Anti-Unfair Competition Law of the PRC

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Chapter I — General Provisions

Article 1 — This Law is enacted to promote the sound development of the socialist market economy, encourage and protect fair competition, prevent acts of unfair competition, and safeguard the lawful rights and interests of business operators and consumers.

Article 2 — Business operators shall, in their market transactions, follow the principles of voluntariness, equality, fairness, good faith, and shall observe generally recognized business ethics. For the purposes of this Law, "act of unfair competition" means an act of a business operator which, in its production or business operation, disrupts the order of market competition and causes damage to 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

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the production or business operation of commodities or the provision of services.

Article 3 — The 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 address major issues in the maintenance of the order of market competition.

Article 4 — The departments performing the functions of market supervision and administration of the people's governments at or above the county level shall investigate and deal with acts of unfair competition; where laws or administrative regulations provide that other departments shall investigate and deal with such acts, such provisions shall prevail.

Article 5 — The State encourages, supports, and protects all organizations and individuals in exercising social supervision over acts of unfair competition. State functionaries shall not support or shield acts of unfair competition. Trade associations and chambers of commerce shall strengthen industry self-discipline, guide and regulate their members in lawful competition, and safeguard the order of market competition.

Chapter II — Acts of Unfair Competition

Article 6 — A business operator shall not conduct any of the following confusing acts that may cause a person to mistake its commodities for those of another person or to believe there is a specific connection with another person: (1) using without authorization a mark that is identical or similar to the name, packaging, or decoration of another person's commodity which has a certain degree of influence; (2) using without authorization the name of an enterprise (including its abbreviated name, trade name, etc.), the name of a social organization (including its abbreviated name, etc.), or the name of a natural person (including a pseudonym, stage name, translated name, etc.) which has a certain degree of influence; (3) using without authorization the principal part of a domain name, website name, web page, or other element which has a certain degree of influence; (4) any other confusing act sufficient to cause a person to mistake a commodity for another person's commodity or to believe there is a specific connection with another person.

Article 7 — A business operator shall not, by giving property or using any other means, bribe the following entities or individuals to seek a transaction opportunity or competitive advantage: (1) employees of the counterparty to a transaction; (2) entities or individuals entrusted by the counterparty to a transaction to handle relevant affairs; (3) entities or individuals that use their authority or influence to affect a transaction. A business operator shall not be deemed to have committed commercial bribery if, in a transaction activity, it pays a discount to the counterparty to the transaction or pays a commission to an intermediary and both the business operator and the recipient truthfully record such payment in their accounts. "Discount" as used in the preceding paragraph means a price reduction granted by a business operator to the counterparty to a transaction; "commission" means remuneration paid by a business operator to an intermediary providing transaction intermediary services. A business operator that pays a discount or commission to the counterparty to a transaction or an intermediary does so in compliance with regulations.

Article 8 — A business operator shall not carry out false or misleading commercial publicity in respect of the performance, functions, quality, sales status, user reviews, honors received, or other aspects of its commodities to deceive or mislead consumers. A business operator shall not, by organizing false transactions or any other means, assist another business operator in carrying out false or misleading commercial publicity.

Article 9 — A business operator shall not commit any of the following acts of infringing upon trade secrets: (1) acquiring a trade secret from the right holder by theft, bribery, fraud, coercion, electronic intrusion, or any other improper means; (2) disclosing, using, or allowing another person to use a trade secret acquired from the right holder by the means mentioned in the preceding subparagraph; (3) disclosing, using, or allowing another person to use a trade secret in violation of confidentiality obligations or the requirements of the right

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holder for preserving the trade secret; (4) instigating, inducing, or assisting another person to acquire, disclose, use, or allow another person to use the right holder's trade secret in violation of confidentiality obligations or the requirements of the right holder for preserving the trade secret. Where a business operator other than a natural person, legal person, or unincorporated organization commits the illegal acts listed in the preceding paragraph, if a natural person commits such acts on behalf of it, the natural person shall be deemed to have infringed upon the trade secret. A third party who knows or should have known that an employee or former employee of the right holder to a trade secret or any other entity or individual has committed the illegal acts listed in the first paragraph of this Article but still acquires, discloses, uses, or allows another person to use the trade secret shall be deemed to have infringed upon the trade secret. "Trade secret" as used in this Law means technical information, business information, or other commercial information that is not known to the public and has commercial value, and in respect of which the right holder has adopted corresponding confidentiality measures.

Article 10 — A business operator conducting a prize-attached sale shall not commit any of the following acts: (1) setting forth information on the types of prizes, the conditions and amounts of prizes, prize-awarding probability, or other prize-related information that is not clear, thereby affecting a participant in the prize-attached sale; (2) carrying out a prize-attached sale through intentional arrangements whereby a designated person wins the prize; (3) for a lottery-style prize-attached sale, where the maximum prize amount exceeds RMB 50,000. "Lottery-style prize-attached sale" as used in this Law means a prize-attached sale in which prizes are awarded through means such as drawing lots or shaking a lottery machine, or other contingent means. "Maximum prize amount" refers to the maximum amount of a single prize, or the maximum total value of items offered in a single prize.

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

Article 12 — A business operator engaging in production or business operation by using the Internet shall abide by the provisions of this Law. A business operator shall not, by using technical means, affect the choices of users or commit any other act to obstruct or disrupt the normal operation of network products or services lawfully provided by another business operator by: (1) inserting a link or forcing a URL redirect into a network product or service lawfully provided by another business operator without the consent of that business operator; (2) misleading, deceiving, or forcing a user to modify, close, or uninstall a network product or service lawfully provided by another business operator; (3) maliciously causing incompatibility with a network product or service lawfully provided by another business operator; (4) any other act that obstructs or disrupts the normal operation of network products or services lawfully provided by another business operator.

Chapter III — Investigation of Suspected Acts of Unfair Competition

Article 13 — When investigating suspected acts of unfair competition, the supervision and inspection departments may take the following measures: (1) entering the business premises of a business operator suspected of engaging in unfair competition for inspection; (2) questioning the business operator under investigation, interested parties, and other relevant entities and individuals and requiring them to provide explanations or other materials related to the acts under investigation; (3) consulting and copying agreements, account books, documents, records, vouchers, electronic data, and other materials related to the acts suspected of being acts of unfair competition; (4) sealing up or seizing property related to acts suspected of being acts of unfair competition; (5) inquiring into the bank accounts of the business operator suspected of engaging in acts of unfair competition. The supervision and inspection departments shall report to the principal responsible person of the department in writing for approval before taking the measures prescribed in the preceding four subparagraphs. Where the measures prescribed in the fifth subparagraph of the preceding paragraph are taken, the investigation shall be reported to the principal responsible person of the department at the level of a city divided into districts or above for approval in writing. When the

supervision and inspection departments investigate suspected acts of unfair competition, they shall abide by the Administrative Compulsion Law of the PRC and other relevant laws and administrative regulations, and shall produce the inspection and investigation approval document or relevant documents. The relevant entities and individuals shall truthfully provide materials and cooperate with the investigation and inspection. Where the measures prescribed in the fourth subparagraph of the first paragraph of this Article are taken, a business operator may be required to provide a security deposit, the goods or materials that have been sealed up or seized may be disposed of by auction or sale, and if no illegal act is found, the proceeds shall be returned.

Article 14 — When the supervision and inspection departments investigate suspected acts of unfair competition, the business operator under investigation, interested parties, and other relevant entities and individuals shall truthfully provide relevant materials or information.

Article 15 — The supervision and inspection departments and their staff members shall keep confidential any trade secrets that come to their knowledge in the course of investigation.

Article 16 — Any entity or individual shall have the right to report suspected acts of unfair competition to the supervision and inspection departments. The supervision and inspection departments shall, after receiving a report, handle it in accordance with law. The supervision and inspection departments shall publish the telephone numbers, mailing addresses, or e-mail addresses for receiving reports and keep reporters confidential. Where a report is made using a real name and relevant facts and evidence are provided, the supervision and inspection departments shall inform the reporter of the outcome of the handling.

Chapter IV — Legal Liability

Article 17 — Where a business operator violates the provisions of this Law and causes damage to another person, it shall bear civil liability in accordance with law. Where the lawful rights and interests of a business operator are damaged by an act of unfair competition, it may bring a lawsuit in a people's court. The amount of compensation for damage caused by an act of unfair competition to a business operator shall be determined based on the actual losses suffered by the business operator as a result of the infringement; where it is difficult to determine the actual losses, the amount shall be determined based on the benefits obtained by the infringer from the infringement. Where compensation is to be paid for a malicious act of infringement of trade secrets, the amount of compensation may be determined as not less than one time and not more than five times the amount determined by the method described above. The amount of compensation shall also include the reasonable expenses paid by the business operator to stop the infringement. Where a business operator violates the provisions of Articles 6 and 9 of this Law and the actual losses suffered by the right holder as a result of the infringement or the benefits obtained by the infringer from the infringement are difficult to determine, a people's court may, based on the circumstances of the infringement, award compensation of not more than RMB 5 million. The limitation period for bringing a lawsuit in respect of compensation for damage caused by an act of unfair competition shall be three years, calculated from the date on which the right holder knew or should have known that its rights had been damaged and the infringer. Where the statute of limitations has been interrupted or suspended, the relevant provisions of the General Provisions of the Civil Law of the PRC shall apply.

Article 18 — Where a business operator violates the provisions of Article 6 of this Law by committing an act of confusion, the supervision and inspection department shall order it to stop the illegal act and confiscate the illegal commodities. Where the illegal turnover is RMB 50,000 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 RMB 50,000, a fine of not more than RMB 250,000 may be imposed. Where the circumstances are serious, the business license shall be revoked. Where the enterprise name registered by a business operator violates the provisions of Article 6 of this Law, the registration shall be handled by the enterprise name registration authority in a timely manner, either by ordering the name to be changed within a time limit or having the

name changed, and the administrative penalty decision shall be made by the supervision and inspection department under the preceding paragraph.

Article 19 — Where a business operator violates the provisions of Article 7 of this Law by bribing another person, the supervision and inspection department shall confiscate the illegal gains and impose a fine of not less than RMB 100,000 and not more than RMB 3 million. Where the circumstances are serious, the business license shall be revoked.

Article 20 — Where a business operator violates the provisions of Article 8 of this Law by carrying out false or misleading commercial publicity, or by organizing false transactions or any other means to assist another business operator in carrying out false or misleading commercial publicity, the supervision and inspection department shall order it to stop the illegal act and impose a fine of not less than RMB 200,000 and not more than RMB 1 million; where the circumstances are serious, a fine of not less than RMB 1 million and not more than RMB 2 million shall be imposed and the business license may be revoked. Where a business operator violates the provisions of Article 8 of this Law and falls under the circumstances of false advertising, the Advertising Law of the PRC shall apply for punishment.

Article 21 — Where a business operator 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 it to stop the illegal act, confiscate the illegal gains, and impose a fine of not less than RMB 100,000 and not more than RMB 1 million; where the circumstances are serious, a fine of not less than RMB 500,000 and not more than RMB 5 million shall be imposed.

Article 22 — Where a business operator violates the provisions of Article 10 of this Law by conducting a prize-attached sale, the supervision and inspection department shall order it to stop the illegal act and impose a fine of not less than RMB 50,000 and not more than RMB 500,000.

Article 23 — Where a business operator violates the provisions of Article 11 of this Law by damaging the commercial reputation or product reputation of a competitor, the supervision and inspection department shall order it to stop the illegal act and eliminate the adverse effects, and impose a fine of not less than RMB 100,000 and not more than RMB 500,000; where the circumstances are serious, a fine of not less than RMB 500,000 and not more than RMB 3 million shall be imposed.

Article 24 — Where a business operator violates the provisions of Article 12 of this Law by obstructing or disrupting the normal operation of network products or services lawfully provided by another business operator, the supervision and inspection department shall order it to stop the illegal act and impose a fine of not less than RMB 100,000 and not more than RMB 500,000; where the circumstances are serious, a fine of not less than RMB 500,000 and not more than RMB 3 million shall be imposed.

Article 25 — Where a business operator engages in unfair competition in violation of the provisions of this Law, if the business operator voluntarily eliminates or mitigates the harmful consequences of the illegal act or falls under any other circumstance in which a lighter or mitigated punishment shall be imposed in accordance with law, a lighter or mitigated administrative penalty shall be imposed; where the illegal act is minor and is corrected in a timely manner without causing harmful consequences, no administrative penalty shall be imposed.

Article 26 — Where a business operator receives an administrative penalty for engaging in unfair competition in violation of the provisions of this Law, the supervision and inspection department shall record the administrative penalty in its credit record and make the information public in accordance with relevant laws and administrative regulations.

Article 27 — Where the civil liability to be borne by a business operator for violating the provisions of this Law and the fines, fines for nonpayment of fines, and confiscation of illegal gains to be imposed on it are insufficient to cover all such liabilities, the civil liability shall be satisfied first.

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Article 28 — Where the supervision and inspection department takes administrative compulsory measures such as sealing up or seizing in violation of the provisions of this Law, the higher-level authority shall order rectification; the directly liable person in charge and other directly liable persons shall be subject to disciplinary action in accordance with law.

Article 29 — Where a party is dissatisfied with the decision on an administrative penalty made by the supervision and inspection department, it may apply for administrative reconsideration or bring an administrative lawsuit in accordance with law.

Article 30 — Where a staff member of a supervision and inspection department abuses his or her power, neglects his or her duties, or engages in malpractices for personal gain, or divulges any trade secret that has come to his or her knowledge in the course of investigation, he or she shall be subject to disciplinary action in accordance with law.

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

Chapter V — Supplementary Provisions

Article 32 — In civil trial proceedings for infringement of trade secrets, where the right holder to a trade secret provides prima facie evidence that it has adopted confidentiality measures for the claimed trade secret and reasonably indicates that the trade secret has been infringed, and the alleged infringer claims that the right holder does not hold the trade secret provided for in this Law, the alleged infringer shall provide evidence. Where the right holder to a trade secret provides prima facie evidence reasonably indicating that the trade secret has been infringed and provides any of the following evidence, and the alleged infringer claims that there is no infringement, the alleged infringer shall provide evidence: (1) evidence proving that the alleged infringer has 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 proving that the trade secret has been or is at risk of being disclosed or used by the alleged infringer; (3) other evidence proving 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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