

# Law of the People's Republic of China for Countering Unfair Competition People's Republic of China

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(Adopted at the Third Session of the Standing Committee of the Eighth National People's Congress and Promulgated on September 2, 1993)

## Chapter 1 General Provisions

### Article 1

With a view to safeguarding the healthy development of the socialist market economy, encouraging and protecting fair competition, stopping acts of unfair competition, and defending the lawful rights and interests of operators and consumers, this Law is enacted.

### Article 2

In carrying on transactions in the market, operators shall follow the principle of voluntariness, equality, fairness, honesty and credibility, and observe generally recognized business ethics. Unfair competition in this Law refers to acts of operators which contravene the provisions of this Law, with a result of damaging the lawful rights and interests of other operators, and disturbing the socio-economic order.

Operators in this Law refer to legal persons, other economic organizations and individuals engaging in the trading of goods or profit-making services. (Goods mentioned below include services.)

### Article 3

The people's governments at various levels shall adopt measures to stop acts of unfair competition, and create a salutary environment and conditions for fair competition.

The administrative authorities for industry and commerce in the people's governments above the county-level shall monitor and investigate acts of unfair competition. In respect of those acts which, according to the provisions of various laws and administrative regulations, shall be monitored and investigated by other departments, these provisions shall be abided by.

### Article 4

The State encourages, supports and protects all organizations and individuals in carrying out social monitoring of acts of unfair competition.

Staff members of state organs shall not support or cover up acts of unfair competition.

## Chapter 2 Acts of Unfair Competition

### Article 5

Operators shall not adopt any of the following unfair means to carry on transactions in the market and cause damage to competitors:

1. Passing off the registered trademarks of others;
  1. using, without authorization, the names, packaging or decoration peculiar to well-known goods or using names, packaging or decoration similar to those of well-known goods so that their goods are confused with the well-known goods of others, causing buyers to mistake them for the well-known goods of others;
1. Using, without authorization, the enterprise names or personal names of others on their own goods, leading purchasers to mistake them for the goods of others;
1. Forging or falsely using, on their goods, symbols of quality such as symbols of authentication and symbols of famous and high-quality goods, falsifying the origin of their goods, and making false representations which are misleading as to the quality of the goods.

### Article 6

Public utility enterprises or other operators having monopolistic status according to law shall not force others to buy the goods of the operators designated by them so as to exclude other operators from competing fairly.

### Article 7

A local government and its subordinate departments shall not abuse their administrative power to force others to buy the goods of the operators designated by them so as to restrict the lawful business activities of other operators.

A local government and its subordinate departments shall not abuse their administrative power to restrict the entry of goods from other parts of the country into the local market or the flow of local goods to markets in other parts of the country.

### Article 8

An operator shall not practice bribery by using money, valuables or other means to sell or buy goods. Where an operator secretly pays a kickback to the other party, be it an entity or individual, off the book, it or he shall be punished for offering a bribe; where the other party, be it an entity or

individual, secretly accepts a kickback off the book, it or he shall be punished for taking a bribe. In the selling or buying of goods, any operator may express clearly its or his intention to offer a discount to the other party and pay a commission to the middlemen. Where an operator gains a discount to the other party as pays a commission to the middlemen, it or he must enter the items in the book factually. An operator accepting a discount or commission must enter it in the book factually.

#### **Article 9**

An operator shall not use advertisement or other means to give false, misleading information on the quality, composition, performance, use, manufacturer, useful life, origin, etc. of the goods. An advertisement operator shall not act as an agent for designing, producing and releasing false advertisements where they clearly know, or should know, that the information in the advertisements is false.

#### **Article 10**

An operator shall not adopt any of the following means to infringe on the business secrets of others:

1. obtaining business secrets from the owner of the right by stealing, promising of gain, resorting to coercion or other illegitimate means;
1. disclosing, using or allowing others to use the business secrets of the owner of the right obtained by the means mentioned in the preceding item;
1. disclosing, using or allowing others to use the business secrets that it has obtained by breaking an engagement or disregarding the requirements of the owner of the right to preserve the business secrets.

Where a third party obtains, uses or discloses the business secrets of others when it or he has or should have full knowledge of the illegal acts mentioned in the preceding section, it or he shall be deemed to have infringed on the business secrets of others.

Business secrets in this **Article** refer to the technical information and operational information which is not known to the public, which is capable of bringing economic benefits to the owners of the rights, which has practical applicability and which the owners of the rights have taken measures to keep secret.

#### **Article 11**

An operator shall not sell its or his goods at a price that is below the cost for the purpose of excluding its or his competitors.

In any of the following events, such sales do not come under acts of unfair competition:

1. selling fresh goods;
1. disposing of goods the useful life of which is about to expire, or of other overstocked good;
1. seasonal lowering of prices;
1. selling goods at lowered prices for paying off debts, changing the line of production or closing the business.

#### **Article 12**

In selling its or his goods, an operator shall not make a tie-in sale against the wish of the buyer or attach other unreasonable conditions.

#### **Article 13**

An operator shall not make any of the following kinds of sales with prizes attached:

1. making sales with prizes attached by the fraudulent method of falsely claiming the existence of prizes or intentionally causing previously chosen people win the prizes;
1. promoting the sale of inferior but high-priced goods by offering prices;
1. making sales with prizes attached in the form of a lottery where the amount for the highest prize exceeds RMB 5,000 Yuan.

#### **Article 14**

An operator shall not utter or disseminate falsehoods to damage the goodwill of a competitor or the reputation of its or his goods.

#### **Article 15**

Tenderers shall not submit tenders in collusion with one another to force the tender price up or down.

A tenderer shall not collaborate with the party inviting tenders to exclude competitors from fair competition.

## **Chapter 3 Control and Inspection**

#### **Article 16**

The control and inspection authorities above the county level may exercise control over and carry out inspection of acts of unfair competition.

#### **Article 17**

In monitoring and investigating acts of unfair competition, the control and inspection authorities are

entitled to exercise the following functions and powers:

1. questioning the operators under investigation, interested parties and witnesses in accordance with the prescribed procedures and requiring them to provide evidential material or other information related to acts of unfair competition;
1. consulting and copying written agreements, account books, receipts, bills, vouchers, invoices, documents, records, business correspondence and other materials related to acts of unfair competition; and
1. inspecting property related to acts of unfair competition as stipulated in **Article 5** of this Law, and, where necessary, requesting other operators under investigation to explain the source and quantity of the goods, to temporarily stop selling them pending inspection, and not to remove, conceal or destroy them.

#### **Article 18**

When monitoring and investigating acts of unfair competition, members of the control and inspection authorities shall produce warrants of inspection.

#### **Article 19**

When the control and inspection authorities are monitoring and investigating acts of unfair competition, the operators under investigation, interested parties and witnesses shall truthfully provide them with relevant data or information.

### **Chapter 4 legal Responsibility**

#### **Article 20**

Where an operator, in contravention of the provisions of this Law, causes damage to another operator, i. e., the injured operator are difficult to calculate, the amount of damages shall be the profit gained by the infringer during the period of infringement through the infringing act . The infringer shall also bear all reasonable costs paid by the injured operator in investigating the acts of unfair competition committed by the operator suspected of infringing its or his lawful rights and interests.

When the lawful rights and interests of the injured operator are damaged by the acts of unfair competition, it or he may institute proceedings in a people's court.

#### **Article 21**

Where an operator passes off the registered trademark of another person, uses the enterprise name or personal name of another person without authorization, counterfeits or fraudulently uses symbols of quality such as symbols of authentication and symbols of famous and high-quality goods, falsifies the origin of the goods and makes false representations which are misleading as to the quality of the goods , it or he shall be punished in accordance with the provisions of the Trademark Law of the People's Republic of China and the Product Quality Law of the People's Republic of China.

Where an operator uses, without authorization, the names, packaging or decoration peculiar to well-known goods or uses names, packaging or decoration similar to those of well-known goods so that its or his goods are confused with the well-known goods of others, causing buyers to mistake them for the well-known goods, the relevant control and inspection authorities shall order it or him to stop the offense, confiscate the illegal income, and may impose, according to circumstances, a fine of more than twice and less than three times the amount of illegal income; where the circumstances are serious, the said authorities may revoke its or his business license; Where an operator sells goods counterfeited or of inferior quality, which constitutes a crime, it or he shall be prosecuted according to law for its or his criminal responsibility.

#### **Article 22**

Where an operator practices bribery by using money, valuables or other means to sell or purchase goods, which constitutes a crime, he shall be prosecuted according to law for his criminal responsibility; Where the act does not constitute a crime, the relevant control and inspection department may, according to circumstances, impose a fine of more them RMB 10,000 yuan and less the RMB 200,000 yuan. Its or his illegal income, if any, shall be confiscated.

#### **Article 23**

Where an operator uses advertisement or other means to give false, misleading information on its goods, the relevant control and inspection authority shall order it or him to desist from the illegal income and may, according to circumstances, impose fines of more than twice and less than three times the illegal income.

#### **Article 24**

Where an operator uses advertisement or other means to give false, misleading information on its goods, the relevant control and inspection authority shall order it or him to desist from the illegal act, dispel the bad influence, and may , according to circumstances, impose a fine of more than RMB 10,000 yuan and less than RMB 200,000 yuan.

Where an advertisement operator acts as an agent in designing, producing and releasing false

advertisements when it or he clearly knows, or should know, that they are false, the relevant control and inspection authority shall order it or him to desist from the illegal act, confiscate its or his illegal income, and impose a fine on it or him according to law.

**Article 25**

Where any party infringes on business secrets in contravention of the provisions of **Article 10** of this Law, the relevant control and inspection authority shall order it or him to desist from the illegal act and may, according to circumstances, impose on it or him a fine of more than RMB 10,000 yuan but less than RMB 200,000 yuan.

**Article 26**

Where an operator makes sales with prizes attached in contravention of the provisions of **Article 13** of this Law, the relevant control and inspection authority shall order it or him to desist from the illegal act and may, according to circumstances, impose on it or him a fine of more than RMB 10,000 yuan and less than RMB 100,000 yuan.

**Article 27**

Where tenderers submit tenders in collusion with one another to force the tender price up or down, or where a tenderer collaborates with the party inviting tenders to prevent competitors from competing fairly, its or his successful bid is null and void. The control and inspection authority may, according to circumstances, impose on it or him a fine of more than RMB 10,000 yuan and less than RMB 200,000 yuan.

**Article 28**

Where an operator commits an act in contravention of an order to temporarily stop selling, and not to remove, conceal or destroy, property related to acts of unfair competition, the relevant control and inspection authority may, according to circumstances, impose on it or him a fine of more than twice and less than three times the price of the property which has been sold, removed, concealed or destroyed.

**Article 29**

Where a party is not satisfied with the decision on punishment made by the relevant control and inspection authority, it or he may, within fifteen days from the date of receipt of the decision on punishment, apply to the competent authority at the next higher levels for reconsideration; where the party is not satisfied with the decision made after reconsideration, it or he may, within fifteen days from the date of receipt of the written decision made after reconsideration, institute proceedings in the people's court; the party may also directly institute proceedings in the people's court upon receipt of the decision on punishment.

**Article 30**

Where a local government and its subordinate departments, in contravention to the provisions of **Article 7** of this Law, force others to buy the goods of the operators designated by them, restrict the legitimate business activities of other operators, or restrict the normal flow of goods between regions, the higher authorities shall order them to rectify the situation; Where the circumstances are serious, the competent authorities at the same level or the next higher level shall take disciplinary sanctions against the persons directly responsible. Where the designated operators, taking advantage of this illegal arrangement, foist inferior but high-priced goods on buyers or make exorbitant charge, the control and inspection authorities shall confiscate the illegal income and may, according to circumstances, impose a fine of more than twice and less than three times the illegal income.

**Article 31**

Where a staff member of the state organ monitoring and investigating acts of unfair competition abuses his powers as neglects his duty, which constitutes a crime, he shall be prosecuted for his criminal responsibility according to law; where the act does not constitute a crime, he shall be disciplined administratively.

**Article 32**

Where a staff member of the State organ monitoring and investigating acts of unfair competition acts irregularly out of personal considerations and intentionally screens an operator from prosecution, fully knowing that he has contravened the provisions of this Law, which constitutes a crime, the said staff member shall be prosecuted for his criminal responsibility according to law.

## **Chapter 5 supplementary Provision**

**Article 33**

This Law shall enter into force on December 1, 1993.