

CHAPTER 13.28 PROTECTION AGAINST UNFAIR COMPETITION ACT

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• Act • Subsidiary Legislation •

ACT

(Act 1 of 2001)

Act 1 of 2001 in force 1 March 2002 (S.I.9/2002)

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CHAPTER 13.28 PROTECTION AGAINST UNFAIR COMPETITION ACT

AN ACT to provide for protection against unfair competition.

Commencement [1 March 2002]

1. Short title

This Act may be cited as the Protection Against Unfair Competition Act.

2. Interpretation

In this Act—

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

"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 products produced or the services rendered by that enterprise;

"dilution of goodwill or reputation" means the lessening of the distinctive character or advertising value of a trademark, 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;

“industrial or commercial activities” includes the activities of professionals and other such persons;

“Minister” means the Minister with responsibility for intellectual property;

“practice” includes an omission to act;

“presentation of products or services” includes advertising;

“trade mark” includes marks relating to goods, marks relating to services and marks relating to both goods and services.

3. General principles

(1) In addition to the acts and practices referred to in sections 4 to 8, any act or practice, in the course of industrial or commercial activities, that is contrary to honest practices constitutes an act of unfair competition.

(2) This section and sections 4 to 8 applies independently of, and in addition to, any legislative provisions protecting inventions, industrial designs, trade marks, literary and artistic works and other intellectual property subject matter.

4. Causing confusion with respect to another’s enterprise or activities

(1) Any act or practice, in the course of industrial or commercial activities, that causes, or is likely to cause, confusion with respect to another’s enterprise or its activities, in particular, the products or services offered by such enterprise, constitutes an act of unfair competition.

(2) Confusion may, in particular, be caused with respect to any of the following—

- (a) a trade mark, whether registered or not;
- (b) a trade name;
- (c) a business identifier other than a trademark or trade name;
- (d) the appearance of a product;
- (e) the presentation of products or services;
- (f) a celebrity or a well-known fictional character.

5. Damaging another’s goodwill or reputation

(1) Any act or practice, in the course of industrial or commercial activities, that damages, or is likely to damage, the goodwill or reputation of another’s enterprise constitutes an act of unfair competition, regardless of whether such act or practice causes confusion.

(2) Damaging another’s goodwill or reputation may, in particular, result from the dilution of the goodwill or reputation attached to any of the following—

- (a) a trade mark, whether registered or not;
- (b) a trade name;
- (c) a business identifier other than a trademark or a trade name;
- (d) the appearance of a product;
- (e) the presentation of products or services;
- (f) a celebrity or well-known fictional character.

6. Misleading the public

(1) Any, act or practice, in the course of industrial or commercial activities, that misleads, or is likely to mislead, the public with respect to an enterprise or its activities, in particular, the products or services offered by such enterprise, constitutes an act of unfair competition.

(2) Misleading may arise out of advertising or promoting or may, in particular, occur with respect to any of the following—

- (a) the manufacturing process of a product;
- (b) the suitability of a product or service for a particular purpose;
- (c) the quality or quantity or other characteristics of products or services;
- (d) the geographical origin of products or services;
- (e) the conditions on which products or services are offered or provided;
- (f) the price of products or services or the manner in which it is calculated.

7. Discrediting another's enterprise or activities

(1) Any false or unjustifiable allegation, in the course of industrial or commercial activities, that discredits, or is likely to discredit, another's enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(2) Discrediting may arise out of advertising or promotion and may, in particular, occur with respect to any of the following—

- (a) the manufacturing process of a product;
- (b) the suitability of a product or service for a particular purpose;
- (c) the quality or quantity or other characteristics of products or services;
- (d) the conditions on which products or services are offered or provided;
- (e) the price of products or services or the manner in which it is calculated.

8. Unfair competition in respect of trade secrets

(1) An act or practice, in the course of industrial or commercial activities, that results in the disclosure, acquisition or use by others of trade secrets without the consent of the person lawfully in control of that information and in a manner contrary to honest commercial practices which constitute an act of unfair competition.

(2) Disclosure, acquisition or use of trade secrets by others without the consent of the rightful holder may, in particular, result from—

- (a) industrial or commercial espionage;
- (b) breach of contract;
- (c) breach of confidence;
- (d) inducement to commit any of the acts referred to in paragraphs (a) to (c);
- (e) acquisition of a trade secret by a third party who knew, or was grossly negligent in failing to know, that an act referred to in paragraphs (a) to (d) was involved in the acquisition.

(3) For the purposes of this section, information shall be considered "a trade secret" if—

- (a) 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;

- (b) it has commercial value because it is a trade secret; and
- (c) the rightful owner has, under the circumstances of the particular case, taken reasonable steps to keep it secret.

(4) Any act or practice, in the course of industrial or commercial activities, shall be considered an act of unfair competition if it consists or results in—

- (a) an unfair commercial use of secret test or other data, the origination of which involves considerable effort and which have been submitted to a competent authority for the purposes of obtaining approval of the marketing of pharmaceutical or agricultural chemical products which utilise new chemical entities; or
- (b) the disclosure of such data, except—
 - (i) where necessary to protect the public, and
 - (ii) where steps are taken to ensure that the data are protected against unfair commercial use.

(5) In this section “**rightful holder**” means the person lawfully in control of information referred to in subsection (1).

9. Civil remedies

A person who is prejudiced or likely to be prejudiced by an act of unfair competition shall be entitled to the remedies obtained under the civil law of Saint Lucia.

CHAPTER 13.28 PROTECTION AGAINST UNFAIR COMPETITION ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
