

**[CHAPTER 481A]**  
**UNIFORM DECEPTIVE TRADE PRACTICE ACT**

Section

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## Law Journals and Reviews

On relationship of this chapter to §480-2, see Misrepresentation and Deception Under Section 480-2 of the Hawaii Revised Statutes. 10 HBJ 69.

What Can the Abolition of Slavery Teach Us About Climate Change? Local Action in the Liquefied Natural Gas Controversy. 35 UH L. Rev. 687 (2013).

## Case Notes

Plaintiffs' unfair or deceptive acts and practices claim, in violation of this section, based on the recording of an allegedly false assignment failed where plaintiffs failed to establish that the assignment was false; moreover, contrary to plaintiffs' contention, the express terms of the mortgage and the assignment in question suggest that one named defendant only transferred to other named defendant its "'right to foreclose and sell the [p]roperty'". 823 F. Supp. 2d 1061.

Under the filed-rate doctrine, telephone customers' claims failed as a matter of law where customers could not demonstrate that telephone company's allegedly inadequate disclosures constituted an unfair or deceptive trade practice because (1) company's tariffs on file with the public utilities commission disclosed that fees should be assessed against customers receiving touch calling services; (2) knowledge of these disclosures contained in the tariff was imputed to the customers, and, thus, (3) customers could prove neither the injury nor the likelihood of damage that is required under §480-2 or this chapter. 109 H. 69, 123 P.3d 194.

" **[§481A-1] Title.** This chapter may be cited as the Uniform Deceptive Trade Practice Act. [L 1969, c 187, pt of §1]

" **[§481A-2] Definitions.** As used in this chapter, unless the context otherwise requires:

"Article" means a product as distinguished from its trademark, label, or distinctive dress in packaging.

"Certification mark" means a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy, or other characteristics of the goods or services or to indicate that the work or labor on the goods or services was performed by members of a union or other organization.

"Collective mark" means a mark used by members of a cooperative, association, or other collective group or

organization to identify goods or services and distinguish them from those of others, or to indicate membership in the collective group or organization.

"Mark" means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement.

"Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

"Service mark" means a mark used by a person to identify services and to distinguish them from the services of others.

"Trademark" means a mark used by a person to identify goods and to distinguish them from the goods of others.

"Trade name" means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement used by a person to identify the person's business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others. [L 1969, c 187, pt of §1; gen ch 1985]

#### **Revision Note**

Numeric designations deleted and definitions rearranged.

" **[\$481A-3] Deceptive trade practices.** (a) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:

- (1) Passes off goods or services as those of another;
- (2) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) Uses deceptive representations or designations of geographic origin in connection with goods or services;
- (5) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;
- (6) Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;

- (7) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (8) Disparages the goods, services, or business of another by false or misleading representation of fact;
- (9) Advertises goods or services with intent not to sell them as advertised;
- (10) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (11) Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; or
- (12) Engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

(b) In order to prevail in an action under this chapter, a complainant need not prove competition between the parties or actual confusion or misunderstanding.

(c) This section does not affect unfair trade practices otherwise actionable at common law or under other statutes of this State. [L 1969, c 187, pt of §1; gen ch 1985]

#### **Cross References**

Cybersquatting, see §§481B-21 to 25.

#### **Case Notes**

Where complaints alleged that credit card providers violated this section and §§480-2 and 480-13.5 and unjust enrichment, the claims were not preempted by the National Bank Act. Also, because the complaints unambiguously disclaimed class status, the actions could not be removed under the Class Action Fairness Act of 2005. 761 F.3d 1027 (2014).

Plaintiffs' unfair or deceptive acts and practices claim, in violation of this section, based on the recording of an allegedly false assignment failed where plaintiffs failed to establish that the assignment was false; moreover, contrary to plaintiffs' contention, the express terms of the mortgage and the assignment in question suggest that one named defendant only transferred to other named defendant its "'right to foreclose and sell the [p]roperty'". 823 F. Supp. 2d 1061 (2011).

No "likelihood of confusion" found. 399 F. Supp. 604; 5 H. App. 194, 683 P.2d 1220.

Plaintiff's likelihood of confusion allegations may support both §§480-2 unfair methods of competition and 481A [sic] deceptive acts or practices claims. 945 F. Supp. 1344.

" **[\$481A-4] Remedies.** (a) A person likely to be damaged by a deceptive trade practice of another may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits, or intent to deceive is not required. Relief granted for the copying of an article shall be limited to the prevention of confusion or misunderstanding as to source.

(b) Costs shall be allowed to the prevailing party unless the court otherwise directs. The court may award attorneys' fees to the prevailing party if (1) the party complaining of a deceptive trade practice has brought an action which the party knew to be groundless, or (2) the party charged with a deceptive trade practice has wilfully engaged in the trade practice knowing it to be deceptive.

(c) The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this State. [L 1969, c 187, pt of §1; gen ch 1985]

#### **Case Notes**

Where there was no evidence in the record that plaintiffs knew that their claim under this chapter was "groundless", as required for an award of attorneys' fees under subsection (b), trial court did not err in denying defendant's motion for attorneys' fees and costs under this section. 98 H. 309, 47 P.3d 1222.

Where plaintiffs' claims were based on a common core of facts, occurred roughly within the same two-month span of time, and were based on similar legal theories, such that it appeared that counsels' time was devoted largely to the litigation as a whole and not divisible into discrete slivers neatly matching each claim advanced, and the trial judge was in the best position to assess the reasonableness of counsels' actions, trial court did not abuse its discretion in awarding fifty per cent of the attorneys' fees requested by plaintiffs. 116 H. 42 (App.), 169 P.3d 994.

" **[\$481A-5] Application.** (a) This chapter does not apply to:

- (1) Conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency;
- (2) Publishers, broadcasters, printers, or other persons engaged in the dissemination of information or reproduction of printed or pictorial matters who

publish, broadcast, or reproduce material without knowledge of its deceptive character; or

(3) Actions or appeals pending on July 14, 1969.

(b) Sections 481A-3(a)(2) and 481A-3(a)(3) do not apply to the use of a service mark, trademark, certification mark, collective mark, trade name, or other trade identification that was used and not abandoned before July 14, 1969 if the use was in good faith and is otherwise lawful except for this chapter. [L 1969, c 187, pt of §1]

#### **Revision Note**

"July 14, 1969" substituted for "the effective date of this Act" and "the effective date of this chapter".