

A BILL

for

**AN ACT TO MAKE PROVISION FOR PROTECTION AGAINST UNFAIR
COMPETITION AND FOR OTHER MATTERS CONNECTED THEREWITH OR
INCIDENTAL THERETO**

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

**Short title and
Commencement**

1. (1) This Act may be cited as the Protection Against Unfair Competition Act, 2001.

(2) This Act shall come into operation on a date to be proclaimed by His Majesty in Council.

**Act binds the
Crown**

2. This Act binds the Crown.

Interpretation

3. In this Act, unless the context otherwise requires -

"appearance of a product" includes the packaging, shape, colour or other nonfunctional characteristic features of the product in question;

"business identifier other than a trademark or a trade name" 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;

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(2) Damaging another's goodwill or reputation may result, inter alia, 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; or
- (f) a celebrity or a well-known fictional character.

Misleading the public 7.

(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.

Unfair competition in respect of secret information 9.

(1) Any act or practice, in the course of industrial or commercial activities, that results in the disclosure, acquisition or use 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 shall constitute an act of unfair competition.

(2) Disclosure, acquisition or use of secret **information may**, inter alia, 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 secret information 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 the acquisition.

(3) For the purposes of this section, information shall be considered secret information if -

(a)

(a) the unfair commercial use or disclosure of secret tests or other data relating to pharmaceutical or agricultural chemical products utilising new chemical substances **after such products** have been submitted to a competent authority for marketing approval

Provided that disclosure shall be authorised -

- (i) where necessary to protect the public; **and**
- (ii) where steps are taken to ensure that the data are protected against unfair commercial use.

(5) Subsection (4) shall not preclude a person **with the approval of the court, from using or disclosing such test or data** after the expiration of a reasonable period of time from the date of submission of these tests or data for marketing approval.

(6) The period of time under subsection (5) shall be determined by the court, upon application, taking into account the nature of the tests or data and the effort and expenditure involved but shall not, except in exceptional circumstances, be less than 5 years.

Passed in the Legislative Assembly this day of 2001.