

DRAFT



PROTECTION AGAINST UNFAIR COMPETITION ACT, 2014

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It is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature Assembled:

SECTION 1: Section 48(1), Chapter 3 of The Industrial Property Act of Liberia, April 30, 2003 relating to acts of unfair competition is hereby repealed.

PART I

PRELIMINARY PROVISIONS

§1.1. Short Title

This Act may be cited as the “Unfair Competition Act”.

§1.2. Definitions

In this Act, unless the context otherwise requires,

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

"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 product produced or the service rendered by that enterprise;

“dilution of goodwill or reputation” means the lessening of the distinctive character or advertising value of a mark, 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.

"enterprise" includes natural and legal persons;

"practice" includes an omission to act;

"presentation of products or services" includes advertising;

“unfair competition” means in general:

- (i.) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industry or commercial activities of a competitor;
- (ii.) false allegations in the course of trade of such a nature as to discredit the establishment, the goods or the industrial or commercial activities of a competitor;
- (iii.) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity of the goods.

PART II

PROTECTION

§2.1. General Principles

(a) Any act or practice that is contrary to honest practices in industrial or commercial matters shall constitute an act of unfair competition.

(b) An act or practice that implies a breach of legal duties, including any infringement of or failure to comply with legal provisions or standards, shall be regarded as contrary to honest practices when its purpose or consequence is to obtain an unfair advantage over competitors.

(c) Any natural person or legal entity damaged or likely to be damaged by an act of unfair competition shall be entitled to the remedies provided by Liberian law.

§2.2. Causing Confusion with Respect to Another’s Enterprise or Activities

Any deceptive act or practice in the course of trade that causes, or is likely to cause, confusion with respect to another person or his activities, in particular with regard to the products or services offered by such person, shall constitute an act of unfair competition.

§2.3. Damaging Another's Goodwill or Reputation

(a) Any deceptive act or practice in the course of trade that damages, or is likely to damage, the goodwill or reputation of another person shall constitute an act of unfair competition, regardless of whether such act or practice causes confusion.

(b) Damaging another person's goodwill or reputation may, in particular, result from the dilution of the goodwill or reputation attached to

- (i) a mark or a geographical indication, whether registered or not;
- (ii) a trade name;
- (iii) a business identifier other than a mark or a trade name;
- (iv) appearance of a product;
- (v) the presentation of products or services;
- (vi) a celebrity or a well-known fictional character.

§2.4. Misleading the Public

(a) Any act or practice in the course of trade that intentionally misleads, or is likely to mislead, the public with respect to a person or his activities, in particular, the products or services offered by such person, shall constitute an act of unfair competition.

(b) Any unauthorized use in the course of trade of a sign that is not registrable under shall constitute an act of unfair competition.

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

- (i.) the manufacturing process of a product;
- (ii.) the suitability of a product or service for a particular purpose;

- (iii.) the quality, origin, provenance, quantity or other characteristics of products or services;
- (iv.) the conditions on which products or services are offered or provided;
- (v.) the price of products or services or the manner in which it is calculated.

§2.5. Discrediting Another's Enterprise or its Activities

(a) Any false or unjustified allegation in the course of trade that discredits, or is likely to discredit, another person or his activities, in particular, the products or services offered by such person, shall constitute an act of unfair competition.

(b) Discrediting may arise out of advertising or promotion and may occur, in particular, with respect to:

- (i.) the manufacturing process of a product;
- (ii.) the suitability of a product or service for a particular purpose;
- (iii.) the quality, origin, provenance, quantity or other characteristics of products or services;
- (iv.) the conditions on which products or services are offered or provided;
- (v.) the price of products or services or the manner in which it is calculated.

§2.6. Unfair Competition in Respect of Secret Information

(a) Any act or practice in the course of trade 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 (hereinafter referred to as "the rightful holder") and in a manner contrary to honest commercial practices shall constitute an act of unfair competition.

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

- (i.) industrial or commercial espionage;
- (ii.) breach of contract;
- (iii.) breach of confidence;

- (iv.) inducement to commit any of the acts referred to in subsection (i.) to (iii.) of this section;
 - (v.) acquisition of secret information by a third party who knew, or was grossly negligent in failing to know, that an act referred to in *items* (i.) to (iv.) of this section was involved in the acquisition.
- (d) For the purposes of this Act, information shall be considered secret if:
- (i.) 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;
 - (ii.) it has commercial value because it is secret; and
 - (iii.) it has been subject to reasonable steps under the circumstances by the rightful holder to keep it secret.
- (e) Where under legal or regulatory provisions in Liberia it is required to submit to a competent authority in Liberia secret test data or other data, the origination of which involved considerable effort, such as for the purposes of obtaining marketing approval for a pharmaceutical or an agricultural chemical product which utilizes a new chemical entity, such data shall be:
- (i) protected against unfair commercial use, and
 - (ii) protected against disclosure, except where disclosure is necessary to protect the public, or unless steps are taken to ensure that the disclosed data are protected against unfair commercial use.

This Act shall take effect immediately upon publication in handbills by the Ministry of Foreign Affairs.

ANY LAW TO THE CONTRARY NOT WITHSTANDING