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In assent

C. Straughn Husbands

Governor-General

14th September, 1998.

1998—20

An Act to provide for protection against unfair competition in order to fulfill the obligations of Barbados under the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organisation.

Commencement

19-02-2001

Enacted by the Parliament of Barbados as follows:

Citation

Short Title

1. This Act may be cited as the *Protection Against Unfair Competition Act, 1998* .

Interpretation

2. In this Act,

(a) “appearance of a product” includes a reference to the packaging, shape, colour or other non-functional characteristic features of the product;

(b) “business identifier” includes business symbols, emblems, logos and signs 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;

(c) “dilution of goodwill or reputation” means the lessening of the

(i) distinctive character or advertising value of a trademark, trade name or other business identifier;

(ii) appearance of a product or the presentation of products or services;

(iii) value of an association with the product of a celebrity or well-known fictional character.

(d) “industrial or commercial activities” includes the activities of

(i) enterprises providing products or services, in particular the buying and selling of such products or services, and

(ii) professionals in private practice, whether or not they engage in such activities for profit;

(e) “presentation of products or services” includes advertising;

(f) “trademark” includes marks relating to either goods or services and marks relating to both goods and services.

Civil Remedies

3.—(1) Any person who is injured or is likely to be injured by an act of unfair competition may institute proceedings in the High Court

(a) for an injunction to prevent the act of unfair competition or to prohibit the continuation of the act of unfair competition; or

(b) for the recovery of damages for injury suffered as a result of the unfair competition.

(2) The grant of an injunction under subsection (1) does not deprive a person of any damages that may be awarded to him for injury suffered by him or likely to be suffered by him as the result of an act of unfair competition.

Unfair Competition

4.—(1) The following are acts of unfair competition:

(a) any act or other conduct by a person in the course of industrial or commercial activities that is contrary to honest practices, in particular any act or other conduct

(i) that causes, or is likely to cause, confusion with respect to another person’s enterprise or activities and to the products or services offered by such person;

(ii) that damages, or is likely to damage, the good will or reputation of another person's enterprise, whether or not the actor practice causes confusion;

(iii) that misleads, or is likely to mislead the public with respect to an enterprise or its activities, in particular, the products and services offered by such enterprise;

(iv) that results in the disclosure, acquisition or use by others of secret information without the consent of the person lawfully in control of that information (hereinafter referred to as the "rightful holder") and in a manner contrary to honest commercial practices;

(b) any actor or other conduct that consists of, or results in an unfair commercial use

(i) by a competent authority, or

(ii) by other persons as a result of the improper disclosure by a competent authority;

of secret tests or other data concerning pharmaceutical or agricultural chemical products that utilise new chemical entities the origination of which requires considerable effort and which data have been submitted to the competent authority for the purpose of obtaining approval of the marketing of such products;

(c) any false or unjustifiable allegation, in the course of industrial or commercial activities, that discredits, or is likely to discredit, another person's enterprise or the activities, products or services offered by such enterprise.

(2) Where secret tests or other data referred to in subsection (1) (b) are submitted to a competent authority for the purpose of obtaining approval of the marketing of pharmaceutical or agricultural products that utilise new chemical entities to which these secret tests or other data relate, such information shall not be disclosed by the competent authority unless

(a) the disclosure is necessary to protect the public, and

(b) steps are taken to protect the tests and data against unfair commercial use.

(3) Any officer of the competent authority who contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$10000 or to imprisonment for a term of 2 years or to both such fine and imprisonment.

(4) The prosecution of a criminal charge against a person pursuant to this section does not affect the institution of civil proceedings in the High Court against that person.

Confusion with Respect to Another's Enterprise or Activities

5. For the purposes of section 4(1) (a)(i), confusion may, in particular, occur 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) the association of a product, service or activity with a celebrity or a well-known fictional character.

Damages to Goodwill or Reputation

6. For the purposes of section 4(1) (a)(ii), damage to a person'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 trade name;
- (d) the appearance of a product;
- (e) the presentation of products or services;
- (f) a celebrity or a well-known fictional character.

Misleading the Public

7. For the purposes of section 4(1) (a)(iii), misleading the public may arise out of an advertisement 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 geographical origin of products or services;
- (e) the conditions on which products or services are offered or provided; or
- (f) the price of products or services or the manner in which it is calculated.

Secret Information

8.—(1) For the purposes of section 4(1) (a)(iv), disclosure, acquisition or use of secret information 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 a trade secret by a third party who knew, or was grossly negligent in failing to know, that an act referred to in paragraphs (a) to (d) was involved in or would result from the acquisition.

(2) For the purposes of this Act, information shall be considered “secret information” 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 that normally would have knowledge of or access to the kind of information in question;

(b) it has commercial value because it is a secret; and

(c) the rightful holder has taken responsible steps under the circumstances to keep it secret.

Discrediting an Enterprise

9. For the purposes of section 4(1) (c), discrediting an enterprise may arise out of an advertisement 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 in which it is calculated.

Saving

10. This Act is in addition to and not in derogation from any enactment relating to inventions, industrial designs, trademarks, literary and artistic works and other intellectual property.

Commencement

11. This Act shall come into operation on a date to be fixed by proclamation.
