

Extract of Act No 2 of 9 January 2009 relating to the Control of Marketing and Contract Terms and Conditions, etc. (the Marketing Control Act)

Chapter 6 Protection of the interests of traders

Section 25 *Good business practice*

No act shall be performed in the course of trade which conflicts with good business practice among traders.

Section 26 *Misleading business methods*

It shall be prohibited in the course of trade to use an incorrect or otherwise misleading representation which is likely to influence the demand for or supply of goods, services or other products. In this chapter, "representation" shall mean any form of announcement or statement made orally, in writing or otherwise, thus including descriptions, pictures, demonstrations, the form, size or type of packaging, etc.

The Ministry may by regulation issue more detailed provisions relating to comparative advertising.

Section 27 *Insufficient guidance, etc.*

It shall be prohibited in the course of trade to use any representation which is likely to influence the demand for or supply of goods, services or other products when the representation must be considered unfair because it does not provide reasonable or sufficient guidance or introduces irrelevant matters.

Section 28 *Trade secrets*

A person who has obtained knowledge or possession of a trade secret in connection with an employment or business relationship or a position of trust shall not exploit the secret unlawfully in the course of trade.

The same shall apply to any person who has obtained knowledge or possession of a trade secret through another person's breach of a confidentiality obligation or otherwise through the unlawful act of another person.

Section 29 *Technical aids*

A person who has been entrusted with technical drawings, descriptions, formulas, models or similar technical aids in connection with an employment or business relationship or a position of trust shall not use these unlawfully in the course of trade.

The same shall apply to any person who has obtained possession of technical drawings, descriptions, formulas, models or similar technical aids through the unlawful act of another person.

Section 30 *Copying the products of another person*

It shall be prohibited in the course of trade to use copies of distinguishing marks, products, catalogues, advertising materials or other produced items in such a manner and under such circumstances that the use must be considered an unfair exploitation of the efforts or results of another person, and to present a risk of confusion.

Section 31 *Application of incorrect geographical descriptions to wines and spirits*

It shall be prohibited in the course of trade to apply a geographical description to a wine or spirit which does not originate from the geographical location designated by the description. This shall apply even if the actual place of origin is also stated, or if the geographical description has been translated or is followed by an expression like "kind", "type", "imitation", or something similar.

Chapter 9 Penalties and civil law sanctions

Section 48 *Penalties*

Any person who with intent materially violates Section 6 fourth paragraph, cf. first paragraph, regulations issued in pursuance of Section 6 fifth paragraph, Section 11, Section 13, Section 15, Section 20 second paragraph, Sections 26, 27, 28, 29 or 30 is liable to fines, imprisonment for a term of up to six months, or both, unless a stricter penal provision applies. Accessories shall be liable to the same penalties.

Negligent material infringement of section 7 or section 8, see also section 6, fourth paragraph, see also first paragraph, section 11, first paragraph, section 26 or section 27 shall be subject to fines, imprisonment of up to six months, or both, unless a stricter penal provision applies. Accessories shall be liable to the same penalties.

In the assessment of whether an infringement is material, particular emphasis shall be given to the scope and effects of the infringement and the degree of guilt. If the person or business has previously been ordered to pay a fine or infringement penalty for infringement of this Act or regulations issued pursuant to this Act, penalties pursuant to the first and second paragraphs may be applied even if the infringement is not material.

A person who intentionally or negligently breaches a decision made pursuant to this Act shall be subject to fines, imprisonment of up to six months, or both, unless a stricter penal provision applies. Accessories shall be liable to the same penalties.

No penalty shall be imposed in relation to an infringement committed by a sales assistant, office assistant or similar subordinate employee if the infringement has essentially resulted from that person's dependent relationship with the trader.

No penalty shall be imposed in the event of an infringement of section 28 if knowledge or possession of the trade secret was acquired in a position of employment or trust, or through a breach of duty in such position, and more than two years have elapsed since the position ceased to exist.

Section 48 a *Penalties and civil law sanctions for the unlawful use of geographical descriptions*

Any person who uses a geographical indication in breach of Sections 25, 26 or 31 or aids and abets thereto is liable to fines or imprisonment for a term of up to one year.

If especially aggravating circumstances exist, the penalty shall be fines or imprisonment for a term of up to three years. When assessing whether especially aggravating circumstances exist, particular importance shall be attached to the loss inflicted on the aggrieved person, including any damage to this person's commercial reputation, the gain procured by the offender, and the extent of the offence in other respects.

A public prosecution will only be instituted if the aggrieved person so requests unless this is required by the public interest.

The provisions concerning sanctions against infringements of trademarks in the Trademarks Act Chapter 8, except for Sections 60, 61 and 61 a, apply correspondingly to the use of geographical descriptions in breach of Sections 25, 26 or 31.

Section 48 b *Compensation and damages for violation of certain provisions in Chapter 6*

For intentional or negligent violation of Sections 28, 29 and 30, the offender shall pay the aggrieved party:

- a) compensation corresponding to a reasonable licence fee for the exploitation, as well as damages for any loss resulting from the violation that would not have arisen in connection with licensing,
- b) damages for any loss resulting from the violation, or
- c) compensation corresponding to the gain obtained as a result of the violation.

The compensation and damages are determined on the basis of the provision in letters a to c that is most favourable for the aggrieved party.

The first paragraph applies correspondingly to aiding and abetting.

The first and second paragraphs apply correspondingly to violations of Sections 25 and 26 that consist of copying another person's product, distinguishing mark, advertising materials or other produced items.

Section 49 *Rules relating to criminal procedure*

The prosecuting authority shall not prosecute infringement of section 28, section 29 or section 30 unless the aggrieved party so requests. The same shall apply to infringement of section 26 or section 27 when the act consists of injurious statements about another trader or about matters which concern that trader specifically.

The prosecuting authority may in connection with criminal proceedings apply for a court order to secure the cessation of the unlawful act and to prevent its repetition.