Anti-Unfair Competition Law of the People's Republic of China

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1. This Law is enacted for the purposes of promoting the sound development of the socialist market economy, encouraging and protecting fair competition, preventing and curbing acts of unfair competition, and safeguarding the lawful rights and interests of business operators and consumers.

Article 2. Business operators shall, in their production and distribution activities, adhere to the principles of voluntariness, equality, fairness, and good faith, and abide by laws and commercial ethics.

For the purposes of this Law, "act of unfair competition" means an act of a business operator in its production or distribution activities that disrupts market competition order, thereby impairing the lawful rights and interests of other business operators or consumers, in violation of the provisions of this Law.

For the purposes of this Law, "business operator" means a natural person, legal person, or unincorporated organization engaged in the production or distribution of commodities or the provision of services (hereinafter collectively referred to as "commodities").

Article 3. People's governments at all levels shall take measures to prevent and curb acts of unfair competition and create a favorable environment and conditions for fair competition.

The State Council shall establish a coordination mechanism for anti-unfair competition work to study and decide on major anti-unfair competition policies and coordinate and handle major issues concerning the maintenance of market competition order.

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Article 4. The departments performing the functions of market regulation under people's governments at or above the county level shall investigate and handle acts of unfair competition in accordance with the law, except as otherwise provided by laws or administrative regulations for investigation and handling by other departments.

Article 5. The State encourages, supports, and protects all organizations and individuals in exercising social supervision over acts of unfair competition.

State organs and their employees shall not support or harbor acts of unfair competition.

Industry organizations shall strengthen industry self-discipline, guide and regulate their members in competing in accordance with the law, and safeguard market competition order.

Chapter II — Acts of Unfair Competition

Article 6. A business operator shall not commit the following acts of confusion that mislead persons into believing that a commodity is one of another person or has a particular connection with another person:

(1) using without authorization a label that is identical or similar to the name, packaging, or decoration of another person's commodity that has a certain degree of influence;

(2) using without authorization another person's enterprise name (including its abbreviated name, trade name, etc.), the name of a social organization (including its abbreviated name, etc.), or a name (including a pen name, stage name, translated name, etc.) that has a certain degree of influence;

(3) using without authorization the principal part of a domain name, website name, web page, or any other mark that has a certain degree of influence and is owned by another person;

(4) committing any other act of confusion sufficient to mislead persons into believing that a commodity is one of another person or has a particular connection with another person.

Article 7. A business operator shall not seek transaction opportunities or competitive advantages by bribing the following entities or individuals with property or by any other means:

(1) employees of the counterparty to a transaction;

(2) entities or individuals entrusted by the counterparty to a transaction to handle relevant matters; or

(3) entities or individuals that use their powers or influence to affect a transaction.

Where a business operator offers a discount to the counterparty to a transaction or pays a commission to an intermediary in the course of a transaction, it shall truthfully record such discount or commission in its accounts. The business operator receiving such discount or commission shall also truthfully record it in its accounts.

Any bribe offered by an employee of a business operator shall be deemed to have been offered by the business operator, unless there is evidence that the employee's act was unrelated to the pursuit of a transaction opportunity or competitive advantage for the business operator.

Article 8. A business operator shall not make false or misleading commercial representations in respect of the performance, functions, quality, sales status, user reviews, honors received, or any other aspect of its commodities so as to defraud or mislead consumers.

A business operator shall not engage in false transactions or any other means to assist another business operator in making false or misleading commercial representations.

Article 9. A business operator shall not commit the following acts of infringing upon trade secrets:

(1) acquiring a trade secret from the right holder by theft, bribery, fraud, duress, electronic intrusion, or any other improper means;

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(2) disclosing, using, or permitting another person to use a trade secret acquired from the right holder by any means as specified in the preceding subparagraph;

(3) disclosing, using, or permitting another person to use a trade secret in its possession in violation of a confidentiality obligation or the right holder's requirements on keeping the trade secret confidential; or

(4) instigating, inducing, or aiding another person to acquire, disclose, use, or permit another person to use the right holder's trade secret in violation of a confidentiality obligation or the right holder's requirements on keeping the trade secret confidential.

Where a natural person, legal person, or unincorporated organization other than a business operator commits any of the illegal acts set forth in the preceding paragraph, it shall be deemed as infringement of a trade secret.

Where a third party knows or ought to know that an employee or former employee of the right holder to a trade secret or any other entity or individual has committed any of the illegal acts set forth in the first paragraph of this Article but still acquires, discloses, uses, or permits another person to use the trade secret, such third party shall be deemed to have infringed the trade secret.

For the purposes of this Law, "trade secret" means technical information, business information, and other commercial information that is not known to the public, has commercial value, and for which the right holder has taken corresponding confidentiality measures.

Article 10. A business operator shall not conduct the following prize-attached sales activities:

(1) prize-attached sales where the type of prize offered, the odds of winning, the prize amount, the prize item, or any other prize information is unclear, thereby affecting prize redemption;

(2) prize-attached sales conducted by means of a deliberately planned arrangement whereby a designated person wins a prize; or

(3) prize-attached sales where the maximum prize exceeds 50,000 yuan.

Article 11. A business operator shall not fabricate or disseminate false or misleading information to impair the goodwill or product reputation of a competitor.

Article 12. A business operator that engages in business activities by using the Internet shall abide by the provisions of this Law.

A business operator shall not use technical means to affect user choice or otherwise commit the following acts to impede or disrupt the normal operation of the network products or services lawfully provided by another business operator:

(1) inserting a link or forcing a URL redirect into the network products or services lawfully provided by another business operator without the consent of that other business operator;

(2) misleading, deceiving, or compelling users into modifying, closing, or uninstalling the network products or services lawfully provided by another business operator;

(3) maliciously causing incompatibility with the network products or services lawfully provided by another business operator; or

(4) committing any other act that impedes or disrupts the normal operation of the network products or services lawfully provided by another business operator.

Chapter III — Investigation and Handling of Suspected Acts of Unfair Competition

Article 13. When conducting investigation into suspected acts of unfair competition, a supervisory inspection authority may take the following measures:

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(1) entering the business premises of a suspected business operator for inspection;

(2) questioning the business operator under investigation, interested persons, or any other relevant entity or individual, and requiring them to provide explanations or other materials related to the suspected act of unfair competition;

(3) consulting or copying agreements, account books, documents, records, correspondence, electronic data, or any other relevant materials related to the suspected act of unfair competition;

(4) sealing up or seizing property related to the suspected act of unfair competition; and

(5) inquiring into the bank accounts of the business operator under investigation.

The adoption of the measures set forth in the preceding paragraph shall be reported in writing to the principal responsible person of the supervisory inspection authority for approval. The adoption of the measures set forth in subparagraphs (4) and (5) of the preceding paragraph shall be reported to the principal responsible person of the supervisory inspection authority at the level of a city divided into districts or above for approval.

A supervisory inspection authority shall comply with the Administrative Compulsion Law of the People's Republic of China and other relevant laws and regulations when investigating suspected acts of unfair competition, and shall disclose the investigation results to the public in a timely manner.

When a supervisory inspection authority investigates suspected acts of unfair competition, the business operator under investigation, interested persons, and other relevant entities and individuals shall truthfully provide relevant materials or information.

Article 14. Where a supervisory inspection authority investigates suspected acts of unfair competition, the investigating personnel may not be fewer than two, and they shall produce their inspection credentials to the business operator under investigation, interested persons, and other relevant entities and individuals. Where the investigating personnel fail to produce their inspection credentials, the business operator under investigation, interested persons, and other relevant entities and individuals shall have the right to refuse the investigation.

Article 15. In the course of an investigation, the supervisory inspection authorities and their employees shall have a duty to keep confidential any trade secrets that come to their knowledge.

Chapter IV — Legal Liability

Article 16. Where a business operator, in violation of the provisions of this Law, causes damage to others, it shall bear civil liability in accordance with the law.

Where the lawful rights and interests of a business operator are impaired by an act of unfair competition, the business operator may bring an action in a people's court.

Article 17. The amount of compensation for damage caused by an act of unfair competition shall be determined on the basis of the actual damage suffered by the right holder as a result of the infringement; where the actual damage is difficult to determine, the amount of compensation shall be determined on the basis of the profits gained by the infringer from the infringement. The amount of compensation shall also include the reasonable expenses incurred by the right holder in stopping the infringing act.

Where a business operator violates the provisions of Articles 6 or 9 of this Law and the right holder is unable to determine the actual damage suffered or the profits gained by the infringer from the infringement, a people's court may award compensation of not more than five million yuan based on the circumstances of the infringement.

Where a business operator commits an act of unfair competition in bad faith with serious circumstances, the amount of compensation may be determined, in accordance with the methods set forth in the first paragraph

of this Article, at an amount of not less than one time but not more than five times the determined amount. The amount of compensation shall also include the reasonable expenses incurred by the right holder in stopping the infringing act.

The amount of compensation to be paid by a business operator whose act of unfair competition impairs the lawful rights and interests of another business operator shall be determined in accordance with the provisions of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests and other laws where the act also impairs the lawful rights and interests of consumers.

Article 18. Where a business operator, in violation of the provisions of Article 6 of this Law, commits an act of confusion, the supervisory inspection authority shall order it to cease the illegal act and confiscate the illegal commodities. Where the illegal turnover is not less than 50,000 yuan, a fine of not more than five times the illegal turnover may be imposed concurrently; where there is no illegal turnover or the illegal turnover is less than 50,000 yuan, a fine of not more than 250,000 yuan may be imposed concurrently. Where the circumstances are serious, the business license shall be revoked.

Where a business operator uses a name in its registered enterprise name that is identical or similar to another person's enterprise name that has a certain degree of influence and thereby commits an act of confusion, it shall also promptly undergo name change registration; and before the name change, the original enterprise registration authority shall replace its name with its unified social credit code.

Article 19. Where a business operator, in violation of the provisions of Article 7 of this Law, bribes another person to seek a transaction opportunity or competitive advantage, the supervisory inspection authority shall confiscate its illegal gains and impose a fine of not less than 100,000 yuan but not more than three million yuan. Where the circumstances are serious, its business license shall be revoked.

Article 20. Where a business operator, in violation of the provisions of Article 8 of this Law, makes false or misleading commercial representations about its commodities, or assists another business operator in making false or misleading commercial representations by engaging in false transactions or any other means, the supervisory inspection authority shall order it to cease the illegal act and impose a fine of not less than 200,000 yuan but not more than one million yuan; where the circumstances are serious, a fine of not less than one million yuan but not more than two million yuan shall be imposed and the business license may be revoked.

Where a business operator publishes false advertisements in violation of the provisions of Article 8 of this Law, penalties shall be imposed in accordance with the Advertising Law of the People's Republic of China.

Article 21. Where a business operator, in violation of the provisions of Article 9 of this Law, infringes upon a trade secret, the supervisory inspection authority shall order it to cease the illegal act, confiscate its illegal gains, and impose a fine of not less than 100,000 yuan but not more than one million yuan; where the circumstances are serious, a fine of not less than 500,000 yuan but not more than five million yuan shall be imposed.

Article 22. Where a business operator, in violation of the provisions of Article 10 of this Law, conducts prize-attached sales in violation of the law, the supervisory inspection authority shall order it to cease the illegal act and impose a fine of not less than 50,000 yuan but not more than 500,000 yuan.

Article 23. Where a business operator, in violation of the provisions of Article 11 of this Law, impairs the goodwill or product reputation of a competitor, the supervisory inspection authority shall order it to cease the illegal act, eliminate the adverse effects, and impose a fine of not less than 100,000 yuan but not more than 500,000 yuan; where the circumstances are serious, a fine of not less than 500,000 yuan but not more than three million yuan shall be imposed.

Article 24. Where a business operator, in violation of the provisions of Article 12 of this Law, impedes or disrupts the normal operation of the network products or services lawfully provided by another business

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operator, the supervisory inspection authority shall order it to cease the illegal act and impose a fine of not less than 100,000 yuan but not more than 500,000 yuan; where the circumstances are serious, a fine of not less than 500,000 yuan but not more than three million yuan shall be imposed.

Article 25. Where a business operator engages in an act of unfair competition in violation of the provisions of this Law and voluntarily eliminates or mitigates the harmful consequences of the illegal act, or where the illegal act is minor and promptly corrected without causing harmful consequences, administrative penalties may be imposed lightly, mitigated, or not imposed in accordance with the law.

Article 26. Where a business operator is subject to an administrative penalty for engaging in an act of unfair competition in violation of the provisions of this Law, the supervisory inspection authority shall record the illegal act in its credit file and disclose it to the public in accordance with the provisions of relevant laws and administrative regulations.

Article 27. Where a business operator infringes upon the lawful rights and interests of another person in violation of the provisions of this Law and ought to bear civil liability, pay an administrative fine, and pay a criminal fine, and its property is insufficient to cover all such payments, priority shall be given to bearing civil liability.

Article 28. Where a party is dissatisfied with a decision of the supervisory inspection authority, it may apply for administrative reconsideration or bring an administrative action in accordance with the law.

Article 29. Where an employee of a supervisory inspection authority abuses his or her power, neglects his or her duties, engages in malpractices for personal gain, or divulges any trade secret that comes to his or her knowledge during investigation, he or she shall be subject to disciplinary action in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 30. Where a person obstructs an employee of a supervisory inspection authority from performing his or her duties in accordance with the law in violation of the provisions of this Law, the public security authority shall impose a public security administrative penalty on the person in accordance with the law; where a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 31. Where the provisions of this Law are violated and a crime is constituted, criminal liability shall be pursued in accordance with the law.

Chapter V — Supplementary Provisions

Article 32. Where a trade secret right holder claims in a civil infringement proceeding that its trade secret has been infringed and provides prima facie evidence proving that it has taken confidentiality measures with respect to the claimed trade secret and reasonably indicating that the trade secret has been infringed, the alleged infringer shall bear the burden of proving that the trade secret claimed by the right holder is not a trade secret as defined in this Law.

Where a trade secret right holder provides prima facie evidence reasonably indicating that its trade secret has been infringed and provides any of the following evidence, the alleged infringer shall bear the burden of proving that it has not infringed the trade secret:

(1) evidence indicating that the alleged infringer has had channels or opportunities to access the trade secret and that the information used by the alleged infringer is substantially identical to the trade secret;

(2) evidence indicating that the trade secret has been disclosed, used, or is at risk of being disclosed or used by the alleged infringer; or

(3) other evidence indicating that the trade secret has been infringed by the alleged infringer.

Article 33. This Law shall come into force on January 1, 2018.

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