

Law Against Unfair Competition of the People's Republic of China

(Adopted at the Third Session of the Standing Committee of the Eighth National People's Congress on September 2, 1993. Promulgated by Order No.10 of the President of the People's Republic of China on September 2, 1993. and Effectives of December 1, 1993)

Chapter I General Provisions

Article 1. This Law is formulated with a view to safeguarding the healthy development of the socialist market economy, encouraging and protect fair competition, preventing acts of unfair competition, and defending the lawful rights and interests of operators and consumers.

Article 2. An operator shall, in transactions in the market, follow the principle of voluntariness, equality, fairness, honesty and credibility, and observe generally recognized business ethics.

"Unfair competition" in this Law refers to acts of operator which contravene the provisions of this Law, damage the lawful rights and interests of other operator, and disturb the socio-economic order.

"Operator" in this Law refers to a legal person or other economic organization or individual engaging in the trading of goods or profit-making services. ("Goods" mentioned hereinafter include services.)

Article 3. The People's Governments at various levels shall adopt measures to prevent acts of unfair competition and create a favorable environment and conditions for fair competition.

The administrative authorities for industry and commerce in the People' s Governments above the county level shall supervise and inspect acts of unfair competition. In respect of those acts which, according to the provisions of various laws and administrative regulations, are subject to supervision and inspection by other departments, these provisions shall be abided by.

Article 4. The state encourages, supports and protects all organizations and individuals in carrying out social supervision over acts of unfair competition.

Staff members of State organs shall not support or cover up acts of unfair competition.

Chapter II Acts of Unfair Competition

Article 5. An operator may not adopt the following unfair means to carry to transactions in the market and cause damage to competitors:

- (1) passing off the registered trademark of another person;
- (2) using, without authorization, the name, packaging or decoration peculiar to well-known goods or using a name, packaging or decoration similar to that of well-known goods, so that his goods are confused with the well-known goods of another person, causing buyers to mistake them for the well-known goods of the other person;
- (3) using, without authorization, the business name or personal name of the other person on his own goods, leading people to mistake them for the goods of the other person;
- (4) forging or falsely using, on his goods, symbols of quality such as symbols of certification and symbols of famous and high-quality goods, falsifying the origin of his goods, and making false representations which are misleading as to the quality of the goods.

Article 6. A public utility enterprise or any other operator having monopolistic status according to law may not restrict others to buying the goods of operators designated by it so as to exclude other operators from competing fairly.

Article 7. Governments and their subordinate departments may not abuse their administrative powers to restrict others to buying the goods of operators designated by them and to restrict the lawful business activities of other operators.

Governments and their subordinate departments shall not abuse their administrative powers to restrict the entry of goods from other parts of the country into the local market or the flow of local goods to markets in other parts of the country.

Article 8. An operator may not practice bribery by using money, gifts or other means to sell or buy goods. Where an operator secretly pays a kickback to the other party, be it an entity or individual, without accounting for it in the books, he shall be punished for offering a bribe; where the other party, be it an entity or individual, secretly accepts a kickback without accounting for it in the books, it or he shall be punished for taking a bribe.

In the selling or buying of goods, an operator may express clearly his intention to offer a discount to the other party and pay a commission to the middleman. Where an operator gives a discount to the other party and pays a commission to the middleman, he must enter the items in the books factually. An operator accepting a discount or commission must enter it in the books factually.

Article 9. An operator may not use advertisements or other means to give false, misleading publicity as to the quality, composition, performance, use, manufacturer, useful life, origin, etc. , of the goods.

An advertisement operator shall not act as an agent for, or design, produce or release advertisements containing false representations of which he is obviously aware or should be aware.

Article 10. An operator may not adopt the following means to infringe business secrets:

(1) obtaining business secrets from the owners of rights by stealing, promising of gain, resorting to coercion or other improper means;

(2) disclosing, using, or allowing others to use business secrets of the owners of rights obtained by the means mentioned in the preceding item;

(3) disclosing, using or allowing others to use business secrets that he has obtained by breaking an engagement or disregarding the requirement of the owners of the rights to maintain the business secrets in confidence.

Where a third party obtains, uses or discloses the business secrets of others when he obviously has or should have full awareness of the illegal acts mentioned in the preceding paragraph, he shall be deemed to have infringed the business secrets of others.

"Business secret" in this Article means technical information and operational information which is not known to the public, which is capable of bringing economic benefits to the owner of rights, which has practical applicability and which the owner of rights has taken measures to keep secret.

Article 11. An operator may not sell goods at a price below cost for the purpose of excluding his competitors.

None of the following acts constitute acts of unfair competition:

(1) selling fresh or live goods;

(2) disposing of goods the useful life of which is about to expire or other overstocked goods;

(3) reducing prices seasonably;

(4) selling goods at reduced prices for paying off debts, changing the line of production or closing the business.

Article 12. An operator may not, in sales of goods, make a tie-in sale against the wish of the buyer or attach other unreasonable conditions.

Article 13. An operator may not make the following kinds of sales with prizes attached:

(1) making sales with prizes attached by the fraudulent method of falsely claiming the existence

of prizes or intentionally causing internally chosen people to win the prizes;

(2) promoting the sale of inferior but high-priced goods by offering prizes;

(3) making sales with prizes attached in the form of a lottery where the amount for the highest prize exceeds 5,000 yuan (RMB).

Article 14. An operator may not utter or disseminate falsehoods to damage the goodwill of a competitor or the reputation of his goods.

Article 15. Tenderers may not submit tenders in collusion with one another to force the tender price up or down.

A tenderer shall not collaborate with the party inviting tenders to exclude competitors from fair competition.

Chapter III Supervision and Inspection

Article 16. The supervising and inspecting authorities above the county level may exercise supervision over and carry out inspection of acts of unfair competition.

Article 17. In exercising supervision over and carrying Out inspection of acts of unfair competition, the supervising and inspecting authorities are entitled to exercise the following functions and powers:

(1) questioning operators under scrutiny, interested parties and witnesses, and requiring them to provide evidential material or other information related to acts of unfair competition in accordance with prescribed procedure;

(2) consulting and copying written agreements, account books, receipts, bills, vouchers, invoices, documents, records, business correspondence and other material related to acts of unfair competition;

(3) inspecting property related to acts of unfair competition as stipulated in Article 5 of this Law and, where necessary, ordering the operator under investigation to explain the source and quantity of the goods, temporarily stop selling them pending inspection, and not to remove, conceal or destroy them.

Article 18. When exercising supervision over and carrying Out inspection of acts of unfair competition, members of the supervising and inspecting authorities shall produce warrants of inspection.

Article 19. When the supervising and inspecting authorities are exercising supervision over and carrying out inspection of acts of unfair competition, the operators under investigation, interested parties and witnesses shall truthfully provide them with relevant data or information.

Chapter IV Legal Responsibility

Article 20. Where an operator, in contravention of the provisions of this Law, causes damage to the injured operator, he shall bear the responsibility for compensating the damages. Where the losses suffered by the injured operator are difficult to calculate, the amount of damages shall be the profits gained by the infringer during the period of infringement through the infringing act. The infringer shall also bear all reasonable costs paid by the injured operator in investigating the acts of unfair competition committed by the operator suspected of infringing his lawful rights and interests.

Where the lawful rights and interests of the injured operator are damaged by the acts of unfair competition, he may institute proceedings before a People' s Court.

Article 21. Where an operator passes off the registered trademark of another person, uses the business name or personal name of another person without authorization, forges or falsely uses symbols of quality such as symbols of certification and symbols of famous and high-quality goods, falsifies the origin of the goods and makes false representations which are misleading as to the quality of the goods, he shall be punished in accordance with the provisions of the Trademark Law and the Product Quality Law of the People's Republic of China.

Where an operator uses, without authorization, the name, packaging or decoration peculiar to well-known goods or uses the name, packaging or decoration similar to that of well-known goods so that his goods are confused with the well-known goods of another person, causing buyers to mistake them for the well-known goods, the relevant supervising and inspecting authority shall order him to cease the offense, confiscate the illegal income, and may impose, according to circumstances, a fine of more than twice and less than three times the amount of illegal income; where the circumstances are serious, the said authority may revoke his business license; where an operator sells goods which are counterfeit or of inferior quality, constituting a crime, his criminal responsibilities shall be investigated according to law.

Article 22. Where an operator practices bribery, by using money, gifts or other means to sell or buy goods, constituting a crime, his criminal responsibilities shall be investigated according to law; where the act does not constitute a crime, the relevant supervising and inspecting authority may, according to circumstances, impose a fine of more than 10,000 yuan (RMB) and less than 200,000 yuan (RMB). His illegal income, if any, shall be confiscated.

Article 23. Where a public utility enterprise or any other operator having monopolistic status according to law restricts others to buying the goods of operators designated by it so as to exclude other operators from competing fairly, the supervising and inspecting authorities at the level of provinces or municipalities which are divided into districts shall order it to desist from the illegal acts and may punish it by imposing, according to circumstances, fines of more than 50,000 yuan (RMB) and less than 200,000 yuan (RMB). Where the designated operators take advantage of the arrangement to foist inferior but high-priced goods on buyers or make exorbitant charges, the supervising and inspecting authorities shall confiscate the illegal income and may, according to circumstances, impose fines of more than twice and less than three times the illegal income.

Article 24. Where an operator uses advertisement or other means to give false, misleading publicity to his goods, the relevant supervising and inspecting authority shall order him to desist from the illegal act, dispel the bad influence, and may, according to circumstances, impose a fine of more than 10,000 yuan (RMB) and less than 200,000 yuan (RMB).

Where an advertisement operator acts as an agent for, or designs, produces or releases advertisements containing false representations of which he is obviously aware or should be aware, the relevant supervising and inspecting authority shall order him to desist from the illegal act, confiscate his illegal income, and impose a fine on him according to law.

Article 25. Where any party infringes the business secret of another person in contravention of the provisions of Article 10 of this Law, the relevant supervising and inspecting authority shall order him to desist from the illegal act and may, according to circumstances, impose on him a fine of more than 10,000 yuan (RMB) and less than 200,000 yuan (RMB).

Article 26. Where an operator makes sales with prizes attached in contravention of the provisions of Article 13 of this Law, the relevant supervising and inspecting authority shall order him to desist from the illegal act and may, according to circumstances, impose on him a fine of more than 10,000 yuan (RMB) and less than 100,000 yuan (RMB).

Article 27. Where tenderers submit tenders in collusion with one another to force the tender price up or down, or where a tenderer collaborates with the party inviting tenders to exclude competitors from competing fairly, his successful bid is null and void. The supervising and inspecting authority may, according to circumstances, impose on them a fine of more than 10,000 yuan (RMB) and less than 200,000 yuan (RMB).

Article 28. Where an operator commits an act in contravention of an order to temporarily stop selling, and not to remove, conceal or destroy, property related to acts of unfair competition, the relevant supervising and inspecting authority may, according to circumstances, impose on him a fine of more than twice and less than three times the price of the property which has been sold, removed, concealed or destroyed.

Article 29. Where a party is not satisfied with the decision on punishment made by the relevant supervising and inspecting authority, he may, within 15 days from the date of receipt of the decision on punishment, apply to the competent authority at the next highest level for reconsideration; where the party is not satisfied with the decision made after reconsideration, he may, within 15 days from the date of receipt of the written decision made after reconsideration, institute proceedings before a People's court. The party may also directly institute proceedings before a People's Court.

Article 30. Where a government and its subordinate departments, in contravention to the provisions of Article 7 of this Law, restrict others to buying the goods of operators designated by them, restrict the legitimate business activities of other operators, or restrict the normal flow of goods between regions, the higher authorities shall order them to rectify the situation; where the circumstances are serious, the competent authorities at the same level or the next highest level shall impose disciplinary sanctions on the persons directly responsible. Where the designated operators, taking advantage of this arrangement, foist inferior but high-priced goods on buyers or make exorbitant charges, the supervising and inspecting authorities shall confiscate the illegal income and may, according to circumstances, impose a fine of more than twice and less than three times the illegal income.

Article 31. Where a staff member of the State organ responsible for supervision over and inspection of acts of unfair competition abuses his powers and neglects his duty, constituting a crime, his criminal responsibilities shall be investigated according to law; where the act does not constitute a crime, he shall be subject to disciplinary sanction.

Article 32. Where a staff member of the State organ responsible for supervision over and inspection of acts of unfair competition practices illegally out of personal consideration, intentionally covers up for an operator and causes him to avoid prosecution, obviously knowing that he has contravened the provisions of this Law, constituting a crime, the said staff member's criminal responsibilities shall be investigated according to law.

Chapter V Supplementary Provision

Article 33. This Law shall enter into force as of December 1, 1993.

Révision de la loi sur la concurrence et les secrets d'affaires

Source: <https://www.loc.gov/law/foreign-news/article/china-trade-secret-provisions-under-anti-unfair-competition-law-revised/>

China: Trade Secret Provisions Under Anti-unfair Competition Law Revised

(June 6, 2019) On April 23, 2019, the National People's Congress (NPC) Standing Committee of the People's Republic of China (PRC or China) adopted an amendment to the PRC Anti-unfair Competition Law, revising provisions of the Law concerning trade secrets. The amended Law took effect on the same day. ([NPC Standing Committee Decision of Amending Eight Laws Including the PRC Construction Law](#) (Apr. 23, 2019), NPC website (in Chinese); [PRC Anti-unfair Competition Law](#) (adopted by the NPC Standing Committee on Sept. 2, 1993, revised Nov. 4, 2017, amended Apr. 23, 2019) (2019 Law), NPC website (in Chinese).)

The Anti-unfair Competition Law went through a major revision in November 2017, which was the first revision of the Law since its original enactment in 1993. The 2017 revised Law entered into effect on January 1, 2018. (Laney Zhang, [China: Amendment of Unfair Competition Law Proposed](#), GLOBAL LEGAL MONITOR (Mar. 20, 2017); [PRC Anti-unfair Competition Law](#) (adopted by the NPC Standing Committee on Sept. 2, 1993, revised Nov. 4, 2017, effective Jan. 1, 2018) (2018 Law), NPC website (in Chinese).)

The 2019 amendment revises three articles of the Anti-unfair Competition Law and adds a new article concerning the burden of proof in trade secret lawsuits. Major changes made by the amendment are as follows:

1. *Definition of Trade Secrets*

The amendment changes the previous Law's definition of "trade secrets" to include all "commercial information," rather than only "technical information" and "business operation information." Under the 2019 Law, the term "trade secrets" refers to "technical information, business operation information, and other commercial information that are not known to the public, have commercial value, and for which the trade secret owner has adopted corresponding measures to maintain its confidentiality." (2019 Law art. 9 (all translations by author).)

2. *Cybertheft of Trade Secrets and Indirect Infringement of Trade Secrets*

The amendment adds to the Law new types of trade secret infringements, especially the acquisition of trade secrets through "cyber invasion." The 2019 Law also prohibits indirect infringement of trade secrets that "instigates, induces, or helps others to obtain, disclose, use, or allow others to use the trade secrets of the rights holders in breach of confidential obligations or in violation of the requirements of the relevant rights holder on keeping confidential trade secrets." (*Id.*)

3. *Persons Subject to the Trade Secret Infringement Provisions*

The amendment expands the scope of persons who are subject to the provisions of trade secret infringement to include all individuals and entities, rather than only business operators as under the previous Law. Under the 2019 Law, natural persons, legal persons, and nonlegal person organizations other than business operators are deemed as infringing on trade secrets if they commit the acts prohibited by the Law. (*Id.*)

4. *Penalties*

The amendment increases penalties for trade secret infringement. First, it adds punitive damages for malicious trade secret infringement, which could be one to five times the actual loss or illegal gains. (*Id.* art. 17.) Second, the amendment increases the maximum damages a court may award for trade secret infringement from 3 million yuan renminbi (RMB) (about US\$434,000) in the 2018 Law to RMB5 million (about US\$724,000). (2018 Law art. 17; 2019 Law art. 17.) Third, the amendment increases the administrative fines that may be imposed for trade secret infringement. Under the 2019 Law the maximum fine would be RMB5 million in addition to the confiscation of the illegal gains. (2019 Law art. 21.)

Trade secret infringement that causes serious losses to the owner may also constitute a crime under the PRC Criminal Law. Such a crime resulting in “exceptionally serious” losses is punishable by up to seven years in prison and a fine. ([PRC Criminal Law](#), promulgated July 1, 1979, revised Mar. 14, 1997, effective Oct. 1, 1997) art. 219, NPC website.) The definition of “trade secrets” under the Criminal Law is similar to that under the 2018 Anti-unfair Competition Law and does not appear to have been changed.