

**ANTIGUA AND BARBUDA**  
**THE PROTECTION AGAINST UNFAIR COMPETITION**  
**(INTELLECTUAL PROPERTY) ACT, 2006**

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**ANTIGUA AND BARBUDA**

**THE PROTECTION AGAINST UNFAIR COMPETITION  
(INTELLECTUAL PROPERTY) ACT, 2006**

**NO. OF 2006**

**A BILL FOR**

AN ACT to provide for the protection against unfair competition with respect to trade secrets and intellectual property.

ENACTED by the Parliament of Antigua and Barbuda as follows:

**1. Short title**

This Act may be cited as the Protection against Unfair Competition (Intellectual Property) Act, 2006.

**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;

“Court” means the Eastern Caribbean Supreme Court;

“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-know 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. Application of Act**

Sections 4 to 9 shall apply independently of, and in addition to, any legislative provisions protecting inventions, industrial designs, trademarks, literary and artistic works and other intellectual property subject matter.

### **4. General principles**

(a) In addition to the acts and practices referred to in sections 4 to 9, any act or practice, in the course of industrial or commercial activities, that is contrary to honest practices shall constitute an act of unfair competition.

(b) Any person who has suffered any damage or is likely to suffer damage by an act of unfair competition shall be entitled to the remedies obtainable under the civil law of Antigua and Barbuda.

### **5. Causing confusion with respect to another’s enterprise or its 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, shall constitute an act of unfair competition.

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

- (a) a trademark, 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.

## **6. 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 shall constitute 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 trademark, 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 a well-known fictional character.

## **7. 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, shall constitute an act of unfair competition.

(2) Misleading may arise out of advertising or promotion and may, in particular, occur with respect to -

- (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.

## **Discrediting another's enterprise or its 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 which it is calculated.

### **Unfair competition in respect of trade secrets**

(1) Any 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 (hereinafter referred to as "the rightful owner") and in a manner contrary to honest commercial practices shall 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 trade secrets by a third party who knew, or was grossly negligent in failing to know, that an act referred in paragraphs (a) to (c) was involved in the acquisition.

(3) For the purpose of the 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 secret; and

(c) it has been subject to reasonable steps under the circumstances by the rightful holder 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 which have been submitted to a competent authority for the purposes of obtaining approval of the marketing of pharmaceutical or agricultural chemical products which utilize new chemical activities, or

(b) the disclosure of such data, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

## **10. Regulations**

The Minister may make Regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

Passed by the House of Representatives  
this day of 2006.

Passed by the Senate  
this day of 2006.

Speaker

President

## EXPLANATORY MEMORANDUM

The object of this Bill is to provide for protection against unfair competition particularly with respect to intellectual property.

Clause 3 provides that sections 4 to 9 shall apply independently of and in addition to any legislative provision protecting intellectual property rights.

Clause 4 establishes the basic protection against unfair competition and at the same time serves as a general definition of acts of unfair competition.

Clause 5 provides that 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, shall constitute an act of unfair competition. It contains a non-exhaustive list of things with respect to which confusion may be caused; for example a trademark, which serve to distinguish the products or services offered by an enterprise from the products or services of other enterprises, or a trade name, which serves to identify an enterprise and its business activities and distinguish them from other enterprises and their business activities.

Clause 6 provides that damaging another's goodwill or reputation constitutes an act of unfair competition, regardless of whether the act or practice concerned causes confusion. An act or practice does damage to goodwill or reputation if it goes beyond what is required for the defence of one's own legitimate interest. However this clause does not apply to damaging a competitor's goodwill or reputation where the damage is legitimately done, for example in comparative advertising that is truthful and not misleading. This clause also includes a non-exhaustive list of instances in which damaging another's goodwill or reputation may occur.

Clause 7 provides that 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, shall constitute an act of unfair competition. Misleading, and in particular, misleading advertising, where a false impression of one's products and services or one's own enterprise is created, may well be the most prevalent form of unfair competition. Misleading acts are primarily targeted at consumers and

not directly against competitors; they may cause consumers to make decisions prejudicial to themselves when they select products and services.

Clause 8 provides that the discrediting of another's enterprise or its activities through false allegations shall constitute an act of unfair competition. Like misleading, discrediting aims to influence customers' decisions by conveying certain kinds of information. Unlike misleading, however, this is not done by making false or deceptive statements about one's own products or services but rather by conveying false information of another enterprise or its products, services or industrial or commercial activities. This clause also contains a non-exhaustive list of instances where discrediting may arise.

Clause 9 provides that the disclosure or acquisition for use of trade secrets, in the course of industrial and commercial activities, without the consent of the person lawfully in control of that information, in a manner contrary to honest commercial practices, shall constitute an act of unfair competition. This clause lists examples of unfair competition in respect of trade secrets also defines information that shall be considered trade secrets.

Clause 10 authorizes the Minister to make regulations for matters required or permitted to be prescribed or necessary or convenient for carrying out or giving effect to the Act.