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Appendix 2
Uniform Deceptive Trade Practices Act: 1964 Act

Drafted by The National Conference of Commissioners on Uniform State Laws and Approved for State Enactment

Prefatory Note

Deceptive conduct constituting unreasonable interference with another's promotion and conduct of business is part of a heterogeneous collection of legal wrongs known as ''unfair trade practices.'' This type of conduct is notoriously undefined. Commonly referred to as ''unfair competition,'' its metes and bounds have not been charted. The tort action for deceptive trade practices or ''passing off'' developed from the common-law action for trademark infringement. It embraced imitation of fanciful and coined marks and names as well as those which had developed trade significance but did not qualify technically as trademarks. The action was historically available whenever one trader diverted patronage from a rival by falsely representing that his goods were the goods of his rival. This common-law notion of passing off reached its highest development in the federal courts.

The gradual expansion of passing off by the federal courts came to an abrupt halt in 1938 with *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938). By the stroke of a pen the ''liberal'' federal diversity cases were deprived of binding effect in the very courts which had decided them. Federal judges were thereafter required to apply state law whenever they obtained jurisdiction of an unfair competition claim. The rub was that state law had marked time during the period that federal law was evolving. It varied from state to state and within the confines of a single federal circuit. Judge Medina has referred to distillation of the appropriate state law as an area ''where angels fear to tread.'' He concluded: ''Since most cases involve interstate transactions, perhaps some day the much needed federal statute or uniform laws on unfair competition will be passed.'' *American Safety Table Co. v. Schreiber*, 269 F.2d 255, 271 (2d Cir. 1959). The proposed federal legislation, known as the Lindsay Bill, has been introduced into Congress several times. The first hearings were scheduled in June 1964. The Uniform Act is designed to bring state law up to date by removing undue restrictions on the common-law action for deceptive trade practices. Certain objectionable practices are singled out, but the courts are left free to fix the proper ambit of the Act in case-by-case adjudications.

The deceptive trade practices singled out by the Uniform Act can be roughly subdivided into conduct involving either misleading trade identification or false or deceptive advertising. The principal state laws relating to trade identification are trademark registration statutes which supplement the common-law protection of registered marks through provisions for additional private remedies and procedural advantages. E.g., N.Y. Gen. Bus. Law art. 24 (Supp. 1963); *see* Note, ''Statutory Treatment of the Model State Trademark Bill,'' 27 Geo. Wash. L. Rev. 353, 354-56 (1959). On the other hand, a businessman was not generally subject to common-law liability to a fellow tradesman for false or deceptive advertising. *Ely-Norris Safe Co. v. Mosler Safe Co.*, 7 F.2d 603 (2d Cir. 1925), *rev'd on other grounds*, 273 U.S. 132 (1927). State legislative modification of the common law has been piecemeal and uncoordinated with an emphasis upon public remedies. *See* Note, ''The Regulation of Advertising,'' 56 Colum. L. Rev. 1019, 1057-58 (1956). Most of the older legislation, characterized by criminal sanctions, has seldom been enforced. See *id*. at 1058-65 (1956). More recently some state attorneys general, e.g., N.J. Stat. Ann. §§56:8-1-56:8-12 (Supp. 1963); N.Y. Gen. Bus. Law art. 22-A (Supp. 1963), and a few state administrative agencies, e.g., Wis. Stat. Ann. § 100.20 (1957) & (Supp. 1963), have been given broader powers to act against deceptive advertising, but there remains ample justification for a private action. See Restatement (Second), Torts §712 (Tent. Draft No. 8, 1963); ATRR 133:A-3 (1/28/64) (remarks of Professor Glen E. Weston).

Although there are several state statutes which reflect aspects of the Uniform Act, Cal. Civ. Code §3369 (Supp. 1963) represents a rough prototype. The California statute provides in part:

2. Any person performing or proposing to perform an act of unfair competition within this State may be enjoined in any court of competent jurisdiction.

3. As used in this section, unfair competition shall mean and include unlawful, unfair or fraudulent business practice and unfair, untrue or misleading advertising and any act denounced by Business and Professions Code of Sections 17500 to 17535, inclusive.

The pertinent conduct condemned by the Business and Professions Code includes making statements in connection with the sale of goods or services which are known or should be known to be untrue or misleading, and advertising goods or services without intent to sell them as advertised, Cal. Bus. & Prof. Code § 17500; stating that a person is a producer, manufacturer, processor, wholesaler, or importer, or that he owns or controls a factory or other source of supply of goods when that is not a fact, or otherwise misrepresenting the character, extent, volume, or nature of a business, Cal. Bus. & Prof. Code § 17505 (Supp. 1963); misrepresenting that goods are the product of blind workers, Cal. Bus. & Prof. Code § 17520; advertising secondhand, used, defective, ''seconds,'' blemished, or rejected merchandise without disclosure of the fact, Cal. Bus. & Prof. Code § 17531; marketing unassembled toys without disclosure of the fact, Cal. Bus. & Prof. Code § 17531.1; advertising of federal surplus property without disclosure of the fact, Cal. Bus. & Prof. Code § 17531.5; knowingly advertising coal under other than its

true name or description, Cal. Bus. & Prof. Code § 17532; purposefully misrepresenting newspaper or periodical circulation, Cal. Bus. & Prof. Code §17533; selling surplus federal property if the seller's name has a tendency to lead the purchasing public to believe, contrary to the fact, that the seller has an official relationship with the United States Government, or that all articles sold are of higher quality and lower prices than elsewhere obtainable, Cal. Bus. & Prof. Code §17533.5; and selling merchandise marked ''made in U.S.A.'' when the merchandise or part thereof has been entirely or substantially manufactured elsewhere. Cal. Bus. & Prof. Code §17533.7 (Supp. 1963).

The following adjudications under Cal. Civ. Code §3369 reflect principles crystallized in the Uniform Act: likelihood of confusion is enough. *Metro-Goldwyn-Mayer, Inc. v. Lee*, 212 Cal. App. 2d 23, 27 Cal. Reptr. 833 (1963); *accord MacSweeney Enterprises v. Tarantino*, 106 Cal. App. 2d 504, 235. P.2d 266 (1951); actual competition between the parties is not a prerequisite of relief, *Academy of Motion Picture Arts & Sciences v. Benson*, 15 Cal. 2d 685, 104 P.2d 650 (1940); *accord Winfield v. Charles*, 77 Cal. App. 2d 64, 175 P.2d 69 (1946); defendant need not be an intentional wrongdoer, *Visser v. Macres*, 214 Cal. App. 2d 249, 29 Cal. Reptr. 367 (1963); *accord Hair v. McGuire*, 188 Cal. App. 2d 348, 10 Cal. Reptr. 414 (1961); the statute provides solely for injunctive relief although damages may also be awarded when otherwise permitted by law, *see, e.g.*, *Hesse v. Grossman*, 152 Cal. App. 2d 536, 313 P.2d 625 (1957); the statute does not contain a restrictive or exclusive definition of unfair competition, *Athens Lodge No. 70 v. Wilson*, 117 Cal. App. 2d 322, 255 P.2d 322, 255 P.2d 482 (1953), what constitutes an unfair or fraudulent business practice under its terms is a question of fact with the essential test being likelihood of public deception, *People v. National Research Co.*, 201 Cal. App. 2d 765, 20 Cal. Reptr. 516 (1962).

The following conduct made actionable by the Uniform Act has been enjoined under Cal. Civ. Code §3369: likelihood of confusion as to the sponsorship of goods, *MacSweeney Enterprises, Inc. v. Tarantino*, 106 Cal. App. 2d 504, 235 P. 2d 266 (1951); likelihood of confusion of goods caused by misleading trademarks, *Don Alvarado Co. v. Porganan*, 203 Cal. App. 2d 377, 21 Cal. Reptr. 495 (1962), product simulation, *Hesse v. Grossman*, 152 Cal. App. 2d 536, 313 P.2d 625 (1957, deceptive packaging, *Audio Fidelity, Inc. v. High Fidelity Recordings, Inc.*, 283 F.2d 551 (9th Cir. 1960); or misleading advertising, *Metro-Goldwyn-Mayer, Inc. v. Lee*, 212 Cal. App. 2d 23, 27 Cal. Reptr. 833 (1963); likelihood of confusion of businesses, *Visser v. Macres*, 214 Cal. App. 2d 249, 27 Cal. Reptr. 367 (1963); *accord Karsh v. Haiden*, 120 Cal. App. 2d 75, 260 P. 2d 633 (1953); and false or deceptive advertising injurious to the plaintiff, *Wood v. Peffer*, 55 Cal. App. 2d 116, 130 P. 2d 220 (1942); *accord Ojala v. Bohlin*, 178 Cal. App. 2d 292, 2 Cal. Reptr. 919 (1960). *But see Show Management v. Hearst Pub. Co.*, 196 Cal. App. 2d 606, 16 Cal. Reptr. 731 (1961) (refusing damages). The broad dictum of the *Show Management* case is criticized in Note, 9 U.C.L.A. L. Rev. 719, 723-31 (1962).

Uniform Deceptive Trade Practices Act

SECTION 1. [*Definitions*.] As used in this Act, unless the context otherwise requires:

(1) ''article'' means a product as distinguished from its trademark, label, or distinctive dress in packaging;

COMMENT: This is substantially the definition utilized by the Supreme Court in *Sears, Roebuck & Co. v. Stiffel Co.*, 32 U.S.L. Week 4206 (1964) in defining the scope of state ability to enjoin the copying of articles. See subsection 2(a) for use of the defined term.

(2) ''certification mark'' means 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;

COMMENT: A certification mark indicates that goods or services meet the standards or specifications of the certifier. See Restatement (second), Torts §715B, comment (Tent. Draft No. 8, 1963). Examples are the Good Housekeeping Seal of Approval and the seal of Underwriters' Laboratories. The definition is substantially the equivalent of the definition of ''certification mark'' in the Lanham Trademark Act, § 45, 60 Stat. 443 (1946), 15 U.S.C. § 1127 (1958). See subsection 4(b) for use of the defined term.

(3) ''collective mark'' means 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;

COMMENT: ''Collective mark'' refers both to a trade or service mark used by members of an organized group to identify goods or services with the organization rather than with individual vendors and to emblems used simply to indicate membership in an organized group. See Restatement (Second), Torts § 715A, comment (Tent. Draft No. 8, 1963). Examples are the ''Quality Court'' mark used by a group of independent motels, e.g., *Lyon v. Quality Courts United*, 249 F.2d 790 (6th Cir. 1957), and American Automobile Association decalcomania. The definition is substantially the same as the definition of ''collective mark'' in the Lanham Trademark Act § 45, 60 Stat. 443 (1946), 15 U.S.C. § 1127 (1958). See subsection 4(b) for use of the defined term.

(4) ''mark'' means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement;

(5) ''person'' means an individual, corporation, government, or governmental subdivision or agency, business trust estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity;

COMMENT: This definition is substantially the same as the definition of

''person'' in Uniform Commercial Code § 1-201 (28) and (30) (1962 official text with comments).

(6) ''service mark'' means a mark used by a person to identify services and to distinguish them from the services of others.

(7) ''trademark'' means a mark used by a person to identify goods and to distinguish them from the goods of others.

COMMENT: The definitions of trademark and service mark parallel those of the Lanham Trademark Act and several state statutes. § 45, 60 Stat. 443 (1946), 15 U.S.C. § 1127 (1958), as amended, 15 U.S.C. § 1127 (Supp. IV, 1963): e.g., Ill. Ann. Stat. ch. 140 § 8(a) (Supp. 1963); N.Y. Gen. Bus. Law § 360(a) & (a-i) (Supp. 1963). See subsection 4(b) for use of the defined terms.

(8) ''trade name'' means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement used by a person to identify his business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others.

COMMENT: The definition is substantially the same as the definition of trade name in the Lanham Trademark Act and several state statutes. § 45, 60 Stat. 443 (1946), 15 U.S.C. § 1127 (1958); e.g., Ill. Ann. Stat. ch. 140 § 8(f) (Supp. 1963); N.Y. Gen. Bus. Law § 360 (a-iii) (Supp. 1963). See subsection 4(b) for use of defined terms.

SECTION 2. [*Deceptive Trade Practices*.]

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

(1) passes off goods or services as those of another;

COMMENT: Passing off has been said to be ''a convenient name for the doctrine that no one should be allowed to sell his goods as those of another.'' *Vogue Co. v. Thompson-Hudson Co.*, 300 Fed. 509, 512 (6th Cir. 1924). Passing off originally denominated unauthorized use of trade identification but today the term is also applied to covert substitution of a different brand of goods for the one requested by a customer. E.g., *Coca-Cola Co. v. Foods, Inc.*, 220 F. Supp. 101 (D.S.D. 1963).

(2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

COMMENT: The ''likelihood of confusion'' test is referred to in the Restatement (Second), Torts § 729, comment a (Tent. Draft No. 8, 1963) as ''a phrase which has long been used in statutes, Federal and State, and in court opinions. . . .'' In encompassing probable confusion as to commercial source, approval, endorsement, or certification of goods or services caused by trademarks, service marks, certification marks, or collective marks likely to be associated with preexisting trade symbols, this subsection reflects the trend of authority. E.g., *Triangle Pub., Inc. v. Rohrlich*, 167 F.2d 969 (2d Cir. 1948); *L. E. Waterman Co. v. Gordon*, 72 F.2d 272 (2d Cir. 1934); *James Burrough, Ltd. v.*

Ferrara, 8 Misc. 2d 819, 169 N.Y.S.2d 93 (Sup. Ct. N.Y. County 1957). See Restatement (Second), Torts § 717 & comments (Tent. Draft No. 8, 1963); Comment, ''The Anti-Competitive Aspects of Trade Name Protection and the Policy Against Consumer Deception,'' 29 U. Chi. L. Rev. 371, 373-75 (1962).

(3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;

COMMENT: This subsection concerns likelihood of confusion caused by misleading trade names, e.g., *Visser v. Macres*, 214 Cal. App. 2d 249, 29 Cal. Reptr. 367 (1963) (defendant opened up a competing florist shop with the same name as plaintiff's at plaintiff's former location after the latter had moved across the street).

(4) uses deceptive representations or designations of geographic origin in connection with goods or services;

COMMENT: This subsection applies to deceptively misdescriptive representations and designations of geographic origin. If geographic terms or symbols are used in a nongeographic sense and are unlikely to be considered descriptive, e.g., ''Everest'' as a trademark for wrist watches, the subsection is inapplicable. Section 43(a) of the Lanham Trademark Act contains an analogous provision. § 43 (a), 60 Stat. 441 (1946), 15 U.S.C. § 1125 (a) (1958); *Federal-Mogul-Bower Bearings, Inc. v. Azoff*, 201 F. Supp. 788 (N.D. Ohio 1962), *rev'd on other grounds*, 313 F.2d 405 (6th Cir. 1963).

(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 does not have;

COMMENT: This subsection deals with false advertising of goods, services or businesses. It includes false representations that a person is the representative, successor, associate, or affiliate of another, e.g., *Alaska Sales and Service, Inc. v. Rutledge*, 128 F. Supp. 1 (D. Alaska 1955) (false representation of automobile dealership franchise), false representations that goods or services were designed, approved, or sponsored by another, e.g., *Parkway Baking Co. v. Freihofer Baking Co.*, 255 F.2d 641 (3d Cir. 1958) (false representation of trademark license), and false representations concerning goods of which another is truthfully represented as the commercial source, e.g., false representations by a retailer concerning ''Arrow'' shirts. See Restatement (Second), Torts § 712, comment d (Tent. Draft No. 8, 1963). Section 43 (a) of the Lanham Act, § 43 (a), 60 Stat. 441 (1946), 15 U.S.C. § 1125 (a) (1958), and Idaho Code Ann. § 48-412 (Supp. 1963) authorize similar private actions.

(6) represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;

COMMENT: The conduct referred to in this subsection has been condemned both at common law, e.g., *Champion Spark Plug Co. v. Sanders*, 331 U.S. 125 (1947) (alternative holding) (requiring disclosure that spark plugs were

repaired); see Restatement (Second), Torts § 714 (Tent. Draft No. 8, 1963), and by a few state statutes, e.g., Cal. Bus. & Prof. Code § 17531.

(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;

COMMENT: The conduct referred to in this subsection has been condemned both at common law, e.g., *Burlington Mills Corp. v. Roy Fabrics, Inc.*, 91 F. Supp. 39 (S.D.N.Y.), *aff'd per curiam*, 182 F.2d 1020 (2d Cir. 1950) (semble) (forbidding sale of second grade materials as first grade); see Restatement (Second), Torts § 714 (Tent. Draft No. 8, 1963); and by a few statutes, e.g., Idaho Code Ann. § 48-412 (Supp. 1963).

(8) disparages the goods, services, or business of another by false or misleading representation of fact;

COMMENT: This subsection reflects the trend of authority allowing businessmen to enjoin disparagement by competitors, e.g., *Maytag Co. v. Meadows Mfg. Co.*, 35 F.2d 403 (7th Cir. 1929), *cert. den.*, 281 U.S. 737 (1930) (bad faith assertions of patent infringement); *accord Royer v. Stoody Co.*, 192 F. Supp. 949 (W.D. Okla. 1961) (false assertion of product inferiority stated cause of action); H. E. Allen Mfg. Co. v. Smith, 224 App. Div. 187, 229 N.Y. Supp. 692 (4th Dep't 1928) (false claims of product inferiority), and noncompetitors, e.g., *Carter v. Knapp Motor Co.*, 243 Ala. 600, 11 So. 2d 383 (1943) (dissatisfied customer enjoined from attempting to coerce auto dealer into giving him another automobile by driving vehicle with white elephant painted on it); *accord Menard v. Houle*, 298 Mass. 546, 11 N.E.2d 436 (1937) (dissatisfied customer enjoined from continuous, malicious campaign designed to convince public that automobile dealer had sold him a worthless vehicle); *Mayfair Farms, Inc. v. Socony Mobile Oil Co.*, 68 N.J. Super. 188, 172 A.2d 26 (1961) (allegation that Mobile Travel Guide had arbitrarily given plaintiffs' establishments unjustified low ratings stated a cause of action for an injunction).

(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;

COMMENT: Subsections 2(a)9 and 2(a) (10) deal with ''bait advertising,'' a practice by which a seller seeks to attract customers through advertising at low prices products which he does not intend to sell in more than nominal amounts. When prospective buyers respond to the advertisement, sale of the ''bait'' is discouraged through various artifices including disparagement and exhaustion of a minuscule stock in order to induce purchase of unadvertised goods on which there is a greater markup. A bait advertising scheme which involved disparagement has been held enjoinable at common law by the manufacturer of the ''bait.'' *Electrolux Corp. v. Val- Worth, Inc.*, 6. N.Y.2d 556,

161 N.E.2d 197, 190 N.Y.S.2d 977 (1959). A Connecticut statute similarly authorizes private parties to enjoin bait advertising. Conn. Gen. Stat. Ann. § 42-115 (a) (Supp. 1962). Odd lot or clearance sales in which bargains are offered in limited quantities will not run afoul of the proposed statute as long as disclosure is made of the limited stock. Cf. *ibid.*

(11) makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; or

COMMENT: This subsection applies to spurious ''fire'' and ''liquidation'' sales as well as to fictitious price cuts. Hawaii Rev. Laws §§ 289-14 and 289-15 (1955) and Mich. Stat. Ann. §§ 28.79(7) and (8) (1962) authorize similar private actions.

(12) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

COMMENT: This subsection permits the courts to block out new kinds of deceptive trade practices. The broad language of Cal. Civ. Code § 3369 (Supp. 1963) has been interpreted as creating the analogous general standard of ''likelihood of public deception.'' *People v. National Research Co.,* 201 Cal. App. 2d 765, 20 Cal. Reptr. 516 (1962).

(b) In order to prevail in an action under this Act, a complainant need not prove competition between the parties or actual confusion or misunderstanding.

COMMENT: This subsection removes the enumerated factors as absolute bars to relief.

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

COMMENT: This subsection is intended to ensure that enactment of the Uniform Deceptive Trade Practices Act will not inhibit future development of the law of unfair trading.

SECTION 3. [*Remedies.*]

(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.

COMMENT: Deceptive commercial conduct is made enjoinable at the suit of any person including a nonprofit organization, e.g., *Mayo Clinic v. Mayo's Drug & Cosmetic, Inc.*, 262 Minn. 101, 113 N.W.2d 852 (1962) (Mayo Clinic held entitled to enjoin use of similar name by a drug wholesale and packaging operation), provided that there is a reasonable probability that the complainant will otherwise incur actual damage. It is immaterial that the amount of

this damage is not provable with certainty or that loss of profits cannot be shown. Similar phraseology determines standing to sue under Section 43(a) of the Lanham Trademark Act, 60 Stat. 441 (1946), 15 U.S.C. § 1125(a) (1958), and some state statutes, e.g., Conn. Gen. Stat. Ann. § 42-115(a) (Supp. 1962) (''any aggrieved party''). A few state statutes treat false or deceptive advertising as a public wrong enjoinable by any private parties who care to bring suit, e.g., Cal. Civ. Code § 3369(5) (Supp. 1963), Hawaii Rev. Laws, § 289-15 (1955).

Among the principles governing the scope of injunctions against misleading trade identification are the privilege of every tradesman to use commercially necessary language in a nondeceptive fashion, *King-Seeley Thermos Co. v. Aladdin Indus., Inc.*, 321 F.2d 577 (2d Cir. 1963), and state disability to enjoin the copying of articles because of the preemptive operation of the Federal patent and copyright laws. *Sears, Roebuck & Co. v. Stiffel Co.*, 32 U.S.L. Week 4206 (1964). *Compco Corp. v. Day Brite Lighting, Inc*. 32 U.S.L. Week 4208 (1964).

(b) [The court in exceptional cases may award reasonable attorneys' fees to the prevailing party.] Costs [or attorneys' fees] may be assessed against a defendant only if the court finds that he has willfully engaged in a deceptive trade practice.

COMMENT: The references to attorneys' fees are bracketed because some state constitutions regulate the award of attorneys' fees. Although there is no comparable statutory authorization, Federal courts have awarded attorneys' fees as an element of costs when deceptive trade practices were fraudulent or malicious. See *A. Smith Bowman Distillery, Inc. v. Schenley Distillers, Inc.*, 204 F. Supp. 374 (D. Del. 1962). This subsection enables state judges to do likewise in appropriate cases whether the prevailing party is the defendant or the plaintiff. The wording of the first sentence of this subsection parallels the attorneys' fees provision of the Patent Code, 35 U.S.C. § 285 (1958). Michigan presently permits the award of attorneys' fees when certain types of false advertising are enjoined. Mich. Stat. Ann. §28.79(8) (1962).

(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.

COMMENT: This subsection preserves a complainant's right to seek damages under the common law or other statutes as well as any available criminal remedies.

SECTION 4. [*Application*.]

(a) This 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 matter who publish, broadcast, or reproduce material without knowledge of its deceptive character; or

(3) actions or appeals pending on the effective date of this Act.

(b) Subsections 2(a)(2) and 2(a)(3) 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 the effective date of this Act, if the use was in good faith and is otherwise lawful except for this Act.

SECTION 5. [*Uniformity of Interpretation*.] This Act shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 6. [*Short Title*.] This Act may be cited as the Uniform Deceptive Trade Practices Act.

SECTION 7. [*Severability*.] If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8. [*Repeals*.] The following acts or parts of acts are repealed:

(1)

(2)

(3)

SECTION 9. [*Time of Taking Effect*.] This Act takes effect . . .