

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER P112

PROTECTION AGAINST UNFAIR COMPETITION ACT

Showing the Law as at 15 December 2002

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 4/2002, in force 12 August 2002

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PROTECTION AGAINST UNFAIR COMPETITION ACT

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PROTECTION AGAINST UNFAIR COMPETITION ACT

Interpretation

1. In this Act—

"appearance of a product" includes the packaging, shape, colour or other non-functional characteristic features of the product in question;

"business identifier" includes business symbols, emblems, logos and slogans used by an enterprise to convey in the course of industrial or commercial activities a certain identity with respect to the enterprise and the products produced or the services rendered by that enterprise;

"Court" means the Eastern Caribbean Supreme Court;

"dilution of goodwill or reputation" means the lessening of the distinctive character or advertising value of a trademark, trade name or other business identifier, the appearance of a product or the presentation of products or services or of a celebrity or well-known fictional character;

"industrial or commercial activities" includes the activities of professionals and other such persons;

"practice" includes an omission to act;

"trademark" includes marks relating to goods, marks relating to services and marks relating to both goods and services.

Application of Act

2. Sections 3 to 8 shall apply independently of, and in addition to, any legislative provisions protecting inventions, industrial designs, trademarks, literary and artistic works and other intellectual property subject matter.

General principles

3. (1) In addition to the acts and practices referred to in sections 3 to 8, any act or practice in the course of industrial or commercial activities that is contrary to honest practices shall constitute an act of unfair competition.

(2) Any person who has suffered any damage or is likely to suffer damage by an act of unfair competition shall be entitled to the remedies before the Court.

Causing confusion with respect to another's enterprise or its activities

4. (1) Any act or practice in the course of industrial or commercial activities that causes, or is likely to cause, confusion with respect to another's enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(2) Confusion may, in particular, be caused with respect to any of the following—

(a) a trademark, whether registered or not;

(b) a trade name;

(c) a business identifier other than a trademark or trade name;

(d) the appearance of a product;

(e) the presentation of products or services;

(f) a celebrity or a well-known fictional character.

Damaging another's goodwill or reputation

5. (1) Any act or practice in the course of industrial or commercial activities that damages, or is likely to damage, the goodwill or reputation of another's enterprise shall constitute an act of unfair competition, regardless of whether such act or practice causes confusion.

(2) Damaging another's goodwill or reputation may, in particular, result from the dilution of the goodwill or reputation attached to any of the following—

(a) a trademark, whether registered or not;

(b) a trade name;

(c) a business identifier other than a trademark or a trade name;

(d) the appearance of a product;

(e) the presentation of products or services;

(f) a celebrity or a well-known fictional character.

Misleading the public

6. (1) Any act or practice in the course of industrial or commercial activities that misleads, or is likely to mislead, the public with respect to an enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(2) Misleading may arise out of advertising or promotion and may, in particular, occur with respect to—

(a) the manufacturing process of a product;

(b) the suitability of a product or service for a particular purpose;

(c) the quality or quantity or other characteristics of products or services;

(d) the geographical origin of products or services;

(e) the conditions on which products or services are offered or provided;

(f) the price of products or services or the manner in which it is calculated.

Discrediting another's enterprise or its activities

7. (1) Any false or unjustifiable allegation in the course of industrial or commercial activities that discredits, or is likely to discredit, another's enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(2) Discrediting may arise out of advertising or promotion and may, in particular, occur with respect to any of the following—

(a) the manufacturing process of a product;

(b) the suitability of a product or service for a particular purpose;

(c) the quality or quantity or other characteristics of products or services;

(d) the conditions on which products or services are offered or provided;

(e) the price of products or services or the manner which it is calculated.

Unfair competition in respect of secret information

8. (1) Any act or practice in the course of industrial or commercial activities that results in the disclosure, acquisition or use by others of secret information without the consent of the person lawfully in control of that information and in a manner contrary to honest commercial practices shall constitute an act of unfair competition.

(2) Disclosure, acquisition or use of secret information by others without the consent of the rightful holder may, in particular, result from—

(a) industrial or commercial espionage;

(b) breach of contract;

(c) breach of confidence;

(d) inducement to commit any of the acts referred to in paragraphs (a) to (c);

(e) acquisition of secret information by a third party who knew, or was grossly negligent in failing to know, that an act referred in paragraphs (a) to (c) was involved in the acquisition.

(3) For the purpose of this section, information shall be considered "secret information" if—

(a) it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) it has commercial value because it is secret; and

(c) it has been subject to reasonable steps under the circumstances by the rightful holder to keep it secret.

(4) Any act or practice in the course of industrial or commercial activities shall be considered an act of unfair competition if it consists of or results in—

(a) an unfair commercial use of secret test or other data, the origination of which involves considerable effort, which have been submitted to a competent authority for the purposes of obtaining approval of the marketing of pharmaceutical or agricultural chemical products which utilise new chemical activities; or

(b) the disclosure of such data, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

Regulations

9. The Governor in Council may make Regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

Citation

10. This Act may be cited as the Protection Against Unfair Competition Act, Revised Statutes of Anguilla, Chapter P112.

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