Anti-Unfair Competition Law of the PRC

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of promoting the healthy development of the socialist market economy, encouraging and protecting fair competition, preventing acts of unfair competition, and protecting the lawful rights and interests of undertakings and consumers.

Article 2 — An undertaking shall, in its production and business activities, abide by 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 an undertaking in its production and business activities that violates the provisions of this Law, disrupts the order of market competition, and damages the lawful rights and interests of other undertakings or consumers. For the purposes of this Law, “undertaking” means a natural person, legal person or unincorporated organization engaged in the production or business operation of commodities or the provision of services.

Article 3 — People’s governments at all levels shall take measures to prevent 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, study and decide on major anti-unfair competition policies, and coordinate and handle major issues in maintaining the order of market competition.

Article 4 — The departments of the people’s governments at or above the county level performing the duties of market supervision and administration shall investigate and deal with acts of unfair competition in accordance with the law, unless otherwise provided by laws or administrative regulations for the investigation and handling of acts of unfair competition by other departments.

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Article 5 — The state shall encourage, support and protect all organizations and individuals in exercising social supervision over acts of unfair competition. State organs and their staff members shall not support or cover up 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 the order of market competition.

Chapter II — Acts of Unfair Competition

Article 6 — An undertaking shall not engage in any of the following acts of confusion that may mislead a person into believing that the undertaking's commodities are those of another person or that the undertaking has a specific connection with another person: (1) using without authorization a label 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 the name of an enterprise, the name of a social organization, or a name that has a certain degree of influence; (3) using without authorization the principal part of a domain name, website name or web page that has a certain degree of influence; or (4) other acts of confusion that may mislead a person into believing that an undertaking's commodities are those of another person or that the undertaking has a specific connection with another person.

Article 7 — An undertaking shall not seek a transaction opportunity or competitive advantage by bribing the following entities or individuals with property or by any other means: (1) employees of the transaction counterparty; (2) entities or individuals entrusted by the transaction counterparty with the handling of relevant matters; or (3) entities or individuals that use their power or influence to affect the transaction. If an undertaking can prove that a bribe paid by an employee of the undertaking was made by the employee for his or her own personal gain, the bribe shall not be deemed as an act of the undertaking, unless otherwise provided by laws or administrative regulations.

Article 8 — An undertaking shall not conduct false or misleading commercial promotion in respect of the performance, function, quality, sales status, user reviews, honors received or other aspects of its commodities in order to deceive or mislead consumers. An undertaking shall not, by means of organizing false transactions or any other means, assist other undertakings in conducting false or misleading commercial promotion. Where an undertaking, through commercial promotion, publicizes the matters listed in the preceding paragraph, and the publicity of the information is inaccurate, untrue or incomprehensive, which causes or is sufficient to cause the public to have a wrong understanding of the relevant commodities, it shall constitute a case of false or misleading commercial promotion as specified in the preceding two paragraphs.

Article 9 — An undertaking shall not commit any of the following acts of infringing upon trade secrets: (1) acquiring trade secrets from the trade secret holder by theft, bribery, fraud, coercion, electronic intrusion or other improper means; (2) disclosing, using or allowing others to use trade secrets acquired by the means mentioned in the preceding item; (3) disclosing, using or allowing others to use trade secrets in its possession in violation of its confidentiality obligations or the requirements of the trade secret holder to keep the trade secrets confidential; or (4) instigating, tempting or assisting others to acquire, disclose, use or allow others to use the trade secrets of the trade secret holder in violation of their confidentiality obligations or the requirements of the trade secret holder to keep the trade secrets confidential. Where any third party other than the undertaking knows or should have known that an employee or former employee of the trade secret holder or any other unit or individual engages in any of the illegal acts specified in the previous paragraph and still acquires, discloses, uses or allows others to use the trade secret, such third party shall be deemed to have infringed upon the trade secret. For the purposes of this Law, "trade secret" means any technical information, business information or other commercial information that is not known to the public, has commercial value, and for which the trade secret holder has adopted corresponding confidentiality measures.

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Article 10 — An undertaking shall not engage in prize-attached sales under any of the following circumstances: (1) specifying the type of the prize, the requirements for prize redemption, the amount of the prize or the prize goods, and failing to truthfully make such specification, thereby affecting prize redemption, or the prize goods being inconsistent with what has been publicly declared; (2) using the method of lying about a prize or intentionally allowing an insider to win a prize; or (3) providing a prize exceeding the maximum prize amount of 50,000 yuan in a lottery-style prize-attached sales event. Where an undertaking undertakes a prize-attached sales activity, the undertaking shall clearly specify the type of the prize, the requirements for prize redemption, the amount of the prize or the prize goods and other information, and shall not change such information, and shall not grant prizes inconsistent with what has been publicly declared.

Article 11 — An undertaking shall not fabricate or disseminate false information or misleading information to damage the goodwill, or product reputation of a competitor.

Article 12 — An undertaking that carries out production and business activities by using networks shall abide by the provisions of this Law. An undertaking shall not use technical means to influence the choices of users or otherwise engage in any of the following acts that impede or disrupt the normal operation of network products or services lawfully provided by other undertakings: (1) inserting a link into a network product or service lawfully provided by another undertaking, or forcing a jump to a target page without the consent of the user; (2) misleading, deceiving or forcing a user to modify, close or uninstall a network product or service lawfully provided by another undertaking; (3) maliciously causing incompatibility with a network product or service lawfully provided by another undertaking; or (4) other acts that impede or disrupt the normal operation of network products or services lawfully provided by other undertakings.

Chapter III — Investigation of Suspected Acts of Unfair Competition

Article 13 — The supervision and inspection department may take the following measures when investigating a suspected act of unfair competition: (1) entering the business premises of the undertaking suspected of committing the act of unfair competition for inspection; (2) making inquiries of the undertaking under investigation, interested parties and other relevant units and individuals, and requiring them to provide explanations or other materials relating to the act under investigation; (3) accessing and copying agreements, account books, documents, records, business correspondence and other materials relating to the suspected act of unfair competition; (4) sealing up or seizing property relating to the suspected act of unfair competition; and (5) inquiring into the bank accounts of the undertaking suspected of committing the act of unfair competition. When taking the measures specified in the preceding paragraph, a written report shall be made to the principal responsible person of the supervision and inspection department and approved by the principal responsible person. When taking the measures specified in items (4) and (5) of the preceding paragraph, a written report shall be made to the principal responsible person of the supervision and inspection department at or above the level of a municipality divided into districts and approved by the principal responsible person. The supervision and inspection department shall abide by the provisions of the Administrative Compulsory Law of the People’s Republic of China and other laws and administrative regulations when investigating suspected acts of unfair competition, and shall make timely disclosure of the results of the investigation. Where the supervision and inspection department investigates a suspected act of unfair competition, the investigators shall produce their credentials in accordance with the law.

Article 14 — When the supervision and inspection department investigates a suspected act of unfair competition, the undertaking under investigation, interested parties and other relevant units and individuals shall faithfully provide relevant materials or information.

Article 15 — When the supervision and inspection department and its staff members investigate a suspected act of unfair competition, they shall abide by the relevant provisions of the Administrative Compulsory Law of the People’s Republic of China and other laws and administrative regulations, and shall make timely

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disclosure of the results of the investigation. The supervision and inspection department and its staff members shall have the obligation to keep confidential any trade secrets they become aware of in the course of the investigation.

Article 16 — Any unit or individual shall have the right to report any suspected act of unfair competition to the supervision and inspection department. The supervision and inspection department shall, after receiving the report, handle it in accordance with the law in a timely manner. The supervision and inspection department shall publish the telephone number, mailbox or e-mail address for receiving reports, and shall keep the informant's information confidential. Where a report is made by a real-name reporter and relevant facts and evidence are provided, the supervision and inspection department shall notify the reporter of the results of the handling.

Chapter IV — Legal Liability

Article 17 — Where an undertaking violates the provisions of this Law and causes damage to others, the undertaking shall bear civil liability in accordance with the law. Where an undertaking whose lawful rights and interests have been damaged by an act of unfair competition may file a lawsuit with a people's court. The amount of compensation for damage caused by an act of unfair competition shall be determined based on the actual loss suffered by the aggrieved party as a result of the infringement; where it is difficult to determine the actual loss, the amount of compensation shall be determined based on the benefits gained by the infringer as a result of the infringement. Where it is difficult to determine the loss of the aggrieved party as a result of the infringement and the benefits gained by the infringer, the people's court shall determine the amount of compensation to be not more than 5 million yuan based on the circumstances of the infringement. The amount of compensation shall also include the reasonable expenses incurred by the aggrieved party in stopping the act of unfair competition. Where an undertaking violates the provisions of Articles 6 or 9 of this Law, and the trade secret holder can provide prima facie evidence that the trade secret has been infringed upon, the alleged infringer shall bear the burden of proving that the alleged infringing act does not constitute an infringement of the trade secret, unless otherwise proved.

Article 18 — Where an undertaking violates the provisions of Article 6 of this Law by engaging in an act of confusion, the supervision and inspection department shall order the cessation of the illegal act and confiscate the illegal commodities. Where the illegal turnover is 50,000 yuan or more, a fine of not more than five times the illegal turnover may be imposed; 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. Where the circumstances are serious, the business license shall be revoked. Where the name registered by an undertaking is used without authorization in violation of Article 6 of this Law, and the name is identical or similar to the prior name of another undertaking that has a certain degree of influence, the undertaking shall complete the change of name registration in a timely manner; before the name is changed, the original enterprise registration authority shall replace the name with the unified social credit code.

Article 19 — Where an undertaking violates the provisions of Article 7 of this Law by bribing others to seek a transaction opportunity or competitive advantage, the supervision and inspection department shall confiscate the illegal gains and impose a fine of not less than 100,000 yuan but not more than 3 million yuan. Where the circumstances are serious, the business license shall be revoked.

Article 20 — Where an undertaking violates the provisions of Article 8 of this Law by conducting false or misleading commercial promotion of its commodities, or by organizing false transactions or assisting other undertakings in conducting false or misleading commercial promotion, the supervision and inspection department shall order the cessation of the illegal act and impose a fine of not less than 200,000 yuan but not more than 1 million yuan; where the circumstances are serious, a fine of not less than 1 million yuan but not more than 2 million yuan shall be imposed, and the business license may be revoked. Where an undertaking, in violation of Article 8 of this Law, publishes false advertisements, punishment shall be

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imposed in accordance with the provisions of the Advertising Law of the People's Republic of China.

Article 21 — Where an undertaking or any other natural person, legal person or unincorporated organization violates the provisions of Article 9 of this Law by infringing upon trade secrets, the supervision and inspection department shall order the cessation of the illegal act, confiscate the illegal gains, and impose a fine of not less than 100,000 yuan but not more than 1 million yuan; where the circumstances are serious, a fine of not less than 500,000 yuan but not more than 5 million yuan shall be imposed.

Article 22 — Where an undertaking violates the provisions of Article 10 of this Law by conducting prize-attached sales in violation of the provisions, the supervision and inspection department shall order the cessation of the illegal act and impose a fine of not less than 50,000 yuan but not more than 500,000 yuan.

Article 23 — Where an undertaking violates the provisions of Article 11 of this Law by damaging the goodwill of a competitor, the supervision and inspection department shall order the cessation of the illegal act and 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 3 million yuan shall be imposed.

Article 24 — Where an undertaking violates the provisions of Article 12 of this Law by impeding or disrupting the normal operation of network products or services lawfully provided by other undertakings, the supervision and inspection department shall order the cessation of 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 3 million yuan shall be imposed.

Article 25 — Where an undertaking 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 has other circumstances specified by laws or regulations for lighter, mitigated or exempted punishment, lighter or mitigated punishment shall be imposed or punishment shall be exempted in accordance with the law. Where an undertaking violates the provisions of this Law, and the illegal act is minor and the undertaking undergoes timely rectification without causing harmful consequences, no administrative penalty shall be imposed.

Article 26 — Where an undertaking is subject to an administrative penalty for engaging in an act of unfair competition, the supervision and inspection department shall record the penalty in the credit record of the undertaking and publicize it in accordance with the provisions of the relevant laws and administrative regulations.

Article 27 — Where an undertaking violates the provisions of this Law and shall bear civil liability and pay fines, and its assets are insufficient to pay both, the civil liability shall be given priority.

Article 28 — Where the supervision and inspection department is obstructed from performing its duties in accordance with this Law by refusing or obstructing the investigation, the supervision and inspection department shall order rectification and may impose a fine of not more than 5,000 yuan on the individual, and a fine of not more than 50,000 yuan on the unit, and the public security authority may impose public security administration penalties in accordance with the law.

Article 29 — Where a party is dissatisfied with the decision of the supervision and inspection department, the party may apply for administrative reconsideration or file an administrative lawsuit in accordance with the law.

Article 30 — Where a staff member of the supervision and inspection department abuses his or her power, neglects his or her duties, engages in malpractice for personal gain, or discloses any trade secret he or she becomes aware of in the course of investigation, and the case does not constitute a crime, the staff member shall be subject to disciplinary action in accordance with the law.

Article 31 — Where a violation of the provisions of this Law constitutes a crime, criminal liability shall be pursued in accordance with the law.

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Chapter V — Supplementary Provisions

Article 32 — This Law shall not apply to the investigation and handling of acts of unfair competition under special laws or administrative regulations, except as otherwise provided in this Law.

Article 33 — This Law shall come into force as of January 1, 2018. The amended text (2019 Amendment) shall come into force as of April 23, 2019.

Disclaimer: This English translation of the Anti-Unfair Competition Law of the People's Republic of China (2017, Amended 2019) is provided for reference and informational purposes only. While every effort has been made to ensure accuracy, this translation is unofficial and carries no legal authority. The original Chinese text adopted by the Standing Committee of the National People's Congress shall prevail in all legal matters. Users should consult qualified legal professionals for advice on specific legal issues. Dan Young Business Consultancy assumes no liability for any errors, omissions, or reliance on this translation.