

A Bill for an Act to Enact the Uniform Deceptive Trade Practices Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately numbered and to read as follows:

“CHAPTER

UNIFORM DECEPTIVE TRADE PRACTICE ACT

Section -1. Title. This Act may be cited as the Uniform Deceptive Trade Practice Act.

Section -2. Definitions. As used in this chapter, unless the context otherwise requires:

(1) ‘Article’ means a product as distinguished from its trademark, label, or distinctive dress in packaging.

(2) ‘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.

(3) ‘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.

(4) ‘Mark’ means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement.

(5) ‘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.

(6) ‘Service mark’ means a mark used by a person to identify services and to distinguish them from the services of others.

(7) ‘Trademark’ means a mark used by a person to identify goods and to distinguish them from the goods of others.

(8) ‘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 his business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others.

Section -3. Deceptive trade practices. (a) A person engages in a deceptive trade practice when, in the course of his business, vocation, or occupa-

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tion, he:

- (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 he 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.

Section -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 he 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.

Section -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 the effective date of this Act.

(b) Sections -3(a) (2) and -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 the effective date of this Act, if the use was in good faith and is otherwise lawful except for this chapter.

Section -6. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.”

SECTION 2. This Act shall take effect upon its approval.

(Approved July 14, 1969.)