



中华人民共和国反不正当竞争法

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

中华人民共和国消费者权益保护法

Law of the People's Republic of China
on the Protection of Consumer Rights and Interests

(中英对照)

(Chinese-English)

法律出版社
Law Press China

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中华人民共和国主席令

第十号

《中华人民共和国反不正当竞争法》已由中华人民共和国第八届全国人民代表大会常务委员会第三次会议于 1993 年 9 月 2 日通过,现予公布,自 1993 年 12 月 1 日起施行。

中华人民共和国主席 江泽民

1993 年 9 月 2 日

Order of the President of the People's Republic of China

No. 10

The Law of the People's Republic of China Against Unfair Competition, adopted at the Third Meeting of the Standing Committee of the Eighth National People's Congress of the People's Republic of China on September 2, 1993, is hereby promulgated and shall enter into force as of December 1, 1993.

Jiang Zemin

President of the People's Republic of China

September 2, 1993

中华人民共和国 反不正当竞争法

(1993年9月2日第八届全国人民代表大会
常务委员会第三次会议通过)

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第一章 总 则

第一条 为保障社会主义市场经济健康发展,鼓励和保护公平竞争,制止不正当竞争行为,保护经营者和消费者的合法权益,制定本法。

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

(Adopted at the Third Meeting 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, and effective as of December 1, 1993)

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Chapter I General Provisions

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

Article 2 A business operator shall, in his market transactions,

第二条 经营者在市场交易中,应当遵循自愿、平等、公平、诚实信用的原则,遵守公认的商业道德。

本法所称的不正当竞争,是指经营者违反本法规定,损害其他经营者的合法权益,扰乱社会经济秩序的行为。

本法所称的经营者,是指从事商品经营或者营利性服务(以下所称商品包括服务)的法人、其他经济组织和个人。

第三条 各级人民政府应当采取措施,制止不正当竞争行为,为公平竞争创造良好的环境和条件。

县级以上人民政府工商行政管理部门对不正当竞争行为进行监督检查;法律、行政法规规定由其他部门监督检查的,依照其规定。

第四条 国家鼓励、支持和保护一切组织和个人对不正当竞争行为进行社会监督。

国家机关工作人员不得支持、包庇不正当竞争行为。

第二章 不正当竞争行为

第五条 经营者不得采用下列不正当手段从事市场交

follow the principles of voluntariness, equality, fairness, honesty and credibility and observe the generally recognized business ethics.

"Unfair competition" mentioned in this Law refers to a business operator's acts violating the provisions of this Law, infringing upon the lawful rights and interests of another business operator and disturbing the socio-economic order.

"A business operator" mentioned in this Law refers to a legal person or any other economic organization or individual engaged in commodities marketing or profit-making services ("commodities" referred to hereinafter includes such services).

Article 3 People's governments at various levels shall take measures to repress unfair competition acts and create favourable environment and conditions for fair competition.

Administrative departments for industry and commerce of the people's governments at or above the county level shall exercise supervision over and inspection of unfair competition acts; where laws or administrative rules and regulations provide that other departments shall exercise the supervision and inspection, those provisions shall apply.

Article 4 The State shall encourage, support and protect all organizations and individuals in the exercise of social supervision over unfair competition acts.

No State functionary may support or cover up unfair competition acts.

Chapter II Acts of Unfair Competition

Article 5 A business operator shall not harm his competitors in market transactions by resorting to any of the following unfair means:

易,损害竞争对手:

(一)假冒他人的注册商标;

(二)擅自使用知名商品特有的名称、包装、装潢,或者使用与知名商品近似的名称、包装、装潢,造成和他人的知名商品相混淆,使购买者误认为是该知名商品;

(三)擅自使用他人的企业名称或者姓名,引人误认为是他人的商品;

(四)在商品上伪造或者冒用认证标志、名优标志等质量标志,伪造产地,对商品质量作引人误解的虚假表示。

第六条 公用企业或者其他依法具有独占地位的经营
者,不得限定他人购买其指定的经营者的商品,以排挤其他
经营者的公平竞争。

第七条 政府及其所属部门不得滥用行政权力,限定
他人购买其指定的经营者的商品,限制其他经营者正当的
经营活动。

政府及其所属部门不得滥用行政权力,限制外地商品
进入本地市场,或者本地商品流向外地市场。

第八条 经营者不得采用财物或者其他手段进行贿赂
以销售或者购买商品。在帐外暗中给予对方单位或者个人

- (1) counterfeiting a registered trademark of another person;
- (2) using for a commodity without authorization a unique name, package, or decoration of another's famous commodity, or using a name, package or decoration similar to that of another's famous commodity, thereby confusing the commodity with that famous commodity and leading the purchasers to mistake the former for the latter;
- (3) using without authorization the name of another enterprise or person, thereby leading people to mistake their commodities for those of the said enterprise or person; or
- (4) forging or counterfeiting authentication marks, famous-and-excellent-product marks or other product quality marks on their commodities, forging the origin of their products or making false and misleading indications as to the quality of their commodities.

Article 6 A public utility enterprise or any other business operator occupying monopoly status according to law shall not restrict people to purchasing commodities from the business operators designated by him, thereby precluding other business operators from fair competition.

Article 7 Governments and their subordinate departments shall not abuse administrative powers to restrict people to purchasing commodities from the business operators designated by them and impose limitations on the rightful operation activities of other business operators.

Governments and their subordinate departments shall not abuse administrative powers to restrict commodities originated in other places from entering the local markets or the local commodities from flowing into markets of other places.

Article 8 A business operator shall not resort to bribery, by offering money or goods or by any other means, in selling or

回扣的,以行贿论处;对方单位或者个人在帐外暗中收受回扣的,以受贿论处。

经营者销售或者购买商品,可以以明示方式给对方折扣,可以给中间人佣金。经营者给对方折扣、给中间人佣金的,必须如实入帐。接受折扣、佣金的经营者必须如实入帐。

第九条 经营者不得利用广告或者其他方法,对商品的质量、制作成分、性能、用途、生产者、有效期限、产地等作引人误解的虚假宣传。

广告经营者不得在明知或者应知的情况下,代理、设计、制作、发布虚假广告。

第十条 经营者不得采用下列手段侵犯商业秘密:

(一)以盗窃、利诱、胁迫或者其他不正当手段获取权利人的商业秘密;

(二)披露、使用或者允许他人使用以前项手段获取的权利人的商业秘密;

(三)违反约定或者违反权利人有关保守商业秘密的要

purchasing commodities. A business operator who offers off-the-book rebate in secret to the other party, a unit or an individual, shall be deemed and punished as offering bribes; and any unit or individual that accepts off-the-book rebate in secret shall be deemed and punished as taking bribes.

A business operator may, in selling or purchasing commodities, expressly allow a discount to the other party and pay a commission to the middleman. The business operator who gives discount to the other party and pays commission to the middleman must truthfully enter them in the account. The business operator who accepts the discount or the commission must also truthfully enter it in the account.

Article 9 A business operator may not, by advertisement or any other means, make false or misleading publicity of their commodities as to their quality, ingredients, functions, usage, producers, duration of validity or origin.

An advertisement agent may not act as agent for, or design, produce or release, a false advertisement while he clearly knows or ought to know its falsehood.

Article 10 A business operator shall not use any of the following means to infringe upon trade secrets:

(1) obtaining an obligee's trade secrets by stealing, luring, intimidation or any other unfair means;

(2) disclosing, using or allowing another person to use the trade secrets obtained from the obligee by the means mentioned in the preceding paragraph; or

(3) in violation of the agreement or against the obligee's demand for keeping trade secrets, disclosing, using or allowing another person to use the trade secrets he possesses.

Obtaining, using or disclosing another's trade secrets by a third party who clearly knows or ought to know that the case falls under the

求,披露、使用或者允许他人使用其所掌握的商业秘密。

第三人明知或者应知前款所列违法行为,获取、使用或者披露他人的商业秘密,视为侵犯商业秘密。

本条所称的商业秘密,是指不为公众所知悉、能为权利人带来经济利益、具有实用性并经权利人采取保密措施的技术信息和经营信息。

第十一条 经营者不得以排挤竞争对手为目的,以低于成本的价格销售商品。

有下列情形之一的,不属于不正当竞争行为:

- (一)销售鲜活商品;
- (二)处理有效期限即将到期的商品或者其他积压的商品;
- (三)季节性降价;
- (四)因清偿债务、转产、歇业降价销售商品。

第十二条 经营者销售商品,不得违背购买者的意愿搭售商品或者附加其他不合理的条件。

第十三条 经营者不得从事下列有奖销售:

- (一)采用谎称有奖或者故意让内定人员中奖的欺骗方式进行有奖销售;
- (二)利用有奖销售的手段推销质次价高的商品;
- (三)抽奖式的有奖销售,最高奖的金额超过五千元。

第十四条 经营者不得捏造、散布虚伪事实,损害竞争

unlawful acts listed in the preceding paragraph shall be deemed as infringement upon trade secrets.

"Trade secrets" mentioned in this Article refers to any technology information or business operation information which is unknown to the public, can bring about economic benefits to the obligee, has practical utility and about which the obligee has adopted secret-keeping measures.

Article 11 A business operator shall not, for the purpose of pushing out their competitors, sell their commodities at prices lower than costs.

Any of the following shall not be deemed as an unfair competition act:

- (1) selling perishables or live commodities;
- (2) disposing of commodities near expiration of their validity duration or those kept too long in stock;
- (3) seasonal sales; or
- (4) selling commodities at a reduced price for the purpose of clearing off debts, change of business or suspension of operation.

Article 12 A business operator may not, against the will of purchasers, conduct tie-in sale of commodities or attach any other unreasonable conditions to the sale of their commodities.

Article 13 A business operator shall not engage in any of the following lottery-attached sale activities:

- (1) lottery-attached sale conducted by such deceptive means as falsely declaring to have prize or intentionally making a designated insider win the prize;
- (2) lottery-attached sale employed as a means to sell goods of low quality at a high price; or
- (3) lottery-attached sale in form of lottery - drawing with the highest prize exceeding 5,000 yuan.

Article 14 A business operator shall not fabricate or spread false

对手的商业信誉、商品声誉。

第十五条 投标者不得串通投标,抬高标价或者压低标价。

投标者和招标者不得相互勾结,以排挤竞争对手的公平竞争。

第三章 监 督 检 查

第十六条 县级以上监督检查部门对不正当竞争行为,可以进行监督检查。

第十七条 监督检查部门在监督检查不正当竞争行为时,有权行使下列职权:

(一)按照规定程序询问被检查的经营者、利害关系人、证明人,并要求提供证明材料或者与不正当竞争行为有关的其他资料;

(二)查询、复制与不正当竞争行为有关的协议、帐册、单据、文件、记录、业务函电和其他资料;

(三)检查与本法第五条规定的不正当竞争行为有关的财物,必要时可以责令被检查的经营者说明该商品的来源和数量,暂停销售,听候检查,不得转移、隐匿、销毁该财物。

第十八条 监督检查部门工作人员监督检查不正当竞