

中华人民共和国反不正当竞争法

Law for Countering Unfair Competition of the P.R.C

第一章 总 则

Chapter 1 General Provisions

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。

Article 1 With a view to safeguarding the healthy development of the socialist market economy, encouraging and protecting fair competition, stopping acts of unfair competition, and defending the lawful rights and interests of operators and consumers, this Law is enacted.

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。

Article 2 In carrying on transactions in the market, operators shall follow the principle of voluntariness, equality, fairness, honesty and credibility, and observe generally recognized business ethics.

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。

Unfair competition in this Law refers to acts of operators which contravene the provisions of this Law, with a result of damaging the lawful rights and interests of other operators, and disturbing the socio-economic order.

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。

Operators in this Law refer to legal persons, other economic organizations and individuals engaging in the trading of goods or profit-making services. (Goods mentioned below include services.)

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。

Article 3 The people's governments at various levels shall adopt measures to stop acts of unfair competition, and create a salutary environment and conditions for fair competition.

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。

The administrative authorities for industry and commerce in the people's governments above the county-level shall monitor and investigate acts of unfair competition. In respect of those acts which, according to the provisions of various laws and administrative regulations, shall be monitored and investigated by other departments, these provisions shall be abided by.

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。

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

国家机关工作人员不得支持、包庇不正当竞争行为。

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

第二章 不正当竞争行为

Chapter 2 Acts of Unfair Competition

第五条 经营者不得采用下列不正当手段从事市场交易，损害竞争对手：

Article 5 Operators shall not adopt any of the following unfair means to carry on transactions in the market and cause damage to competitors:

（一）假冒他人的注册商标；

(1) Passing off the registered trademarks of others;

（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；

(2) using, without authorization, the names, packaging or decoration peculiar to well-known goods or using names, packaging or decoration similar to those of well-known goods so that their goods are confused with the well-known goods of others, causing buyers to mistake them for the well-known goods of others;

（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；

(3) using, without authorization, the enterprise names or personal names of others on their own goods, leading purchasers to mistake them for the goods of others;

（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。

(4) Forging or falsely using, on their goods, symbols of quality such as symbols of authentication and symbols of famous and high-quality goods, falsifying the origin of their goods, and making false representations which are misleading as to the quality of the goods.

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。

Article 6 Public utility enterprises or other operators having monopolistic status according to law shall not force others to buy the goods of the operators designated by them so as to exclude other operators from competing fairly.

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。

Article 7 A local government and its subordinate departments shall not abuse their administrative power to force others to buy the goods of the operators designated by them so as to restrict the lawful business activities of other operators.

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。

A local government and its subordinate departments shall not abuse their administrative power 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.

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。

Article 8 An operator shall not practice bribery by using money, valuables 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, off the book, it or he shall be punished for offering a bribe; where the other party, be it an entity or individual, secretly accepts a kickback off the book, it or he shall be punished for taking a bribe.

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。

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

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。

Article 9 An operator shall not use advertisement or other means to give false, misleading information on the quality, composition, performance, use, manufacturer, useful life, origin, etc. of the goods.

广告的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。

An advertisement operator shall not act as an agent for designing, producing and releasing false advertisements where they clearly know, or should know, that the information in the advertisements is false.

第十条 经营者不得采用下列手段侵犯商业秘密：

Article 10 An operator shall not adopt any of the following means to infringe on the business secrets of others:

（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；

(1) obtaining business secrets from the owner of the right by stealing, promising of gain, resorting to coercion or other illegitimate means;

（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；

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

(三) 违反约定或者违反权利人有关保守商业秘密的要求, 披露、使用或者允许他人使用其所掌握的商业秘密。

(3) disclosing, using or allowing others to use the business secrets that it has obtained by breaking an engagement or disregarding the requirements of the owner of the right to preserve the business secrets.

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。

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

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。

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

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。

Article 11 An operator shall not sell its or his goods at a price that is below the cost for the purpose of excluding its or his competitors.

有下列情形之一的, 不属于不正当竞争行为:

In any of the following events, such sales do not come under acts of unfair competition:

(一) 销售鲜活商品;

(1) Selling fresh goods;

(二) 处理有效期限即将到期的商品或者其他积压的商品;

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

(三) 季节性降价;

(3) seasonal lowering of prices;

(四) 因清偿债务、转产、歇业降价销售商品。

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

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。

Article 12 In selling its or his goods, an operator shall not make a tie-in sale against the wish of the buyer or attach other unreasonable conditions.

第十三条 经营者不得从事下列有奖销售：

Article 13 An operator shall not make any of the following kinds of sales with prizes attached:

（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；

(1) making sales with prizes attached by the fraudulent method of falsely claiming the existence of prizes or intentionally causing previously chosen people to win the prizes;

（二）利用有奖销售的手段推销质次价高的商品；

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

（三）抽奖式的有奖销售，最高奖的金额超过五千元。

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

第十四条 经营者不得捏造、散布虚伪事实，损害竞争对手的商业信誉、商品声誉。

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

第十五条 投标者不得串通投标，抬高标价或者压低标价。

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

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。

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

第三章 监督检查

Chapter 3 Control and Inspection

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。

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

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：

Article 17 In monitoring and investigating acts of unfair competition, the control and inspection authorities are entitled to exercise the following functions and powers:

（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；

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

（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;

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

(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。

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

第十八条 监督检查部门工作人员监督检查不正当竞争行为时,应当出示检查证件。

Article 18 When monitoring and investigating acts of unfair competition, members of the control and inspection authorities shall produce warrants of inspection.

第十九条 监督检查部门在监督检查不正当竞争行为时,被检查的经营者、利害关系人和证明人应当如实提供有关资料或者情况。

Article 19 When the control and inspection authorities are monitoring and investigating acts of unfair competition, the operators under investigation, interested parties and witnesses shall truthfully provide them with relevant data or information.

第四章 法律责任

Chapter 4 Legal Responsibility

第二十条 经营者违反本法规定,给被侵害的经营者造成损害的,应当承担损害赔偿责任,被侵害的经营者的损失难以计算的,赔偿额为侵权人在侵权期间因侵权所获得的利润;并应当承担被侵害的经营者因调查该经营者侵害其合法权益的不正当竞争行为所支付的合理费用。

Article 20 Where an operator, in contravention of the provisions of this Law, causes damage to another operator, i. e., the injured party, it or he shall bear the responsibility for compensating for the damages. Where the losses suffered by the injured operator are difficult to calculate, the amount of damages shall be the profit 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 its or his lawful rights and interests.

被侵害的经营者的合法权益受到不正当竞争行为损害的,可以向人民法院提起诉讼。

When the lawful rights and interests of the injured operator are damaged by the acts of unfair competition, it or he may institute proceedings in a people's court.

第二十一条 经营者假冒他人的注册商标,擅自使用他人的企业名称或者姓名,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的,依照《中华人民共和国商标法》、《中华人民共和国产品质量法》的规定处罚。

Article 21 Where an operator passes off the registered trademark of another person, uses the

enterprise name or personal name of another person without authorization, counterfeits or fraudulently uses symbols of quality such as symbols of authentication 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, it or he shall be punished in accordance with the provisions of the Trademark Law of the People's Republic of China and the Product Quality Law of the People's Republic of China.

经营者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的，监督检查部门应当责令停止违法行为，没收违法所得，可以根据情节处以违法所得一倍以上三倍以下的罚款；情节严重的，可以吊销营业执照；销售伪劣商品，构成犯罪的，依法追究刑事责任。

Where an operator uses, without authorization, the name, packaging or decoration peculiar to well-known goods or uses names, packaging or decoration similar to those of well-known goods so that its or his goods are confused with the well-known goods of others, causing buyers to mistake them for the well-known goods, the relevant control and inspection authorities shall order it or him to stop the offence, 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 authorities may revoke its or his business license; Where an operator sells goods counterfeited or of inferior quality, which constitutes a crime, it or he shall be prosecuted according to law for its or his criminal responsibility.

第二十二条经营者采用财物或者其他手段进行贿赂以销售或者购买商品，构成犯罪的，依法追究刑事责任；不构成犯罪的，监督检查部门可以根据情节处以一万元以上二十万元以下的罚款，有违法所得的，予以没收。

Article 22 Where an operator practices bribery by using money, valuables or other means to sell or purchase goods, which constitutes a crime, he shall be prosecuted according to law for his criminal responsibility; Where the act does not constitute a crime, the relevant control and inspection department may, according to circumstances, impose a fine of more than RMB 10,000 yuan and less than RMB 200,000 yuan. Its or his illegal income, if any, shall be confiscated.

第二十三条公用企业或者其他依法具有独占地位的经营者，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的，省级或者设区的市的监督检查部门应当责令停止违法行为，可以根据情节处以五万元以上二十万元以下的罚款。被指定的经营者借此销售质次价高商品或者滥收费用的，监督检查部门应当没收违法所得，可以根据情节处以违法所得一倍以上三倍以下的罚款。

Article 23 Where public utility enterprises or other operators having monopolistic status according to law force others to buy the goods of the operators designated by them so as to prevent other operators from competing fairly, the control and inspection authorities at the level of provinces or of municipalities which are divided into districts shall order them to desist from the illegal acts and may punish them by imposing, according to circumstances, fines of more than RMB 50,000 yuan and less than RMB 200,000 yuan. Where the designated operators take advantage of the illegal arrangements to foist inferior but high-priced goods on buyers or make exorbitant charges, the control and inspection 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.

第二十四条经营者利用广告或者其他方法，对商品作引人误解的虚假宣传的，监督检查部门应当责令停止违法行为，消除影响，可以根据情节处以一万元以上二十万元以下的罚款。

Article 24 Where an operator uses advertisement or other means to give false, misleading information on its goods, the relevant control and inspection authority shall order it or him to desist from the illegal act, dispel the bad influence, and may, according to circumstances, impose a fine of more than RMB 10,000 yuan and less than RMB 200,000 yuan.

广告的经营者，在明知或者应知的情况下，代理、设计、制作、发布虚假广告的，监督检查部门应当责令停止违法行为，没收违法所得，并依法处以罚款。

Where an advertisement operator acts as an agent in designing, producing and releasing false advertisements when it or he clearly knows, or should know, that they are false, the relevant control and inspection authority shall order it or him to desist from the illegal act, confiscate its or his illegal income, and impose a fine on it or him according to law.

第二十五条违反本法第十条规定侵犯商业秘密的，监督检查部门应当责令停止违法行为，可以根据情节处以一万元以上二十万元以下的罚款。

Article 25 Where any party infringes on business secrets in contravention of the provisions of Article 10 of this Law, the relevant control and inspection authority shall order it or him to desist from the illegal act and may, according to circumstances, impose on it or him a fine of more than RMB 10,000 yuan but less than RMB 200,000 yuan.

第二十六条经营者违反本法第十三条规定进行有奖销售的，监督检查部门应当责令停止违法行为，可以根据情节处以一万元以上十万元以下的罚款。

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

第二十七条投标者串通投标，抬高标价或者压低标价；投标者和招标者相互勾结，以排挤竞争对手的公平竞争的，其中标无效。监督检查部门可以根据情节处以一万元以上二十万元以下的罚款。

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 prevent competitors from competing fairly, its or his successful bid is null and void. The control and inspection authority may, according to circumstances, impose on it or him a fine of more than RMB 10,000 yuan and less than RMB 200,000 yuan.

第二十八条经营者有违反被责令暂停销售，不得转移、隐匿、销毁与不正当竞争行为有关的财物的行为的，监督检查部门可以根据情节处以被销售、转移、隐匿、销毁财物的价款的一倍以上三倍以下的罚款。

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 control and inspection authority may, according to circumstances, impose on it or 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.

第二十九条当事人对监督检查部门作出的处罚决定不服的，可以自收到处罚决定之日起十五日内向上一级主管机关申请复议；对复议决定不服的，可以自收到复议决定书之日起十五日内向人民法院提起诉讼；也可以直接向人民法院提起诉讼。

Article 29 Where a party is not satisfied with the decision on punishment made by the relevant control and inspection authority, it or he may, within fifteen days from the date of receipt of the decision on punishment, apply to the competent authority at the next higher level for reconsideration; where the party is not satisfied with the decision made after reconsideration, it or he may, within fifteen days from the date of receipt of the written decision made after reconsideration, institute proceedings in the people's court; the party may also directly institute proceedings in the people's court upon receipt of the decision on punishment.

第三十条政府及其所属部门违反本法第七条规定，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，或者限制商品在地区之间正常流通的，由上级机关责令其改正；情节严重的，由同级或者上级机关对直接责任人员给予行政处分。被指定的经营者借此销售质次价高商品或者滥收费用的，监督检查部门应当没收违法所得，可以根据情节处以违法所得一倍以上三倍以下的罚款。

Article 30 Where a local government and its subordinate departments, in contravention to the provisions of Article 7 of this Law, force others to buy the goods of the 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 higher level shall take disciplinary sanctions against the persons directly responsible. Where the designated operators, taking advantage of this illegal arrangement, foist inferior but high-priced goods on buyers or make exorbitant charges, the control and inspection 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.

第三十一条监督检查不正当竞争行为的国家机关工作人员滥用职权、玩忽职守，构成犯罪的，依法追究刑事责任；不构成犯罪的，给予行政处分。

Article 31 Where a staff member of the state organs monitoring and investigating acts of unfair competition abuses his powers as neglects his duty, which constitutes a crime, he shall be prosecuted for his criminal responsibility according to law; where the act does not constitute a crime, he shall be disciplined administratively.

第三十二条监督检查不正当竞争行为的国家机关工作人员徇私舞弊，对明知有违反本法规定构成犯罪的经营者故意包庇不使他受追诉的，依法追究刑事责任。

Article 32 Where a staff member of the State organ monitoring and investigating acts of unfair competition acts irregularly out of personal considerations and intentionally screens an operator from prosecution, fully knowing that he has contravened the provisions of this Law, which constitutes a crime, the said staff member shall be prosecuted for his criminal responsibility according to law.

第五章 附 则

Chapter 5 Supplementary Provision

第三十三条 本法自 1 9 9 3 年 1 2 月 1 日起施行。

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