

Nebraska State Statutes (as of 7/09/08)

Uniform Deceptive Trade Practices Act

Contact: Nebraska Attorney General

[Consumer Protection Division](#)

(402) 471-2811

[Consumer Complaint Forms](#)

87-301 Terms, defined.

For purposes of the Uniform Deceptive Trade Practices Act, unless the context otherwise requires:

- (1) Article shall mean a product as distinguished from its trademark, label, or distinctive dress in packaging;
- (2) Certification mark shall mean 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 shall mean 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 shall mean a word, name, symbol, device, or any combination of the foregoing in any form or arrangement;
- (5) Person shall mean an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, 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 shall mean a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others;
- (7) Trademark shall mean any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him or her and to distinguish them from goods made or sold by others;
- (8) Trade name shall mean a word or a name, or any combination of the foregoing in any form or arrangement used by a person to identify his or her business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others;
- (9) Chain distributor scheme also known as pyramid sales shall mean a sales device whereby a person, upon a condition that he or she make an investment, is granted a license or right to recruit for profit one or more additional persons who also are granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for such license or right to recruit or the receipt of profits therefrom, shall not change the identity of the scheme as a chain distributor scheme;
- (10) Investment shall be any acquisition, for a consideration other than personal services, of personal property, tangible or intangible, for profit or business purposes, and shall include, without limitation, franchises, business opportunities, and services. It shall not include real estate, securities registered under the Securities Act of Nebraska, or sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;
- (11) Referral or chain referral sales or leases shall mean any sales technique, plan, arrangement, or agreement whereby the seller or lessor gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of the buyer or lessee giving to the seller or lessor the names of prospective buyers or lessees or otherwise aiding the seller or lessor in making a sale or lease to

another person if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease; and

(12) Attorney General shall mean the Attorney General of the State of Nebraska or the county attorney of any county with the consent and advice of the Attorney General.

Source Laws 1969, c. 855, § 1, p. 3221; Laws 1974, LB 327, § 1; Laws 1993, LB 121, § 557; Laws 2002, LB 857, § 6.

Cross Reference

Securities Act of Nebraska, see section 8-1123.

Attorney General and associates immune from suit for libel after initiating deceptive practices suit against plaintiffs. *Ledwith v. Douglas*, 568 F.2d 117 (8th Cir. 1978). Successor to manufacturer in representing it owned trademark owned by distributor and in using trademark in its corporate name violated this act. *Wrist-Rocket Manuf. Co., Inc. v. Saunders*, 379 F.Supp. 902 (D. Neb. 1974).

87-302 Deceptive trade practices; enumerated.

(a) A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, he or she:

(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 or she does not have;

(6) Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand, except that sellers may repair damage to and make adjustments on or replace parts of otherwise new goods in an effort to place such goods in compliance with factory specifications;

(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;

(12) Uses or promotes the use of a chain distributor scheme in connection with the solicitation of business or personal investments from members of the public;

(13) With respect to a sale or lease to a natural person of goods or services purchased or leased primarily for personal, family, household, or agricultural purposes, uses or employs any referral or chain referral sales technique, plan, arrangement, or agreement;

(14) Knowingly makes a false or misleading statement in a privacy policy, published on the Internet or otherwise distributed or published, regarding the use of personal information submitted by members of the public;

(15) Uses any scheme or device to defraud by means of:

(i) Obtaining money or property by knowingly false or fraudulent pretenses, representations, or promises; or

(ii) Selling, distributing, supplying, furnishing, or procuring any property for the purpose of furthering such scheme;

(16) Offers an unsolicited check, through the mail or by other means, to promote goods or services if the cashing or depositing of the check obligates the endorser or payee identified on the check to pay for goods or services. This subdivision does not apply to an extension of credit or an offer to lend money;

(17) Mails or causes to be sent an unsolicited billing statement, invoice, or other document that appears to obligate the consumer to make a payment for services or merchandise he or she did not order; or

(18) Violates any provision of the Nebraska Foreclosure Protection Act.

(b) In order to prevail in an action under the Uniform Deceptive Trade Practices Act, a complainant need not prove competition between the parties.

(c) This section does not affect unfair trade practices otherwise actionable at common law or under other statutes of this state.

Source Laws 1969, c. 855, § 2, p. 3222; Laws 1974, LB 327, § 2; Laws 1976, LB 820, § 1; Laws 1979, LB 257, §

1;Laws 1988, LB 180, § 1;Laws 1991, LB 408, § 1;Laws 1993, LB 305, § 32;Laws 2003, LB 118, § 1;
Laws 2008, LB781, § 1.July 18, 2008

Pursuant to subsection (a)(12) of this section, criminal prosecutions for chain distribution schemes are not limited to prosecution under the Uniform Deceptive Trade Practices Act. *State v. Irons*, 254 Neb. 18, 574 N.W.2d 144 (1998). Although use of word "similar" is not deceptive, as a whole a comparative advertisement which misrepresents that the consumer would have to wait for competitor's product, which makes unauthorized use of competitor's sample book, and which makes unsubstantiated comparison as to savings violates this act. *Kirsch Fabric Corp. v. Brookstein Enterprises, Inc.*, 209 Neb. 666, 309 N.W.2d 328 (1981). Nebraska Deceptive Trade Practices Act prohibits a broad panoply of deceptive trade practices, including passing of goods and services of another as one's own, confusing consumers as to the origin of the goods. *Midway Mfg. Co. v. Dirkschneider*, 571 F.Supp. 282 (D. Neb. 1983). Successor to manufacturer in representing it owned trademark owned by distributor and in using trademark in its corporate name, violated this act. *Wrist-Rocket Manuf. Co., Inc. v. Saunders*, 379 F.Supp. 902 (D. Neb. 1974).

87-303 Deceptive trade practices; damages; injunction; costs; additional remedy.

(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 in its discretion 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 willfully 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.

Source Laws 1969, c. 855, § 3, p. 3223.

Portion of order enjoining violator from ever disseminating advertising using competitor's name is deprivation of due process. *Kirsch Fabric Corp. v. Brookstein Enterprises, Inc.*, 209 Neb. 666, 309 N.W.2d 328 (1981). Company found to have committed unfair competition in use of trademark was not liable for attorney's fees in infringement action where activities were not willfully improper with knowledge they were deceptive but acted in colorable theory it had right to use trademark. *Wrist-Rocket Manuf. Co., Inc. v. Saunders*, 379 F.Supp. 902 (D. Neb. 1974).

87-303.01 Unconscionable act or practice; violation; determination.

(1) An unconscionable act or practice by a supplier in connection with a consumer transaction shall be a violation of the Uniform Deceptive Trade Practices Act.

(2) The unconscionability of an act or practice shall be a question of law for the court. If it is claimed or appears to the court that an act or practice may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making its determination.

Source Laws 1974, LB 327, § 3; Laws 2008, LB781, § 2.July 18, 2008

87-303.02 Deceptive trade practice or unconscionable act; Attorney General; powers.

When the Attorney General has cause to believe that any person has engaged in or is engaging in any deceptive trade practice or unconscionable act listed in section 87-302 or 87-303.01, the Attorney General may:

(a) Require such person to file a statement or report in writing under oath or otherwise, on such forms as shall be prescribed by the Attorney General, as to all facts and circumstances concerning the sale, offer, or advertisement of property by such person, and such other data and information as the Attorney General deems necessary;

(b) Examine under oath any person in connection with the sale or advertisement of any property;

(c) Examine any property or sample thereof, record, book, document, account, or paper as the Attorney General deems necessary; and

(d) Pursuant to an order of any district court, impound any record, book, document, account, paper, or sample of property which is material to such practice and retain the same in his or her possession until the completion of all proceedings undertaken under the Uniform Deceptive Trade Practices Act.

Source Laws 1974, LB 327, § 4; Laws 2008, LB781, § 3.July 18, 2008

87-303.03 Attorney General; additional powers.

(1) The Attorney General, in addition to other powers conferred upon him or her by the Uniform Deceptive Trade Practices Act, may issue subpoenas to require the attendance of witnesses or the production of documents, administer oaths, conduct hearings in aid of any investigation or inquiry, and prescribe such forms and adopt and promulgate such rules as may be necessary to administer the Uniform Deceptive Trade Practices Act.

(2) Service of any notice or subpoena may be made in the manner prescribed by the rules of civil procedure.

Source Laws 1974, LB 327, § 5; Laws 2008, LB781, § 4. July 18, 2008

87-303.04 Attorney General; order; failure or refusal to obey; court; powers.

(1) If any person fails or refuses to obey any order of the Attorney General to file any statement or report, or to obey any subpoena issued by the Attorney General, pursuant to the Uniform Deceptive Trade Practices Act, the Attorney General may apply to any district court in this state for relief until such person obeys such order or subpoena or files such statement or report.

(2) The court, in its order, may:

(a) Grant injunctive relief restraining the sale or advertisement of any property by such person;

(b) Require the attendance of or the production of documents by such person, or both;

(c) Suspend or revoke any license, permit, or certificate issued pursuant to law to any such person, which may be used to further the alleged unlawful practice; or

(d) Grant such other or further relief as may be necessary to obtain compliance by such person.

Source Laws 1974, LB 327, § 6; Laws 2008, LB781, § 5. July 18, 2008

87-303.05 Attorney General; temporary restraining order; civil action; written assurance of voluntary compliance; deceptive practice; burden of proof.

(1) Whenever the Attorney General has cause to believe that a person has engaged in or is engaging in any deceptive trade practice or unconscionable act listed in section 87-302 or 87-303.01, the Attorney General may apply for and obtain, in an action in any district court of this state, a temporary restraining order, or injunction, or both, pursuant to the rules of civil procedure, prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice, or which may be necessary to restore to any other person any money or real or personal property which may have been acquired by means of any such practice.

(2) When the Attorney General has authority to institute a civil action or other proceeding pursuant to the Uniform Deceptive Trade Practices Act, in lieu thereof, the Attorney General may accept an assurance of discontinuance of any deceptive trade practice or unconscionable act listed in section 87-302 or 87-303.01. Such assurance may include a stipulation for the voluntary payment by the alleged violator of the costs of investigation by the Attorney General and of any amount or amounts necessary to restore to any person any money or real or personal property which may have been acquired by such alleged violator by means of any such practice. Proof by a preponderance of evidence of a violation of such assurance shall constitute prima facie evidence of a deceptive practice as listed in section 87-302 or 87-303.01 in any civil action or proceeding thereafter commenced by the Attorney General.

Source Laws 1974, LB 327, § 7; Laws 2008, LB781, § 6. July 18, 2008

Proceedings brought by the Attorney General under 87-303.05(1) are civil in nature. State ex rel. Douglas v. Ledwith, 204 Neb. 7, 281 N.W.2d 729 (1979). The requirement in this section that the Attorney General must have cause to believe deceptive trade practices exist or have existed before he institutes an action is not an essential element of the action which must be proved at trial. State ex rel. Douglas v. Ledwith, 204 Neb. 7, 281 N.W.2d 729 (1979).

87-303.06 Claims not barred.

The Uniform Deceptive Trade Practices Act shall not bar any claim against any person who has acquired any money or real or personal property by means of any deceptive trade practice or unconscionable act listed in section 87-302 or 87-303.01.

Source Laws 1974, LB 327, § 8; Laws 2008, LB781, § 7. July 18, 2008

87-303.07 Sale or lease agreement; unenforceable; when.

If a buyer or lessee is induced by a violation of section 87-302 or 87-303.01 to enter into a sale or lease, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his or her option, may rescind the agreement or retain the merchandise delivered and the benefit of any services performed without any obligation to pay for them.

Source Laws 1974, LB 327, § 9; Laws 2008, LB781, § 8. July 18, 2008

87-303.08 Violations; penalty.

Any person who violates the Uniform Deceptive Trade Practices Act shall be guilty of a Class II misdemeanor except as otherwise provided in the act.

Source Laws 1974, LB 327, § 10; Laws 1979, LB 257, § 7; Laws 1988, LB 180, § 2; Laws 1990, LB 656, § 22;

Laws 1993, LB 305, § 33.

87-303.09 Injunction, declaratory judgment, written assurance; violation; penalty.

Any person who willfully violates the terms of an injunction or declaratory judgment of the court or the terms of a written assurance of voluntary compliance entered into pursuant to the Uniform Deceptive Trade Practices Act shall be guilty of a Class IV felony.

Source Laws 1974, LB 327, § 11; Laws 1990, LB 656, § 23.

87-303.10 Civil action; statute of limitations.

A civil action arising under the Uniform Deceptive Trade Practices Act may be brought only within four years from the date of the purchase of goods or services.

Source Laws 1976, LB 820, § 2; Laws 1990, LB 656, § 24.

87-303.11 Violations; civil penalty; recovery; procedure.

Any person who violates section 87-302 or 87-303.01 or who willfully violates the terms of an injunction or declaratory judgment of a district court or the terms of a written assurance of voluntary compliance entered into pursuant to the Uniform Deceptive Trade Practices Act shall be subject to a civil penalty of not more than two thousand dollars for each violation. The Attorney General, acting in the name of the state, may seek recovery of such civil penalties in a civil action. For purposes of this section, the district court which issues any injunction shall retain jurisdiction and the cause shall be continued while the Attorney General seeks the recovery of such civil penalties.

Source Laws 1990, LB 656, § 25; Laws 1993, LB 305, § 34.

87-304 Applicability of act.

(a) The Uniform Deceptive Trade Practices Act 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 (a) on December 25, 1969, under the Uniform Deceptive Trade Practices Act as such act existed immediately prior to March 25, 1974, or (b) under such act as amended and sections 87-303.01 to 87-303.09 on March 25, 1974.

(b) Subdivisions (a)(2) and (a)(3) of section 87-302 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 December 25, 1969, if the use was in good faith and is otherwise lawful except for the Uniform Deceptive Trade Practices Act.

(c) The Uniform Deceptive Trade Practices Act shall apply to deceptive trade practices conducted in whole or in part within the State of Nebraska against residents or nonresidents of this state. The act shall also apply to deceptive trade practices conducted outside of Nebraska against residents of this state if there is a direct connection to any deceptive trade practices conducted in whole or in part within this state.

Source Laws 1969, c. 855, § 4, p. 3224; Laws 1974, LB 327, § 12; Laws 2008, LB781, § 9. July 18, 2008

87-305 Act, how construed.

The Uniform Deceptive Trade Practices Act shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

Source Laws 1969, c. 855, § 5, p. 3224; Laws 1974, LB 327, § 13; Laws 2008, LB781, § 10. July 18, 2008

87-306 Act, how cited.

Sections 87-301 to 87-306 shall be known and may be cited as the Uniform Deceptive Trade Practices Act.

Source Laws 1969, c. 855, § 6, p. 3224; Laws 1974, LB 327, § 14; Laws 1990, LB 656, § 26.