

「Law of the People's Republic of China Against Unfair Competition」

[Law, 1993.9.2., Adopted]

(Adopted at the Third Meeting of the Standing Committee of the Eighth National People's Congress and promulgated by Order No.10 of the President of the People's Republic of China on September 2, 1993)

Contents

Chapter I General Provisions

Chapter II Acts of Unfair Competition

Chapter III Supervision and Inspection

Chapter IV Legal Responsibility

Chapter V Supplementary Provisions

Chapter I General Provisions

Article 1 This Law is formulated with a view to safeguarding the healthy development of socialist market economy, encouraging and protecting fair competition, repressing unfair competition acts, and protecting the lawful rights and interests of business operators and consumers.

Article 2 A business operator shall, in his market transactions, follow the principles of voluntariness, equality, fairness, honesty and credibility and observe the generally recognized business ethics.

"Unfair competition" mentioned in this Law refers to a business operator's acts violating the provisions of this Law, infringing upon the lawful rights and interests of another business operator and disturbing the socio-economic order.

"A business operator" mentioned in this Law refers to a legal person or any other economic organization or individual engaged in commodities marketing or profit-making services ("commodities" referred to hereinafter includes such services).

Article 3 People's governments at various levels shall take measures to repress unfair competition acts and create favourable environment and conditions for fair competition.

Administrative departments for industry and commerce of the people's governments at or above the county level shall exercise supervision over and inspection of unfair competition acts; where laws or administrative rules and regulations provide that other departments shall exercise the supervision and inspection, those provisions shall apply.

Article 4 The State shall encourage, support and protect all organizations and individuals in the exercise of social supervision over unfair competition acts.

No State functionary may support or cover up unfair competition acts.

Chapter II Acts of Unfair Competition

Article 5 A business operator shall not harm his competitors in market transactions by resorting to any of the following unfair means:

(1) counterfeiting a registered trademark of another person;

(2) using for a commodity without authorization a unique name, package, or decoration of another's famous commodity, or using a name, package or decoration similar to that of another's famous commodity, thereby confusing the commodity with that famous commodity and leading the purchasers to mistake the former for the latter;

(3) using without authorization the name of another enterprise or person, thereby leading people to mistake their commodities for those of the said enterprise or person; or

(4) forging or counterfeiting authentication marks, famous-and-excellent-product marks or other product quality marks on their commodities, forging the origin of their products or making false and misleading indications as to the quality of their commodities.

Article 6 A public utility enterprise or any other business operator occupying monopoly status according to law shall not restrict people to purchasing commodities from the business operators designated by him, thereby precluding other business operators from fair competition.

Article 7 Governments and their subordinate departments shall not abuse administrative powers to restrict people to purchasing commodities from the business operators designated by them and impose limitations on the rightful operation activities of other business operators.

Governments and their subordinate departments shall not abuse administrative powers to restrict commodities originated in other places from entering the local markets or the local commodities from flowing into markets of other places.

Article 8 A business operator shall not resort to bribery, by offering money or goods or by any other means, in selling or purchasing commodities. A business operator who offers off-the-book rebate in secret to the other party, a unit or an individual, shall be deemed and punished as offering bribes; and any unit or individual that

accepts off-the-book rebate in secret shall be deemed and punished as taking bribes.

A business operator may, in selling or purchasing commodities, expressly allow a discount to the other party and pay a commission to the middleman. The business operator who gives discount to the other party and pays commission to the middleman must truthfully enter them in the account. The business operator who accepts the discount or the commission must also truthfully enter it in the account.

Article 9 A business operator may not, by advertisement or any other means, make false or misleading publicity of their commodities as to their quality, ingredients, functions, usage, producers, duration of validity or origin.

An advertisement agent may not act as agent for, or design, produce or release, a false advertisement while he clearly knows or ought to know its falsehood.

Article 10 A business operator shall not use any of the following

means to infringe upon trade secrets:

(1) obtaining an obligee's trade secrets by stealing, luring, intimidation or any other unfair means;

(2) disclosing, using or allowing another person to use the trade secrets obtained from the obligee by the means mentioned in the preceding paragraph; or

(3) in violation of the agreement or against the obligee's demand for keeping trade secrets, disclosing, using or allowing another person to use the trade secrets he possesses.

Obtaining, using or disclosing another's trade secrets by a third party who clearly knows or ought to know that the case falls under the unlawful acts listed in the preceding paragraph shall be deemed as infringement upon trade secrets.

"Trade secrets" mentioned in this Article refers to any technology information or business operation information which is unknown to

the public, can bring about economic benefits to the obligee, has practical utility and about which the obligee has adopted secret-keeping measures.

Article 11 A business operator shall not, for the purpose of pushing out their competitors, sell their commodities at prices lower than costs.

Any of the following shall not be deemed as an unfair competition act:

- (1) selling perishables or live commodities;
- (2) disposing of commodities near expiration of their validity duration or those kept too long in stock;
- (3) seasonal sales; or
- (4) selling commodities at a reduced price for the purpose of clearing off debts, change of business or suspension of operation.

Article 12 A business operator may not, against the will of purchasers, conduct tie-in sale of commodities or attach any other unreasonable conditions to the sale of their commodities.

Article 13 A business operator shall not engage in any of the following lottery-attached sale activities:

(1) lottery-attached sale conducted by such deceptive means as falsely declaring to have prize or intentionally making a designated insider win the prize;

(2) lottery-attached sale employed as a means to sell goods of low quality at a high price; or

(3) lottery-attached sale in form of lottery-drawing with the highest prize exceeding 5,000 yuan.

Article 14 A business operator shall not fabricate or spread false information to injure his competitors' commercial credit or the

reputation of his competitors' commodities.

Article 15 Bidders shall not act in collusion with each other so as to force up or down the bidding prices.

Bidders and tender-inviter shall not collude with each other so as to push out their competitors from fair competition.

Chapter III Supervision and Inspection

Article 16 Supervision and inspection departments at or above the county level may carry out supervision over and inspection of unfair competition acts.

Article 17 Supervision and inspection departments shall, in supervising and inspecting unfair competition acts, have the right to exercise the following functions and powers:

(1) to interrogate the business operators under inspection, interested

persons, or witnesses in accordance with the prescribed procedures, and require them to provide testimonial materials or other materials relating to the unfair competition acts;

(2) to inquire about and duplicate the agreements, account books, invoices, documents, records, business letters and telegrams or other materials relating to the unfair competition acts; and

(3) to inspect the property involved in the unfair competition acts under Article 5 of this Law; and, when necessary, to order the business operators under inspection to explain the source and quantity of the commodities, suspend the sale and await the inspection thereof, and the property involved shall not be transferred, concealed or destroyed.

Article 18 Functionaries of supervision and inspection departments shall, when supervising and inspecting unfair competition acts, produce their inspection certificates.

Article 19 Business operators under inspection, interested persons and witnesses shall truthfully provide relevant materials or

particulars when the supervision and inspection departments supervise and inspect unfair competition acts.

Chapter IV Legal Responsibility

Article 20 A business operator who violates the provisions of this Law and thus causes damage to the infringed business operators, shall bear the liability of compensation for the damage. If the losses of the infringed business operator are difficult to estimate, the damages shall be the profits derived from the infringement by the infringer during the period of infringement. And the infringer shall also bear the reasonable expense paid by the infringed business operator for investigating the infringer's unfair competition acts violating his lawful rights and interests.

A business operator whose lawful rights and interests are infringed upon by unfair competition acts may bring a suit in a people's court.

Article 21 A business operator who counterfeits another's registered trademark, uses without authorization the name of another enterprise or person, forges or counterfeits authentication marks, famous—and—

excellent— product marks or other product quality marks, forges origin of the products or makes false and misleading indications regarding the product quality shall be punished in accordance with the provisions of the Trademark Law of the People's Republic of China and the Law of the People's Republic of China on Product Quality.

In case a business operator uses for a commodity without authorization the name, package or decoration of a famous commodity or the name, package or decoration similar to that of a famous commodity and thereby confuses the commodity with another's famous commodity and leads the purchasers to mistake the former for the latter, the supervision and inspection department shall order the business operator to stop the illegal act and confiscate the illegal earnings and may, in light of the circumstances, impose a fine of not less than one time but not more than three times the illegal earnings; if the circumstances are serious, his business licence may be revoked; and if the commodities sold are fake and inferior, and the case constitutes a crime, he shall be investigated for criminal responsibility according to law.

Article 22 A business operator, who resorts to bribery by offering

money or goods or by any other means in selling or purchasing commodities and if the case constitutes a crime, shall be investigated for criminal responsibility according to law; if the case does not constitute a crime, the supervision and inspection department may impose a fine of not less than 10,000 yuan but not more than 200,000 yuan in light of the circumstances and confiscate the illegal earnings, if any.

Article 23 In case a public utility enterprise or any other business operator occupying monopoly status according to law restricts people to purchasing commodities from a designated business operator in order to push out other business operators from fair competition, the supervision and inspection departments at the provincial level or of cities divided into districts shall order the ceasing of the illegal acts and may impose a fine of not less than 50,000 yuan but not more than 200,000 yuan in light of the circumstances. If such designated business operator takes advantage of his monopoly status to sell goods of low quality at high prices or indiscriminately collects fees, the inspection and supervision department shall confiscate the illegal earnings and may impose a fine of not less than one time but not more than three times the illegal earnings in light of the circumstances.

Article 24 In case a business operator makes false and misleading publicity of his commodities by advertisement or any other means, the supervision and inspection department shall order the said business operator to stop his illegal acts and eliminate the bad effects, and may impose a fine of not less than 10,000 yuan but not more than 200,000 yuan in light of the circumstances.

In case an advertisement agent acts as agent for, or designs, produces or releases, a false advertisement though the agent clearly knows or ought to know the falsehood, the supervision and inspection department shall order the ceasing of the illegal acts, confiscate the illegal earnings, and impose a fine according to law.

Article 25 In case a business operator violates the provisions of Article 10 of this Law and infringes upon trade secrets, the supervision and inspection department shall order the ceasing of the illegal acts and may impose a fine of not less than 10,000 yuan but not more than 200,000 yuan in light of the circumstances.

Article 26 In case a business operator engages in lottery-attached sale in violation of the provisions of Article 13 of this Law, the supervision and inspection department shall order the ceasing of the

illegal acts and may impose a fine of not less than 10,000 yuan but not more than 100,000 yuan in light of the circumstances.

Article 27 Where bidders act in collusion with each other to force up or down the bidding price, or a bidder colludes with a tender-inviter for the purpose of pushing out their competitors, the successful bid shall be invalid, and the supervision and inspection department may impose a fine of not less than 10,000 yuan but not more than 200,000 yuan in light of the circumstances.

Article 28 In case a business operator acts in violation of the order of stopping the sale or forbidding the transfer, concealment or destruction of the property involved in the unfair competition acts, the supervision and inspection department may impose a fine of not less than one time but not more than three times the price of the property sold, transferred, concealed or destroyed.

Article 29 In case a party is not satisfied with the punishment decision made by the supervision and inspection department, it may apply for reconsideration to the competent department at the next higher level within 15 days from receipt of the decision; and if the party is still not satisfied with the reconsideration decision, it may

bring a suit in a people's court within 15 days from receipt of the decision; and the party may also directly file a suit in a people's court.

Article 30 Where a government or its subordinate departments, in violation of the provisions of Article 7 of this Law, restrict people to purchasing commodities from a designated business operator or impose limits on other business operator's rightful operation activities or the normal circulation of commodities between different areas, the supervision and inspection department at higher levels shall order them to make corrections; and if the circumstances are serious, the persons held directly responsible shall be given administrative sanctions by the relevant department at the same or higher levels; if the designated business operator takes advantage of his status to sell goods of low quality at high prices or indiscriminately collects fees, the supervision and inspection department shall confiscate the illegal earnings and may impose a fine of not less than one time but not more than three times the illegal earnings in light of the circumstances.

Article 31 Where a State functionary engaged in supervision over and inspection of unfair competition acts abuses his power or neglects his

duty, and if the case constitutes a crime, he shall be investigated for criminal responsibility according to law; if the case does not constitute a crime, he shall be given an administrative sanction.

Article 32 Where a State functionary engaged in supervision over and inspection of unfair competition acts practices favouritism or irregularities and intentionally harbours a business operator whom he clearly knows to be guilty of a crime by violating the provisions of this Law and attempts to shield him from prosecution, he shall be investigated for criminal responsibility according to law.

Chapter V Supplementary Provisions

Article 33 This Law shall go into effect as of December 1, 1993.