

Certain Regulations on Prohibiting Unfair Competition activity concerning imitating specific Names, Packaging or Decoration of Well-known Commodities

Article 1 With a view to prohibiting the unfair competition activity concerning imitating the specific names, packaging or decorations of well-known commodities, these Regulations are formulated in accordance with the relevant provisions of the Law of the People's Republic of China for Countering Unfair Competition (hereinafter referred to as the Anti-Unfair Competition Law).

Article 2 The unfair competition activity concerning imitating the specific names, packaging or decoration of well-known commodities refers to the act in violation of the provision of Article 5 (2) of the Anti-Unfair Competition Law of adopting without authorization the same or similar name, packaging or decoration peculiar to a well-known commodity, that causes confusion with the well-known commodity and misleads the purchasers into regarding the imitation as the well-known commodity.

To mislead the purchasers into regarding the imitation as the well-known commodity mentioned in the previous paragraph embraces the meaning of being enough to mislead the purchasers into regarding the imitation as the well-known commodity.

Article 3 A well-known commodity as mentioned in these Regulations refers to a commodity enjoying a certain reputation in the market and well known among the relevant public.

Peculiar to a well-known commodity as mentioned in these Regulations refers to the name, packaging and decoration of a commodity not commonly used by similar commodities and having remarkable distinction.

The name peculiar to a well-known commodity refers to a commodity name exclusively used by a well-known commodity which is strikingly different from other commodity names, unless it has been registered as a trademark.

Packaging as mentioned in these Regulations refers to an auxiliary object or a container for a commodity making the commodity easy to be identified, carried about, stored and transported.

Decoration as mentioned in these Regulations refers to the writing, design, color and their combination attached to a commodity or its packaging so as to identify and beautify the commodity.

Article 4 In case the name, packaging or decoration of a commodity is used by others in the same or a similar way without authorization, and is enough to cause misidentification of the buyers, this commodity can be recognized as a well-known commodity.

The name, packaging and decoration specially owned by a commodity should be determined according to the principle of first use.

Article 5 The use of a name, packaging or decoration similar to which of a well-known commodity can be determined if its main part and impression as a whole is similar to which of a well-known commodity, and ordinary purchasers may mistake the commodity for the well-known one under general attention.

Where there exists mistakenness or confusion, a similarity can be determined.

Article 6 When supervising and examining cases of imitating the name, packaging or decoration specially owned by a well-known commodity, the administrative authorities for industry and commerce at or above county level shall recognize the well-known commodity and its specially owned name, packaging and decoration at the same time.

Article 7 If an operator commits any act listed in Article 2 of these Regulations, the administrative authorities for industry and commerce at or above county level may punish him or her in accordance with the provisions of Item 2 of Article 21 of the Anti-Unfair Competition Law.

Article 8 If an operator commits any of the acts listed in Article 2 of these Regulations, the administrative authorities for industry and commerce shall, apart from punishing him/her according to the provisions of the previous Article, handle the Articles involved in the infringement as follows:

- 1) Confiscate and destroy or order and supervise the infringer to destroy the infringing packaging and decorations that have not been sold;
- 2) Order the infringer to get rid of the infringing name, packaging or decoration on the extant commodities;
- 3) Confiscate the models, printing plates and other relevant apparatus for producing the infringing packaging and decorations; and
- 4) Where the previous three measures cannot stop the infringement, or the infringing name, packaging or decoration is difficult to separate from the commodity, the infringer shall be ordered to destroy the infringer Articles under supervision.

Article 9 Selling commodities containing specific name, packaging or decoration of a well-known commodity which is known well or ought to be known well by the sellers shall be punished according to the provisions of Articles 7 and 8 of these regulations.

Article 10 In case the specific packing and decoration of a well-known commodity for which the operator has obtained a patent is imitated, the administrative authorities for industry and commerce may punish the infringer in accordance with the Anti-Unfair Competition Law and these Regulations.

Article 11 These Regulations shall go into effect on the day of their promulgation.

(Source: State Administration for Industry and Commerce the People's Republic of China)