digital asset, although the underlying copyright and any registered entitlement underlying the NFT is not part of and is not traded with the NFT unless there is an express contractual provision entitling and evidencing the passing of and corresponding entitlement of the holder to such assets.

When and if created pursuant to a smart contract, it is possible for that contract to provide for generation of a limited number of NFTs for the same artistic work. NFT is “minted” (ie, created) by a process of constituting the NFT as a virtual asset on the blockchain, and the creator of the NFT may be either an artist or a party with appropriate rights to entitle the minting by that person of an NFT into a digital asset.

9.2 Metaverse

There are no special laws or regulations in the Hong Kong SAR applicable to advertising within the metaverse. Further, given that Hong Kong does not have any Advertising Standards Authority and given that the Broadcast Codes expressly exclude the internet from definition as broadcast service, the Television and Radio Codes have no specific application to internet communication.

10. Product Compliance

10.1 Regulated Products

The Public Health and Municipal Services Ordinance provides that no person shall advertise for sale any drug with any added substance to or abstracted from it injuriously affecting its quality, constitution or potency by means of adding a substance to or abstracting any constituent from the drug so as to affect injuriously its quality, constitution or potency nor to advertise under the designation of milk any liquid in the making of which any separated milk, or any dried or condensed milk has been used.

Under the Food and Drugs (Composition and Labelling) Regulations, advertisement means any form of advertising intended for the general public which is published by any means, including:

- newspaper or other publication;
- television or radio broadcast;
- electronic messages;
- display of notices, signs, labels, showcards or goods;
- distribution of samples, circulars, catalogues, pricelists or other materials; or
- exhibition of pictures, models or films,

and “advertise” shall be construed accordingly.

It is further provided that any person who advertises for sale any pre-packaged food which is not marked or labelled in compliance with the applicable regulation shall commit an offence and be liable to a fine and to imprisonment. It is further provided that if any person advertises for sale any pre-packaged food where the advertisement contains any nutrition claim that does not conform to the applicable regulation, that person commits an offence and is liable to a fine and to imprisonment.

Any person who advertises for sale any infant formula, follow-up formula or pre-packaged food for infants and young children that is not marked or labelled in compliance with the applicable regulation commits an offence and is liable to a fine and to imprisonment.

The Undesirable Medical Advertisements Ordinance prohibits advertisements being published or being caused to be published where such advertisement is likely to lead to the use of any medicine, surgical appliance or treatment for certain disease, or for certain orally consumed products; also prohibited are printing or publishing or causing to be written, printed or published any advertisement for abortion.

Under the Smoking (Public Health) Ordinance, no person shall print, publish or cause to be published a tobacco advertisement in any local newspaper or any printed document printed, published or distributed in Hong Kong; nor display a tobacco advertisement unless it is in or upon any premises of any manufacturer of tobacco products or wholesaler or wholesale dealer and in any such case is not visible from outside the premises; nor broadcast a tobacco advertisement by radio or visible images; nor exhibit a tobacco advertisement by film or on the internet.

10.2 Product Placement

See also **3.2 Children** for restrictions on advertisements around the time of children's programmes.

The Television Code specifically prohibits subliminal advertising by a television licensee on its television channels and in this connection "advertisement" or "advertising material" means any material that is effectively designed to advance the sale of any particular product or service or to promote the interests of any organisation, commercial concern or individual in whatever way and included in the course of a programme of any product or services. All such purely commercial promotional material must be clearly distinguished from the actual programme material and there are regulations limiting the time spent on advertisements in relation to actual programme material.

The Broadcast Codes require that the advertising of alcoholic beverages should target only an adult audience. No children or adolescents shall be allowed to participate in the presentation of such advertisements which, accordingly, should not be shown in proximity to children's programmes or programmes that in the opinion of the Communications Authority target young persons under the age of 18.

10.3 Other Products

Smoking (Public Health) Ordinance

The Smoking (Public Health) Ordinance (the "Smoking Ordinance") prohibits printing, publishing or causing to be published a tobacco advertisement in any local newspaper or any printed document printed, published or distributed in Hong Kong and further prohibits printing, publishing or causing to be published a smoking product advertisement in any local newspaper or any printed document printed, published or distributed in Hong Kong.

In either case, the Smoking Ordinance provides that there is an exception for any tobacco advertisement or any smoking product advertisement in a printed publication that is published for the tobacco trade or the smoking products trade or as the "in-house magazine or publication of any company engaged in that trade".

The Smoking Ordinance provides that no person shall broadcast a tobacco advertisement by transmission of sound by means of radio waves or by the transmission of visual images or sound by wireless or otherwise than by wireless intended for general reception by members of the public, nor shall exhibit tobacco advertisement by film.

"A tobacco advertisement" is provided to be an advertisement if it:

- contains any express or implied inducement, suggestion or request to purchase or smoke cigarettes, cigarette tobacco, cigars or pipe tobacco;
- relates to smoking in terms which are calculated, expressly or impliedly, to promote or encourage the use of cigarettes, cigarette tobacco, cigars or pipe tobacco; or

- illustrates or mentions smoking or cigarettes, cigarette tobacco, cigars or pipe tobacco or their packages or qualities.

It is further clarified that where an advertisement or any object other than a tobacco product which is displayed to the public, whether for sale or otherwise, in the course of conducting any business or providing any service also includes the name or trade name of any person associated with the marketing of any tobacco product, or any trade mark or brand name of a tobacco product or any pictorial device or part thereof commonly associated therewith, this shall be deemed to be a tobacco advertisement.

"Smoking product" is defined as "any cigarette, cigarette tobacco, cigar or pipe tobacco" and an alternative smoking product is defined as "including any one of several categories including a device (other than a water pipe) that is capable of:

(a) generating aerosol from any substance that is not tobacco or dangerous drug, other than by means of lighting the substance directly; and

(b) use for imitating conventional smoking or a device (other than a water pipe) that is capable of generating aerosol from tobacco, other than by means of lighting the tobacco directly; and

(c) use for smoking."

Further identified is "tobacco" that is packaged as being suitable for use with a device as defined and from which an aerosol is capable of being generated. A further identification is of "specified plant material" rolled up in any material, in a form that is capable of immediate use for imitating conventional smoking.

The Smoking Ordinance provides and defines that an advertisement is a smoking product advertisement if it:

- contains any express or implied inducement, suggestion or request to purchase or smoke any smoking product;
- relates to smoking in terms which are calculated, expressly or impliedly, to promote or encourage the use of any smoking product; or
- illustrates or mentions smoking or any smoking product or their packages or qualities.

It is further expressly provided that an advertisement is not regarded as a smoking product advertisement if its purpose is to discourage smoking, with further fully detailed references to identify the prohibitive conditions and the ways in which the non-smoking content can be advertised or made available inclusive of the name of any company or body corporate associated with the manufacture or marketing of any smoking product or containing any name identical to the trade name or brand name of any smoking product not to be used in association with any product that is not a smoking product.

It is further provided that no person shall display or cause to be displayed or published or distribute for the purpose of display or cause to be published or distributed for the purpose of display any smoking product advertisement in writing or other permanent or semi-permanent form.

There is an exception for any smoking product advertisement in a printed publication that is published for the smoking products trade or as the in-house publication of any company engaged in that trade.

There is an exception that this restriction on display does not apply to any smoking product advertisement which is in or upon any premises of any manufacturer of conventional smoking products or any wholesale dealer dealing in conventional smoking products where those premises are used for the manufacturing of conventional smoking products or for the purpose of dealing by wholesale in conventional smoking products and is not visible from outside the premises.

The Smoking Ordinance further prohibits broadcast by any person of a smoking product advertisement by the transmission of sound by means of radio waves or by the transmission of visual images or sound by wireless or otherwise than by wireless, intended for general reception by members of the public.

The Smoking Ordinance further prohibits the exhibition of a smoking product advertisement by film.

The Smoking Ordinance goes further than other Hong Kong legislation in expressly stating that no person shall place or cause to be placed a tobacco advertisement or a smoking product advertisement on the internet, further providing that the holder of a Public Non-Exclusive Telecommunications Service Licence granted under the Telecommunications Ordinance shall not be responsible for content placed on the internet by a user unless that licensee has knowledge of the content and can reasonably be expected to block the use of such content or require amendment of such content or where access is provided by the licence holder to such content using automatic and temporary storage thereof by the licence holder due to the request of a user.

Under the Smoking Ordinance, no person shall promote or advertise any cigarette, cigarette tobacco, cigar or pipe tobacco defined as “conventional smoking products” to any person under the age of 18 years. This prohibition is applicable to conventional smoking products being made available by way of a token or as a prize in any event or competition with other related prohibitive measures.

It is further provided that no person may either manufacture or sell or offer for sale or carry out various other acts in relation to an alternative smoking product or give an alternative smoking product to another person for promotion or advertisement or in exchange for a token or as a prize in any event or competition.

Any reference to the acts prohibited in respect of alternative smoking products confirms that that act is a promotion or advertisement in relation to a product if that act is a promotion or advertisement as an inducement to smoke, or encourage the use of, the product, whether or not the particular brand is mentioned.

Reference in this restriction and prohibition to the sale of an alternative smoking product includes the sale of any product that includes, or is accompanied by, an alternative smoking product as a gift; but it is further provided that the reference does not include the sale of the product with a view to its export.

Undesirable Medical Advertisements Ordinance

The Undesirable Medical Advertisements Ordinance prohibits publishing or causing to be published any advertisement likely to lead to the use of any medicine, surgical appliance or treatment for certain specified disease or condition but shall not apply to any advertisement published by or with the authority of the Director of Health or to an advertisement duly authorised by an officer of the Chinese People’s Liberation Army for dissemination only amongst members of the Chinese People’s Liberation Army.

The Undesirable Medical Advertisements Ordinance further prohibits advertisements relating to certain orally consumed products, with further provision that the sale or supply, or offer or exposure for sale or supply, of an orally consumed product in a labelled container or package shall constitute the publication of an advertisement.

This Ordinance provides that:

- no person shall in any manner write, print, or publish or cause to be written, printed or published any advertisement offering to procure miscarriage of women, the procuration of miscarriage of women, or inviting or inducing the procuration of miscarriage of women; and
- where any such advertisement gives the name, address or telephone number of, or indicates some other means of contacting, a person who manufactures or supplies medicine or surgical appliances or any treatment, that person is presumed, until the contrary is proved, to have caused the advertisement to be published.

The Undesirable Medical Advertisements Ordinance prohibits any person from publishing or causing to be published any advertisement likely to lead to the use of any medicine, surgical appliance or treatment for treating human beings in purposes specified in the schedule to that Ordinance or offering to procure a miscarriage of women or canvassing or inviting or inducing the procuration of miscarriage of women.

Control of Obscene and Indecent Articles Ordinance

The Control of Obscene and Indecent Articles Ordinance (COIAO) regulates the publication of obscene and indecent articles, where "article" is defined to mean anything consisting of or containing material to be read or looked at (or both), including any sound recording, any film, video-tape, disc or other record of a picture or pictures. The COIAO empowers the Obscene Articles Tribunal to classify Class 1 Articles and Class 2 Articles, which are not indecent, and Class 3 Articles, which are obscene and are prohibited from publication.

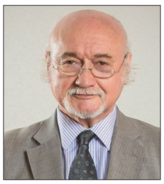
The COIAO also regulates publication of obscene and indecent articles online.

Trends and Developments

Contributed by:
Angus Forsyth
Angus Forsyth **& Co**

Angus Forsyth & Co offers services in commercial and company, mergers and acquisitions, intellectual property in trade marks, registered design, copyright, information technology, advertising law and all relevant coverage in issues of personal data privacy, immigration matters, and commercial and residential tenancies. The firm also acts in matters of wills, trusts, probate of Hong Kong estates, powers of attorney, and a wide range of notarial certification and obtaining of apostilles.

Author



Angus Forsyth was admitted as a solicitor in England in 1970 and in Hong Kong in 1971. He co-founded the well-established Hong Kong law firm of Stevenson, Wong & Co in 1978 and was senior partner between 1991 and 2012 before becoming a consultant to the firm. On retiring from this consultancy in 2017, he established the sole proprietorship of Angus Forsyth & Co. Angus is Chairman of the Board of Governors of Musica Viva Limited (opera and music production) and legal adviser to New Life Psychiatric Rehabilitation Association, Friends of Hong Kong Museum of Art and Hong Kong International Film Festival Society Limited.

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Digitalisation and Streamlining of Initial Public Offerings

In November 2020, Hong Kong Exchanges and Clearing Limited (HKEXC) published a concept paper setting out a conceptual vision and plan to modernise, streamline and digitalise the Hong Kong settlement process for initial public offering (IPO) for listing on the Hong Kong Stock Exchange (HKEX). The vision in the concept paper set out the new platform, called Fast Interface for New Issuance (FINI). This proposal was designed to address and eliminate various bottleneck and constriction points, and to streamline and digitise the settlement process of a new listing on the HKEX by sponsors, intermediaries and legal advisers being required to be entered into a new online external user testing registration form.

The concept paper was generally accepted by the listing market and HKEXC published the concept paper conclusions in July 2021. Following publication of the conclusions, HKEX worked on the details of the development of FINI: FINI started in November 2022 with registration onboarding of applicants; and the actual launch of the real platform FINI with its own website and email address was 22 November 2023. Following the launch, all new listings on HKEX of assets in Hong Kong were required to use FINI.

Members of HKEX participating in Initial Public Offerings and all those successfully completing the registration form ("FINI Users") were able:

- to input and amend the information on the IPO (ie, IPO reference date) in FINI from time to time when the task was delegated to them by the sponsors of the IPO; *or*
- to submit the required documents and legal undertakings where FINI Users participated in the capacity of counsel for the issuer or sponsor in a new listing and, accordingly, any law firm successfully completing the online FINI registration form and submitting all the necessary onboarding documents as soon as practicable prior to the launch of FINI was able to participate in the new listings going forward.

On completion of FINI Registration, participators were invited to take part in the FINI External User Testing (EUT) by completing the EUT registration form and reviewing the EUT Information Pack for Sponsors, Intermediaries and Legal Advisers published on the FINI webpage.

Following EUT Registration, a participating sponsor, intermediary or law firm would provide the name and contact of two representatives of the law firm who would participate in the EUT and the firm would be assigned to a simulated IPO accordingly.

HKEX published further training materials on the FINI Webpage and the Terms and Conditions of FINI (the "FINI Terms and Conditions") preserved the acknowledgement on the FINI website that the content and materials of the webpages of FINI belonged to HKEX group and all copyright and other intellectual property right and proprietary rights in them belonged to HKEX Group and other parties (as applicable).

Notices to and from FINI Users

Condition 17.2 of the FINI Terms and Conditions as to notice permits that any notices, requests, demands or other communications in connection with the Terms and Conditions may be given orally (followed by email) or in writing and delivered in person, by post, by electronic or wire transmission, by telephone, by fax or by any means of computer data transmission based in any such case on the information about the contact details of the FINI User as maintained by HKSCC.

Virtual Asset Service Provider

The Hong Kong Monetary Authority (HKMA) published a circular on 27 April 2023 ahead of the implementation on 1 June 2023 of the new Hong Kong licensing regime for Virtual Asset Service Providers (VASP). This circular introduced the concept of VASP licensing applicants meeting the requirements of the Securities and Futures Commission (SFC) that it receives the bank account details of applicants for VASPs before approving their licensing applications.

Under the disclosure obligations for applicants for Hong Kong licensing, virtual asset trading platform operators are required to provide clients with adequate product information to enable them to evaluate their investments. This information must be made available on the platform operator's website and include the following:

- last 24 hours' price and trading volume;
- management or development team information;
- issuance date;
- material terms and features of the virtual assets;
- affiliation of the platform operator with the issuer, management or development team of any virtual asset;
- links to the official websites of the virtual assets and to the smart contract audit reports and other bug reports of the virtual assets; and
- where the virtual assets have voting rights, how these voting rights will be handled by the platform operator.

In handling client virtual assets, a licensed virtual asset trading platform operator can only hold client assets (ie, client virtual assets and client money) through an associated entity. This can be a Hong Kong incorporated subsidiary of the virtual asset trading platform operator which is a licensed trust or service company provider under the Anti-Money Laundering Ordinance (AMLO) and has notified the Securities and Futures Commission that it is an associated entity of the licensed virtual asset trading platform operator under the AMLO and under the Securities and Futures Ordinance.

Client virtual assets must be held in wallet addresses established by the platform operator's associated entity and must be segregated from the assets of the platform operator and the associated entity.

Licensed trading platform operators must have robust internal controls and governance procedures to ensure that cryptographic seeds and private keys are securely generated, stored and backed up. The operators must also ensure that their associated entities implement the same controls and procedures, which must (among others): restrict access to seeds and private keys for client virtual assets to authorised personnel who have been appropriately screened and trained; and provide for seeds and private keys to be securely stored in Hong Kong.

The SFC will publish lists on its website:

- to inform the public of the regulatory status of Hong Kong virtual asset trading platforms; and
- of Hong Kong licensed virtual asset trading platforms, deemed Hong Kong licensed virtual asset trading platforms, closing-down virtual asset trading platforms and unlicensed "illegal" virtual asset trading platforms.

Blueprint for Arts and Culture and Creative Industries Development

The November 2024 Blueprint promulgated by the Secretary for Culture, Sports and Tourism in Hong Kong set out a clear vision with supporting principles and strategic directions to foster the future development of culture in Hong Kong. It promoted traditional Chinese culture with Hong Kong character, including diverse arts and culture industries in Hong Kong with an international perspective, in the establishment of international platforms to foster "East Meets West" arts and culture exchanges and the enhancement of the ecosystem for the arts, culture and creative industries. In his policy address on 17 September 2025, the Chief Executive indicated – as one element of many initiatives to capture and maintain the preservation of a full spectrum economy – that the government realises and acknowledges that Hong Kong is among the world's top three arts trading centres. The government will step up efforts to drive the building of Hong Kong into a global premium arts trading hub. Motivated to attract more international auction houses, galleries and professionals to establish a presence in Hong Kong, the government will relax standards for admission into Hong Kong of students and outstanding educational talent in both applied and performing arts.

West Kowloon Cultural District

A substantial development in this drive is in progress at Airport City, an adjunct to the huge piece of reclaimed land now constituting the Hong Kong International Airport. Coming on stream later in 2025, an art hub facility will host arts studios, galleries and dealers under one roof. In support of this purpose, specific community large-scale arts storage and related facilities are also coming on line. Hong Kong has a deepening collaboration with Art Basel and is actively engaging the art industry both in Hong Kong and overseas to carry out studies on taxation, financing, talent and related areas of arts trading in order to explore the introduction and fine tuning of policy measures applicable to Hong Kong.

The well-established West Kowloon Cultural District is actively developing its own arts trading system, introducing the Artist Square Towers scheduled for completion in 2026/27 with a declared programme to attract arts trading enterprises, including galleries, insurance companies and family offices, to house space in the new towers. The West Kowloon Cultural District would establish an international collaboration network for arts conservation and provide professional training and internship opportunities, with associated expansion of systematic training for talent in curation, conservation and arts administration. The Authority would organise more high-profile international events, promote and implement the touring of exhibitions overseas and on Mainland China to showcase exhibitions and collections of the M+ Museum in Hong Kong and of the Hong Kong Palace Museum. There are plans to establish the West Kowloon Academy to provide professional training for arts and cultural organisations and practitioners from Hong Kong, overseas and Mainland China. In addition, there are new plans for the Leisure & Culture Services Department to utilise various facilities, such as the leasing out of museums at vacant time hours for commercial or private use, and to open up more venues for hire, introducing paid guided tours for visitor groups and developing more cultural and creative products to enhance visitor experience and operational efficiency.

East Kowloon Cultural Centre

In what is a clearly understandable extension of the intentions of the Airport Authority and the West Kowloon Cultural District in their application of increased facilities for the visual arts and all related arts productive adjunctive activities such as research, conservation and the like, there is further initiative from the Leisure and Cultural Services Department – planning for the new East Kowloon Cultural Centre, designed by the leading architect Rocco Yim and located in the new performing arts complex in the former public housing site at Ngau Tau Kok Lower Estate.

Just as London's West End and New York's Broadway centres provide for full-scale live entertainment, so the entire initiative is based on the intention to establish similar running performances at venues in the East Kowloon Cultural Centre. This has seen the creation of five new performance spaces, including a 1,200-seat main theatre as the first in Hong Kong to be equipped with a full suite of performance technology, including 4K projection, an immersive audio system and an automatic stage tracking system. The result is to enhance audience experience, from creating rich sound scales to automatically focusing lighting on performance. The complex also features a 536-seat venue with a stage centring three sides, which will enable close interaction between performers and their audience. Additional forums are smaller rehearsal and testing practice bases to enable educational activities. These developments are all leading towards full-scale utilisation from November 2025, with the East Kowloon Cultural Centre's grand opening – a Cantonese musical based on the life and achievements of the late Charles Kao Kuen, Hong Kong's only Noble Prize Laureate, awarded for his contributions to the development of fibre optics.

In Conclusion

The above-mentioned proposals indicate active support by the government for actions and activities that will engender substantial associated advertising activity for the active outreach of information dedicated to promotion of their practical development.

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