

# Trade Code (Decree No. 671, of May 8, 1970)

## (Extracts)

### Part IV Restrictions on Trading Activity

**488.** Traders shall carry out their activities in accordance with the law and established trade customs and practice, and without prejudice to the public or to the national economy.

Infringement of this rule shall entitle an injured party to take legal proceedings to stop the unlawful practice and to claim damages.

**489.** Agreements that restrict the trading activities of a trader to a market, region or specific type of trade shall be valid, provided that their duration does not exceed ten years and that they do not conflict with any constitutional right.

Notwithstanding the foregoing, if such agreements result in the establishment of monopolies or cause prejudice to the national economy or to the rights of third persons, the injured parties may take legal action to have the said agreements dissolved. In the first two of those cases, the Attorney General may also take action to the same end.

**490.** Agreements that govern conditions relating to the quantity and quality of production or features of services provided to the public shall also be valid, subject to the restrictions laid down in the preceding article.

**491.** Acts designed to attract custom improperly shall be regarded as unfair competition, and in particular:

1. if they deceive the public in general or specific persons by:

(a) bribing the customer's employees with a view to misleading him as to the services or goods supplied;

(b) using false indications as to the origin or quality of the goods or services, or as to the prizes or distinctions awarded to the same;

(c) using packaging, markings or any other means to give imitation or adulterated goods the appearance of genuine articles;

(d) disseminating false information as to the seller's reasons for offering special terms, which is liable to influence the buyer's attitude, for example, by advertising sales as being due to liquidation, bankruptcy or cessation of business when such is not the case. The resale of goods purchased following bankruptcy, cessation of business or liquidation may not be accompanied by any announcement of such circumstances. Only those sales that take place on the winding-up of a company, the closure of a business or a subsidiary thereof or the cessation of activities at one of its branches, may be advertised as liquidation sales;

(e) offering goods on sale at prices which have not actually been reduced by comparison with previous prices;

2. if they directly prejudice any other trader, without infringing contractual obligations with the latter, by:

(a) the unlawful use of the trade names, emblems, patterns, signs, trademarks, patents, and any other elements belonging to an undertaking and its trading establishments;

(b) the dissemination of reports liable to discredit the goods or services of another undertaking;

(c) the bribery of the employees of another trader with a view to depriving him of his custom;

(d) obstructing customer access to the premises of another trader;

(e) comparing, directly and publicly, the quality and prices of one's own goods and services with those of other undertakings referred to by name or in such a way as to leave no doubt as to their identity;

3. if they deliberately cause prejudice to another trader by failing to comply with the terms of an agreement on the limitation of competition;

4. if they use the services of a person who has broken his contracts of employment at the instigation of his new employer. In this connection, failing proof to the contrary, enticement shall be presumed on the part of whosoever makes use of the services of a person placed in this situation;

5. if there are any other similar acts designed directly or indirectly to attract custom away from another trader.

**492.** Where practices constituting unfair competition cause prejudice to the interests of a professional group, legal proceedings may be initiated either by the persons individually affected or by the professional association or chamber of commerce concerned.

**493.** Legal proceedings may be initiated by submission to the court of all exhibits constituting evidence of unfair competition, or a sufficient number thereof, subject to the deposit of an appropriate sum as security.

A party may also, pending institution of the proceedings, seek an interlocutory injunction ordering that the acts of unfair competition shall cease. In such a case, he shall provide as security a sum which the judge deems adequate to compensate for the damage caused in the event that the judgement subsequently passed does not conclusively establish unfair competition.

**494.** If the judgement finds acts of unfair competition, an order shall be made not only for the cessation of such acts, but also for the adoption of the necessary measures to mitigate their consequences and to prevent their recurrence and also, where applicable, for compensation of any loss or damage.

**495.** Where the repetition of acts of unfair competition has been legally proved, the personal license of the trader responsible shall be permanently revoked.

**496.** Where a company repeatedly infringes the provisions of the present Part, the personal licenses of the members or directors responsible for the infringement shall be revoked.

The foregoing clause shall apply to the members or directors of companies that commit the offences referred to in **Chapter XIII, Part II** of the First Volume of the present Code, even if such offences are not repeated.

**497.** When the Commercial Court which hears a case concerning unfair competition takes note of the commission of acts that may constitute a criminal offence, it shall authenticate the relevant passages of the proceedings and transmit them, and in particular the evidence produced in the matter, to the Attorney General of the Republic, so that the latter may, on his own responsibility, take the appropriate penal action.

## **Part V**

### **Chapter II**

#### **Section B—Trade Name**

**570.** The right to a trade name shall be acquired by the person who first applies it to an undertaking or trading establishment. This right shall give way to that of any person who first registers the name in the Trade Register.

**571.** The trade name shall be freely selected but it shall not include any proper name other than that of the owner of the undertaking, unless that undertaking or trading establishment has been transferred under such name to a new owner, in which case an expression shall be added to indicate the change made. Names liable to be confused with that of another undertaking carrying out the same kind of business may also not be used.

Trade names in foreign languages shall not enjoy legal protection and may not be registered. Such names if already registered shall continue to be protected during the period of validity of their registration.

**572.** The owner of a trade name is entitled to use it, to prevent others from using or imitating it in his own field of activity, and to assign it in accordance with the law.

**573.** Anyone who imitates or usurps the trade name of another when he knows or ought to know of its existence shall be liable for any loss or damage caused and shall incur the penalty which the law prescribes. Anyone who, without having used a trade name, requests its registration in the Register shall not have usurped the name.

Knowledge of the trade name of another shall be presumed if that name has been published in the Official Gazette or entered in the Trade Register at the place where the said name is used unlawfully.

**574.** The right to the trade name lapses on the winding-up of the business or enterprise to which it relates.

## **Chapter II**

### **Section C—Distinctive Trade Signs**

**575.** The right to the exclusive use of a trademark in order to distinguish the origin and quality of goods manufactured or sold by an undertaking or trading establishment may be acquired by the person who uses it or wishes to do so, by registering it in accordance with the present Code and the relevant special law.

**576.** Rights in a registered trademark shall not be acquired as against its owner as a result of unlawful use of the mark.

**577.** A trademark which is not used by its owner shall be cancelled at the request of any trader interested therein, provided that the trademark has not been used for a period of three consecutive years.

The cancellation procedure is prescribed in the relevant special law.

**578.** Any material medium, sign, emblem or name whose special characteristics render it capable of distinguishing the articles to which it applies from others of the same type or class may be used as a trademark, provided that it meets the requirements of the relevant special law.

**579.** A trademark shall be used in accordance with the relevant special law and for the period of validity of the registration as laid down by that law.

**580.** Any trader may add his own trademark to that of the manufacturer, provided he does not obliterate, alter or conceal the manufacturer's trademark.

**581.** Where there exists an agreement which provides for equivalence of the goods manufactured, by means of using the same processes and formulae, the contracting parties shall be permitted to use simultaneously the same trademark.

**582.** Assignment of a trademark shall only have effect as against a third party as from the date on which it is recorded in the Trade Register.

**583.** The owner of a trademark may authorize its use by third parties. The right to use a trademark is not transferable.

**584.** The owner of a trademark may take legal action to prevent its use or imitation by other persons and to obtain compensation for loss or damage.

Such legal action shall take the form of:

1. A court order to the customs authorities of the Republic, to prevent the import into the country of foreign goods which carry the trademark unlawfully. Such an order shall be issued by the judge competent in the matter at the request of the interested party who shall prove his ownership of the trademark by producing the appropriate certificate.

2. A court judgement, given in summary jurisdiction, in favor of the person proving his ownership of the trademark, against those persons in the country who manufacture similar goods carrying the trademark unlawfully.

**585.** The foregoing provisions apply *mutatis mutandis* to samples, emblems and signs.

## **Chapter II**

### **Section D—Patents**

**586.** Any person who has obtained a patent shall enjoy the exclusive right to work the invention or the improvements covered during the period specified in the patent.

**587.** An inventor may obtain a patent for himself, his successors-in-title or any other person to whom he has assigned the corresponding rights.

**588.** Anybody who provides another person with his services and who in the course of his employment makes an invention shall have the right to be recognized as the inventor and to be remunerated independently of the salary or emoluments he receives; such remuneration shall in no case be less than 20 per cent of the commercial value of the invention, unless the inventor has been engaged in a research capacity in a research capacity in the field to which the invention relates.

**589.** Patents may be issued in the name of two or more persons jointly if they so request.

**590.** The granting of a license to work a patented invention shall be compulsory in the following cases:

1. Where a patentee applies for a license in respect of a patent of improvement related to his invention; or, where a patent of improvement has been granted, in respect of the patent for the improved invention.

2. Where the patentee allows three years to elapse without working his patent industrially.

**591.** A license, whether compulsory or contractual, shall not deprive the patentee of the right to work the invention himself and to grant other contractual licenses as he sees fit.

**592.** Compulsory licenses shall be revoked:

1. if the initial invention to which a patent of improvement refers comes within the public sector;

2. if the owner of a patent, in respect of which a compulsory license has been granted on the ground of failure to work the invention, so requests, provided he can prove that he has worked the invention for two consecutive years.

**593.** On the grant of a compulsory license and after consultation with experts, the percentage of the profits which the licensee shall be required to pay to the patentee shall be established.

**594.** Rights conferred by patents may be transferred wholly or in part but the modification of such rights shall be without prejudice to any third party until it has been recorded in the relevant register.

**595.** Patents shall at all times be liable, *ex officio* or at the request of a third party or pursuant to a court order, to verification of novelty with a view to ascertaining whether the invention covered meets the requirements for its legal protection.

**596.** Patents shall lapse when legally declared null and void or on the expiry of the time-limits laid down by the relevant special law.

**597.** The decision of the Registrar granting a patent shall be published.

**598.** The owner of a patent shall have the right to take legal action in order to prevent its use by other persons and to obtain compensation for loss and damage arising from unlawful use.

**599.** Patents and licenses shall be granted by the Registrar of Trade in accordance with the special law.

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