

Notice of the Legislative Affairs Office of the State Council on Promulgation of the "Law of the People's Republic of China against Unfair Competition (Revised Draft for Review)" for Solicitation of Public Comments

Through the development of over 20 years since the implementation of the *Law of the People's Republic of China against Unfair Competition* (hereinafter referred to as the "Law against Unfair Competition") in 1993, there has been great increase in the pace of market-oriented development of the economy in China as well as extensive and profound change in economic aggregates, market size, market competition degree and competition situation. In order to achieve the objectives set by the Central Committee of the CPC and the State Council for bringing into play the decisive role of market in resource allocation, establishing the fair, open and transparent market rules and building the unified and open market system with orderly competition, better safeguard the market order of fair competition and better protect the lawful rights and interests of consumers, the State Administration for Industry & Commerce has, by taking into comprehensive consideration the opinions from all sectors, revised the current Law against Unfair Competition, formed the *Law of the People's Republic of China against Unfair Competition (Revised Draft for Review)* (hereinafter referred to as the "Draft for Review") and submitted the same to the State Council. With a view to having a comprehensive knowledge of the opinions and proposals of all sectors of the society and improving the legislative quality, the full text of the Draft for Review is hereby promulgated for solicitation of the opinions from all sectors of the society. Relevant entities and the persons from all sectors of the society may, by March 25, 2016, provide their opinions for revision through following channels:

1. Logon to <http://www.chinalaw.gov.cn>, and submit comments on the Draft for Review through the System of Collection of Opinions on Draft Regulations and Rules on the left of the website homepage;
2. Send comments by post to: Postal Box 2067, Beijing (Zip code: 100035), with the words "comments on the "Law against Unfair Competition" indicated on the envelops;
or
3. Send comments by email to: fbzdjz@chinalaw.gov.cn.

Legislative Affairs Office of the State Council

February 25, 2016

Law of the People's Republic of China against Unfair Competition
(Revised Draft for Review)

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, curbing unfair competition acts, and protecting the lawful rights and interests of business operators and consumers.

Article 2 Business operators shall, in their economic activities, follow the principles of voluntariness, equality, fairness, honesty and credibility and observe the generally recognized business ethics.

For the purpose of this Law, "unfair competition" refers to a business operator's acts violating the provisions of this Law, infringing upon the lawful rights and interests of any other business operators or consumers and disturbing the market order.

For the purpose of this Law, "business operators" refer to the natural persons, legal persons and other organizations engaging or participating in production or operation of commodities or provision of services ("commodities" referred to hereinafter include services).

Article 3 People's governments at various levels shall take measures to curb unfair competition acts and create favorable 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 it is otherwise provided for under other laws or administrative regulations, relevant departments may exercise the supervision and inspection in accordance with such provisions.

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 participate in, support or cover up unfair competition acts.

Chapter II Acts of Unfair Competition

Article 5 A business operator shall not make use of business logo to commit any of the following acts of market confusion:

(1) Use without authorization the well-known business logo of another person or use the business logo similar to the well-known business logo of another person, causing market confusion;

(2) Use in a prominent manner its business logo identical or similar to the well-known business logo of another person, misleading the public and causing market confusion;

(3) Use the registered trademark or the unregistered famous trademark of another person as the trade name in its enterprise name, misleading the public and causing market confusion; or

(4) Use the trade name in or the abbreviation of the name of a well-known enterprise or enterprise group as the text logo of the trademark or main part of the domain name, etc., misleading the public and causing market confusion.

For the purpose of this Law, business logos refer to the marks that distinguish among producers or business operators of commodities, including, without being limited to, the unique names, packages, decorations, commodity shapes of well-known commodities, trademarks, the names and abbreviation thereof and trade names therein of enterprises and enterprise groups, main parts of domain names, website names, webpage, names, pen names, stage names, and the names and logos of programs and columns of channels.

For the purpose of this Law, market confusion occurs when relevant public are made to have mistaken recognition of producers or business operators of commodities or the specific connection among producers or business operators of commodities.

Article 6 A business operator shall not make use of comparative dominant position to commit any of the following acts of unfair transaction:

(1) Restrict, without justified reasons, the transaction counterparties to the transaction with specific parties;

(2) Restrict, without justified reasons, the transaction counterparties to the purchase of the commodities it has designated;

(3) Restrict, without justified reasons, conditions for the transaction between transaction counterparties with other business operators;

(4) Indiscriminately collect fees or unreasonably require transaction counterparties to provide other economic benefits; or

(5) Attach other unreasonable conditions to transaction.

For the purpose of this Law, comparative dominant position means that a business operator as one party to the transaction is in a dominant position in terms of funds, technologies, market entry, sales channels, purchase of raw materials and other aspects in the course of a specific transaction and the transaction counterparty is dependent on such business operator and has difficulty in turning to other business operators.

Article 7 A business operator shall not commit any of the following acts of commercial bribery:

(1) Seek the organizational, departmental or personal economic benefits in public services or by depending on public services;

(2) Pay economic benefits to another business operator without making truthful record thereof in the contract and accounting documents; or

(3) Pay or offer to pay economic benefits to a third party having influence on the transaction, causing harm to the lawful rights and interests of other business operators or consumers.

Commercial bribery means that a business operator pays or offers to pay economic benefits to the transaction counterparty or a third party that may have influence on the

transaction and thus induce the latter to seek for the business operator any transaction opportunities or competitive advantages. Paying or offer to pay economic benefits constitutes offering of commercial bribery; accepting or agreement to accept economic benefits constitutes taking of commercial bribery.

Where any staff member of a business operator makes use of commercial bribery to seek any transaction opportunity or competitive advantage for the business operator, such act shall be deemed to the act of the business operator. Where there is evidence showing that the staff member takes bribery against the interests of the business operator, such act shall not be deemed as the act of the business operator.

Article 8 A business operator shall not commit any of the acts of misleading business publicity

- (1) Carry out false or one-sided publicity;
- (2) Use the opinions or phenomenon not confirmed in science as the conclusive facts for publicity; or
- (3) Use the ambiguous words or other misleading methods to make publicity.

Article 9 A business operator shall not commit any of the following acts of infringing upon trade secrets:

- (1) Obtain an obligee's trade secrets by stealing, luring, intimidation, fraud or any other unfair means;
- (2) Disclose, use or allow another person to use the trade secrets obtained from the obligee by the means mentioned in the preceding item; or
- (3) Disclose, use or allow another person to use the trade secrets possessed by such business operator in violation of the agreement or against the obligee's demand for keeping trade secrets,.

Obtaining, disclosing, using or allowing another person to use the obligee's trade secrets by a third party who is clearly aware or ought to be aware of the unlawful acts listed in the preceding paragraph shall be deemed as infringement upon trade secrets.

For the purpose of this Law, "trade secrets" refer to any technology information or business information which is unknown to the public and has commercial value and about which the obligee has adopted appropriate secret-keeping measures.

Article 10 A business operator shall not carry out the following acts of prize-attached promotion to consumers:

- (1) Fail to explicitly indicate the types of the prize, conditions for claiming the prize, prize amount offered or the prizes, and other prize-attached promotion information, affecting the claim for the prizes by consumers;
- (2) Carry out prize-attached sale by such deceptive means as falsely declaring to have prize or intentionally making an internally designated person to win the prize;;
- (3) Setting unreasonable conditions for claiming prizes; or
- (4) Carry out prize-attached promotion with lucky draws with the value of the highest prize exceeding RMB20,000.

For the purpose of this Law, prize-attached promotion includes the prize-attached promotion with lucky draws and prize-attached promotion with gift offers. The prize-attached promotion with gift offers means the offer of definite prize under same

conditions; the prize-attached promotion with lucky draws means the determination of the types of prizes or whether to offer prizes by any method involving chance.

Article 11 A business operator shall not fabricate or spread false information or malicious evaluation information or spread incomplete information or the information that cannot be proved to injure the others' business credit or product reputation.

Article 12 Bidders shall not act in collusion with each other so as to force up or down the bidding prices.

Bidders and tender-invited shall not collude with each other so as to push out their competitors from fair competition.

Article 13 A business operator shall not make use of network technologies or application services to commit any of the following acts of affecting users' choices or disturbing the normal business operation of other business operators:

(1) Hinder, without users' consent and through technical means, users from normal use of the network application services of other business operators;

(2) Insert, without license or authorization, links in the network application services provided by other business operators and force target jump;

(3) Mislead, deceive or force users into modifying, closing or downloading, or prevent users from normal use of, the network application services lawfully provided by others; or

(4) Disturb or damage, without license or authorization, the normal operation of the network application services lawfully provided by others.

Article 14 A business operator shall not commit any other acts of unfair competition that harm the lawful rights and interests of others and disturb market order.

The other acts of unfair competition prescribed in the preceding paragraph shall be determined by the administrative department for industry and commerce of the State Council.

Chapter III Supervision and Inspection

Article 15 Supervision and inspection departments shall, in investigating unfair competition acts, have the right to exercise the following functions and powers:

(1) Enter into the places of business or other premises related to the acts under investigation for inspection;

(2) Make inquiry of the business operators under investigation, the interested parties or other relevant entities and individuals and require them to provide supporting materials, data and technical support or other materials relating to the acts of unfair competition;

(3) Inquire about and reproduce the agreements, account books, vouchers, documents, records, business correspondence, electronic data, audio-visual materials and other materials relating to the acts under investigation;

(4) Order the business operators under investigation to suspend the suspected illegal acts, to explain the source and quantity of the money and property relating to the acts under investigation and not to transfer, conceal or destroy such money and property;

(5) Seal up or detain the money and property involved in the suspected acts of unfair competition;

(6) Inquire about the bank accounts as well as the accounting documents, account books and statements of account, etc. relating to deposits of the business operators involved in the suspected acts of unfair competition; and

(7) Apply to the judicial organs for freezing the funds involved in the illegal acts if there is evidence proving the transfer or concealment of such funds.

Article 16 When supervision and inspection departments investigate the acts of unfair competition, the business operators under investigation, the interested parties or any other relevant entities or individuals shall truthfully provide relevant materials and information and cooperate with the supervision and inspection departments in performing duties in accordance with the law and shall not reject or hinder the supervision and inspection.

Chapter IV Legal Liability

Article 17 A business operator who violates the provisions of this Law and thus causes damage to the lawful rights and interests of others shall stop the infringement and bear the liability of compensation for the damage if its acts cause damage to others.

A business operator or consumer that suffers infringement by the acts of unfair competition may bring a suit in the people's court in accordance with the law.

Article 18 Where there is any dispute arising from any of the acts listed in Article 5 hereof, the parties concerned shall solve the dispute through consultation. If the parties concerned are unwilling to consult or the consultation fails, any of the parties concerned may file a lawsuit with the people's court or may request the supervision and inspection department to handle the dispute.

Where a business operator violates the provisions of Article 5 hereof, the supervision and inspection department shall order the business operator to stop the illegal act, confiscate the illegal commodities and impose a fine of not more than five times the illegal business revenue if the illegal business revenue amounts to more than RMB50,000; if the circumstances are serious, its business license may be revoked; if there is no illegal business revenue or the amount of illegal business revenue is less than RMB50,000, a fine of not more than RMB250,000 shall be imposed; if it is impossible to calculate the illegal business revenue, a fine of not less than RMB100,000 but not more than RMB1 million shall be imposed in light of circumstances.

Where there is any violation of Item (3), Paragraph 1 of Article 5 hereof, the supervision and inspection department shall order the party concerned to go through registration of the change of the enterprise name within one month; if the party concerned fails to apply for the registration of the change within the specified time limit, the supervision and inspection department shall impose punishment thereon by applying the provision in the preceding paragraph and the supervision and inspection department of the place where the enterprise is registered shall delete such enterprise name from the enterprise credit information disclosure system, replace such enterprise name with the registration number or the uniform social credit code and include such

enterprise in the list of enterprises with abnormal business operation; if the circumstances are serious, its business license may be revoked directly.

Article 19 Where a business operator violates the provisions of Article 6 hereof, the supervision and inspection department at or above the level of prefecture-level city shall order the business operator to make correction and impose a fine of not less than the amount of the illegal business revenue but not more than five times that amount; if there is no illegal business revenue or it is impossible to calculate the illegal business revenue, a fine of not less than RMB100,000 but not more than RMB3 million shall be imposed in light of circumstances.

Where a business operator of the designated commodities commits any violation of Article 6 hereof, punishment shall be imposed thereon by reference to the provisions in preceding paragraph.

Article 20 Where a business operator violates Article 7 hereof, the supervision and inspection department shall order the business operator to stop the illegal act and impose on it a fine of not less than ten percent but not more than thirty percent of the illegal business revenue in light of the circumstances; if the violation constitutes a crime, criminal liability shall be imposed in accordance with the law.

Article 21 Where a business operator violates the provisions of Article 8 hereof, the supervision and inspection department shall order the business operator to stop the illegal act and impose a fine of not less than three times but not more than five times the illegal business revenue; if there is no illegal business revenue or it is impossible to calculate the illegal business revenue, a fine of not less than RMB100,000 but not more than RMB1 million shall be imposed in light of circumstances; if the circumstances are serious, its business license may be revoked; if the violation constitutes a crime, criminal liability shall be imposed in accordance with the law.

Article 22 Where a business operator violates the provisions of Article 9 hereof, the supervision and inspection department shall order the business operator to stop the illegal act and impose a fine of not less than RMB100,000 but not more than RMB3 million in light of circumstances; if the violation constitutes a crime, criminal liability shall be imposed in accordance with the law.

Where the obligee of the trade secrets can prove that the information used by another person is substantially identical to the trade secrets of such obligee and such another person possesses conditions for obtaining the trade secrets of such obligee, such another person shall bear the burden of proving that the information used by it has lawful source.

Article 23 Where a business operator violates the provisions of Article 10 hereof, the supervision and inspection department shall order the business operator to stop the illegal act, confiscate the illegal commodities and impose a fine of not less than RMB100,000 but not more than RMB1 million in light of circumstances.

Article 24 Where a business operator violates the provisions of Article 11 hereof, the supervision and inspection department shall order the business operator to stop the illegal act, eliminate the adverse effects and impose a fine of not less than RMB100,000 but not more than RMB3 million in light of circumstances; if the violation constitutes a crime, criminal liability shall be imposed in accordance with the law.

Article 25 Where a business operator violates the provisions of Article 12 hereof, the supervision and inspection department shall order the business operator to stop the illegal act and impose a fine of not less than RMB100,000 but not more than RMB3 million in light of circumstances; if the violation constitutes a crime, criminal liability shall be imposed in accordance with the law.

Article 26 Where a business operator violates the provisions of Article 13 hereof, the supervision and inspection department shall order the business operator to stop the illegal act and impose a fine of not less than RMB100,000 but not more than RMB3 million in light of circumstances.

Article 27 Where a business operator commits any act of unfair competition in violation of the provisions of Article 14 hereof, the supervision and inspection department shall order the business operator to stop the illegal act and impose a fine of not less than RMB100,000 but not more than RMB3 million in light of circumstances; if the act constitutes a crime, criminal liability shall be imposed in accordance with the law

Article 28 Where any party is clearly aware or ought to be aware of the acts of unfair competition committed in violation of the provisions of this Law but still provides the violator with production, marketing, warehousing, transportation, network services, technical support, advertising and promotion, payment and settlement as well as other facilitating conditions, a fine of not less than RMB100,000 but not more than RMB1 million shall be imposed on such party in light of circumstances. If such party voluntarily cooperates with the supervision and inspection department in investigation and provides true information and evidence, such party may be given a lighter or mitigated punishment.

Article 29 Where any party, in violation of the provisions hereof, transfers, conceals, destroys or sells the commodities sealed up, detained or ordered to be suspended from sale, the supervision and inspection department may confiscate the commodities involved and impose a fine of not less than the amount of the prices of the commodities involved but not more than three times that amount; if it is impossible to calculate the amount of the prices, a fine of not less than RMB100,000 but not more than RMB1 million shall be imposed; if the violation constitutes a crime, criminal liability shall be imposed in accordance with the law.

Article 30 Whoever, in respect of the investigation conducted by the supervision and inspection department in accordance with the law, refuses to provide relevant materials or information without statutory reasons, provides false materials or information, conceals, destroys or transfers evidence or otherwise rejects or obstructs the investigation shall be ordered to make correction and subject to a fine of not less than RMB20,000 but not more than RMB200,000 by the supervision and inspection department.

Article 31 Whoever refuses to accept the decision made by the supervision and inspection department may apply for administrative reconsideration or institutes an administrative lawsuit in accordance with the law.

Article 32 Where a State functionary engaged in supervision over and inspection of unfair competition acts abuses his power or neglects his duty shall be given an administrative sanction in accordance with the law; if the case constitutes a crime, criminal liability shall be imposed in accordance with the law.

Article 33 Where a State functionary engaged in supervision over and inspection of unfair competition acts practices favoritism or irregularities and intentionally harbors a business operator whom he clearly knows to be guilty of a crime by violating the provisions of this Law and attempts to shield him from prosecution, such State functionary shall be subject to criminal liability in accordance with the law.

Chapter V Supplementary Provisions

Article 34 For the purpose of this Law, "not less than" and "not more than" shall all include the given figure.

Article 35 This Law shall come into effect on ____.

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