

**Unofficial Translation of Draft Revision of People's  
Republic of China Anti-Unfair Competition Law**

**Chapter One General Provisions**

**Article 1**

The purpose of this Law is to safeguard the healthy development of a socialist market economy, encourage and protect fair competition, prevent unfair competition and protect the legitimate rights and interests of business entities and consumers.

**Article 2**

Business entities shall, in their business activities, follow the principles of voluntariness, equality, fairness, honesty and credibility and observe generally recognized business ethics.

'Unfair competition' stipulated in this Law refers to the conduct of business entities that violate the provisions of this Law, and thus infringe upon the legitimate rights and interests of other business entities or consumers, and disturb the market order.

'Business entity(ies)' stipulated in this Law refers to natural persons, legal persons or any other organizations engaging in or participating in the manufacture or operation of products or provision of services ('product' referred to hereinafter includes service).

**Article 3**

People's governments at all levels shall take measures to prevent unfair competition conduct and create a sound environment and good conditions for fair competition.

Administrative departments for industry and commerce of the people's governments at or above county level shall supervise and inspect unfair competition conduct. In the event other laws or administrative regulations stipulate otherwise, relevant departments may conduct such supervision and inspection accordingly.

**Article 4**

The state encourages, supports and protects all organizations and individuals who carry out social supervision over unfair competition conduct.

No staff member of the state may participate in, support or cover up unfair competition conduct.

## **Chapter Two Unfair Competition Conduct**

### **Article 5**

A business entity shall not engage in any of the following acts of market confusion by making use of a commercial sign:

- (1) using, without authorization, the famous commercial sign of another business entity, or using a commercial sign similar to another business entity's famous commercial sign leading to market confusion;
- (2) using its own commercial sign that is identical with or similar to the famous commercial sign of another business entity in a conspicuous way misleading the general public and leading to market confusion;
- (3) using a registered trademark or unregistered well-known trademark of another business entity as a trade name in its business name misleading the general public and leading to market confusion; or
- (4) using a trade name or abbreviation of a name of a famous enterprise or conglomerate as text-based signs in its trademark or main part of its domain name misleading the general public and leading to market confusion.

'Commercial sign' in this Law refers to a symbol that differentiates product manufacturers or traders, including but not limited to the unique names of famous products, packaging, trade dress, shape of goods, trademarks, enterprises and conglomerates' names and abbreviations, trade names, main parts of domain names, website names, webpages, names, pen names, stage names, program names and logos of TV channels, etc.

'Market confusion' in this Law refers to misunderstanding by the general public of product manufacturers, traders or a particular relationship linked to product manufacturers or traders.

### **Article 6**

A business entity in a comparatively advantageous position shall not do the following:

- (1) without justification, restrict with whom the trading party does business,
- (2) without justification, designate the products that the trading party should purchase (thus restricting the trading party's choice of products),
- (3) without justification, make restrictions in the trading terms and conditions that relate to the trading party and the party with whom it is doing business,
- (4) abusively overcharge or unreasonably demand trading party(ies) to offer other economic benefits, or
- (5) request other unreasonable trading terms.

'Comparatively advantageous position' in this Law refers to an advantageous position in a specific transaction held by an business entity in terms of capital, technology, market access, distribution channel and material procurement, etc. and its trading counterparty depends on such business entity and is difficult to switch to

other business entities.

**Article 7**

A business entity shall not engage in any of the following conduct of commercial bribery:

- (1) seek economic benefits from an organization, department or individual that provides public services based either on the public service entity's actual provision of services or on the public entity's influence;
- (2) provide economic benefits between business entities based on false contracts and accounting documents; or
- (3) provide or promise to provide economic benefits to a third party who may influence the transaction to the detriment of the legitimate rights and interests of other business entities or consumers.

Commercial bribery refers to the conduct whereby a business entity provides or promises to provide economic benefits to its trading counterparty or any third party who may have an impact on the transaction, to induce such trading counterparty or third party to seek trading opportunities or competitive advantages for that business entity. Conduct of providing or promising to provide economic benefits shall be deemed as commercial offering of a bribe; conduct of accepting or consenting to accept economic benefits shall be deemed as acceptance of a commercial bribe.

Commercial bribery conducted by the employee(s) to gain trading opportunities or competitive advantages for a business entity shall be deemed as the conduct of that business entity. The acceptance of commercial bribes conducted by the employee(s) that is against a business entity's interests and for which there is evidentiary proof shall not be deemed as the conduct of that business entity.

**Article 8**

A business entity shall not engage in any of the following misleading conduct of commercial promotion:

- (1) carrying out false promotion or biased promotion;
- (2) using inconclusive scientific opinions, phenomenon as conclusive facts for promotion; or
- (3) using ambiguous language or other misleading ways to conduct promotion.

**Article 9**

A business entity shall not engage in any of the following conduct to infringe upon trade secrets:

- (1) obtaining a right owner's trade secrets by ways of stealing, luring, intimidation, fraud or other unfair means;
- (2) disclosing, using or allowing other party to use the trade secrets obtained from

- the rightful owner by means stipulated in the preceding paragraph; or
- (3) disclosing, using or allowing other parties to use trade secrets in its possession in violation of an agreement or against rightful owners' requirement for keeping trade secrets confidential.

The obtaining, disclosure, usage or allowing other party to use the rightful owner's trade secrets by a third party is deemed as infringement upon trade secrets if the third party is aware of or should be aware of the illegal conduct stipulated in the preceding paragraphs.

"Trade secrets" in this Law refers to any technology information or business information which is unknown to the public, has commercial value and has been protected by relevant security measures by the rightful owner.

## **Article 10**

A business entity shall not engage in any of the following prize-giving sales promotions to consumers:

- (1) without explicitly defining the categories of the prize, redemption terms, reward amount or the prize and other prize-giving sales promotions information, jeopardizing the prize redemption of consumers;
- (2) prize-giving sales promotions conducted by such deceptive means as falsely declaring to have prize or intentionally making a designated insider win the prize;
- (3) setting unreasonable terms and conditions for gift redemption; or
- (4) lottery-based sales promotions with the highest prize exceeding RMB 20,000.

"Prize-giving sales promotion" in this Law includes the lottery-based sales promotion and the gift-based sales promotion. The gift-based sales promotion means that the gift is certain under the same conditions; the lottery-based sales promotion means that the categories of prize and whether to reward prize are determined on a random basis.

## **Article 11**

A business entity shall not fabricate and spread false information, malicious review information, spread incomplete or unverifiable information, which damaging other parties' business and product reputation.

## **Article 12**

The bidders shall not conduct collusive bidding to raise or lower the bidding prices.

The bidder and the tenderee shall not collude with each other to impede the fair competition among competitors.

## **Article 13**

A business entity shall not engage in any of the following conduct which affects users' choices or interfere with other business entities' normal business operations by

making use of network technologies or application services:

- (1) impeding users' normal use of other business entities' network application services through technological means without the consent of users;
- (2) inserting hyperlinks in network application services provided by other business entities to perform compelled target jump without permission or authorization;
- (3) misleading, deceiving, or compelling users to modify, close, uninstall or make the users unable to properly use network application services legitimately provided by other parties; or
- (4) interfering with or destroying the normal operation of the network application services legitimately provided by other parties without permission or authorization.

#### **Article 14**

A business entity shall not engage in other unfair-competition conduct that harms other parties' legitimate rights and interests, and disrupt market orders.

"Other unfair-competition conduct" prescribed in the preceding paragraph shall be determined by the administrative department for industry and commerce of the state council.

### **Chapter Three Supervision and Inspection**

#### **Article 15**

The supervision and inspection agency has the right to exercise the following functions and powers when investigating unfair-competition conduct:

- (1) conduct investigation of the business premises related to the investigated conduct or other premises;
- (2) interviewing the business entity under investigation, interested parties or other relevant entities or individuals, and demanding them to provide evidential materials, data and technical support or other materials related to the unfair-competition conduct;
- (3) requesting and reproducing agreements, books, receipts and invoices, documents, records, business correspondence, electrical data, audio files and other materials related to the investigated conduct;
- (4) ordering the business entity under investigation to suspend the alleged illegal conduct, explain the origins and quantity of the items related to the investigated conduct, and not to transfer, conceal or destroy such items;
- (5) sealing up or seizing the items related to the alleged unfair-competition conduct;
- (6) requesting bank accounts and accounting books, bank statements, etc. related to the deposits of the business entity engaged in the alleged unfair-competition conduct; or
- (7) requesting judicial authorities to freeze accounts in situations where there is evidence to prove the conduct of transferring or concealing illegal funds.

**Article 16**

The business entities under investigation, interested parties or other relevant entities, individuals shall provide relevant materials or information truthfully, cooperate with the supervision and inspection agency to perform its duties in accordance with law, and shall not resist, impede the supervision and inspection when the agency investigates the unfair-competition conduct.

**Chapter Four Legal Liability**

**Article 17**

A business entity who violates the provisions of this Law and harms the legitimate rights and interests of any other party, shall cease the infringement; and such business entity shall bear the liability of compensation if it causes damage to the other party.

Business entities or consumers infringed by unfair competition conduct may file lawsuit with the people's court in accordance with law.

**Article 18**

Where any dispute arises from any of the conduct prescribed in Article 5 of this Law, the parties shall settle the dispute through negotiation; where the parties are unwilling to negotiate or the negotiation fails, the parties may file a lawsuit with people's court or request the supervision and inspection agency to handle the dispute.

The supervision and inspection agency shall order the business entity in violation of Article 5 of this Law to stop illegal conduct and confiscate its illegal products. A business entity whose illegal operation revenue is more than RMB 50,000, shall be imposed a fine of less than five times of its illegal operation revenue, and its licenses may be revoked if the circumstances are serious; a fine of less than RMB 250,000 shall be imposed if there is no illegal operation revenue or the illegal operation revenue is less than RMB 50,000; a fine of more than RMB 100,000 but less than RMB 1,000,000 shall be imposed on the basis of the seriousness of the illegal conduct if the illegal operation revenue cannot be calculated.

The supervision and inspection agency shall order the business entity who violates item (3), paragraph 1 of Article 5 of this Law to conduct enterprise name change registration within one month; An business entity failing to file such application within the prescribed period shall be fined by the supervision and inspection agency pursuant to the preceding paragraph, and the local supervision and inspection agency of the place where the business entity is registered shall remove the business entity's name from the business entity credit information publication system, and use the registration number or the unified social credit code to replace the business entity's name, and include the business entity in the list of enterprises with abnormal business operations; such business entity's licenses may be revoked

if the circumstances are serious.

**Article 19**

The supervision and inspection agency at or above the city level shall instruct the business entity in violation of Article 6 of this Law to rectify its illegal conduct and impose a fine of more than one time but less than five times of its illegal operation revenue; a fine of more than RMB 100,000 but less than RMB 3,000,000 shall be imposed on the basis of the seriousness of the illegal conduct if there is no illegal operation revenue or the illegal operation revenue cannot be calculated.

A business entity shall be fined pursuant to the preceding paragraph if its products are designated and violates Article 6 of this Law.

**Article 20**

The supervision and inspection agency shall order the business entity in violation of Article 7 of this Law to cease illegal conduct and impose a fine of more than 10% but less than 30% of its illegal operation revenue; criminal liability of the business entity shall be pursued in accordance with law if the conduct constitutes a crime.

**Article 21**

The supervision and inspection agency shall order the business entity in violation of Article 8 of this Law to cease illegal conduct and impose a fine of more than three times but less than five times of its illegal operation revenue; a fine of more than RMB 100,000 but less than RMB 1,000,000 shall be imposed on the basis of the seriousness of the illegal conduct if there is no illegal operation revenue or the illegal operation revenue cannot be calculated; such business entity's licenses may be revoked if the circumstances are serious; criminal liability shall be pursued in accordance with law if the conduct constitutes a crime.

**Article 22**

The supervision and inspection agency shall order the business entity in violation of Article 9 of this Law to cease illegal conduct and impose a fine of more than RMB 100,000 but less than RMB 3,000,000; criminal liability shall be pursued in accordance with law if the conduct constitutes a crime.

Where a rightful owner of trade secrets can prove that the information used by other party is substantively the same as its own trade secrets and the other party has the access to such trade secrets, the other party shall bear the burden of proving that the information is acquired through legitimate source.

**Article 23**

The supervision and inspection agency shall order the business entity in violation of Article 10 of this Law to cease illegal conduct, confiscate its

illegal products, and impose a fine of more than RMB 100,000 but less than RMB 1,000,000 on the basis of the seriousness of the illegal conduct.

**Article 24**

The supervision and inspection agency shall order the business entity in violation of Article 11 of this Law to cease illegal conduct, eliminate consequences and impose a fine of more than RMB 100,000 but less than RMB 3,000,000 on the basis of the seriousness of the illegal conduct; criminal liability shall be pursued in accordance with law if the conduct constitutes a crime.

**Article 25**

The supervision and inspection agency shall order the business entity in violation of Article 12 of this Law to cease illegal conduct and impose a fine of more than RMB 100,000 but less than RMB 3,000,000 on the basis of the seriousness of the illegal conduct; criminal liability shall be pursued in accordance with law if the conduct constitutes a crime.

**Article 26**

The supervision and inspection agency shall order the business entity in violation of Article 13 of this Law to cease illegal conduct and impose a fine of more than RMB 100,000 but less than RMB 3,000,000 on the basis of the seriousness of the illegal conduct.

**Article 27**

The supervision and inspection agency shall order the business entity in violation of Article 14 of this Law by engaging in unfair competition conduct to cease illegal conduct and impose a fine of more than RMB 100,000 but less than RMB 3,000,000 on the basis of the seriousness of the illegal conduct; criminal liability shall be pursued in accordance with law if the conduct constitutes a crime.

**Article 28**

Where a business entity clearly knows or ought to know the unfair competition conduct prescribed in this Law and still provides conveniences such as production, sales, warehousing, transportation, web service, technical support, advertising promotion, payment and settlement, etc., such business entity shall be imposed a fine of more than RMB 100,000 but less than RMB 1,000,000 on the basis of the seriousness of the illegal conduct. Such business entity may be given a lighter or mitigated punishment if it actively cooperates with the supervision and inspection agency's investigation, truthfully provides explanations and submits relevant evidence.

**Article 29**

Where a business entity violates this Law by transferring, concealing, destroying or selling products that have been sealed-up, seized or suspended from selling by



orders, the supervision and inspection agency may confiscate the involved products of such business entity and impose a fine of more than one time but less than three times of the price of the involved products; a fine of more than RMB 100,000 but less than RMB 1,000,000 shall be imposed if the price cannot be calculated; criminal liability shall be pursued in accordance with law if the conduct constitutes a crime.

**Article 30**

Where a business entity, without statutory reasons, refuses to provide relevant materials or information, provides false materials or information, conceals, destroys or transfers evidence, or otherwise refuses or impedes the investigation conducted by the supervision and inspection agency in accordance with law, the said agency shall instruct the business entity to rectify its illegal conduct and impose a fine of more than RMB 20,000 but less than RMB 200,000.

**Article 31**

Where a business entity is dissatisfied with the decision issued by the supervision and inspection agency, it may apply for an administrative review or file an administrative lawsuit in accordance with law.

**Article 32**

Where a staff member of the state, who is responsible for supervision and inspection of unfair competition conduct, abuses his/her power or neglects his/her duty, he/she shall be issued an administrative sanction according to law; criminal liability shall be pursued in accordance with law if the conduct constitutes a crime.

**Article 33**

Where a staff member of the state, who is responsible for supervision and inspection of unfair competition conduct, engages in malpractices for personal gain and intentionally harbors business entities which he/she clearly knows to be guilty of crimes by violating the provisions of this Law, he/she shall be pursued for criminal liability in accordance with law.

**Chapter Five Supplementary Provisions****Article 34**

Terms in this Law that involve “more than”, “less than” shall include the number itself.

**Article 35**

This Law shall come into effect on YY/MM/DD.