

# District of Columbia

Westerman Hattori Daniels & Adrian LLP\*  
Washington, DC  
www.WHDA.com

---

## A. D.C. Trademark Registration Statute

---

There is no District of Columbia Trademark Registration statute. Marks used in commerce in the District of Columbia are registrable under the Federal Trademark Act, 15 U.S.C. §105 *et seq.*, because such commerce is subject to lawful regulation by Congress. See *Giant Food Inc. v. Standard Terry Mills, Inc.*, 229 U.S.P.Q. 955 (TTAB) *aff'd on reh'g*, 231 U.S.P.Q. 626 (TTAB 1986).

1.-22. Not applicable.

---

## B. Dilution

---

### 1. Code Section

None.

### 2. Judicially Created Dilution Doctrine

No common law doctrine of dilution has been adopted. See *Champion Paper & Fore Co. v. Nat'l Ass'n of Mut. Ins.*, 148 F. Supp. 123 (D.D.C. 1957), *aff'd*, 249 F.2d 525 (D.C. Cir. 1957). See also *Dart Drug Corp. v. Schering Corp.*, 328 F.2d 745, 748 n.10 (D.C. Cir. 1963) (court of appeals declining to express a view as to the validity or applicability of the dilution doctrine.)

---

\*Westerman Hattori Daniels & Adrian LLP, a Washington, DC-based law firm, offers specialized expertise and experience in all areas of intellectual property law, including prosecution, counseling, and litigation. The Westerman firm has an in-depth understanding of the business and technical underpinnings of the industries we serve. Our trademark practice offers a full range of trademark and brand protection services including clearance, prosecution, transactional matters, enforcement, and litigation in the U.S. District Courts, before the Trademark Trial and Appeal Board, and before various domain name dispute tribunals. The participants in the preparation of this entry are attorneys Alan S. Cooper, Kumiko Ide and Samantha Moskowitz. Mr. Cooper has served as an Adjunct Professor teaching trademark law at the Georgetown University Law Center.

3.-10. Not applicable.

### C. Unfair Business Practices Acts (Little FTC Acts)

---

#### 1. Code Section

District of Columbia Consumer Protection Procedures Act, D.C. Code Ann. §28-3901 *et seq.*

#### 2. Scope

The Consumer Protection Procedures Act applies specifically to “consumers,” and in a definition rewritten in 2013, defines a consumer as “a person who, other than for purposes of resale, does or would purchase, lease (as lessee), or receive consumer goods or services, including as a co-obligor or surety, or does or would otherwise provide the economic demand for a trade practice.” D.C. Code Ann. §28-3901(a)(2)(A). Section 28-3901(c) was added in 2000 to decree that the Act should “be construed and applied liberally to promote its purpose,” and amendments in 2013 further clarified that the law “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.” D.C. Code Ann. §28-3901(c). *Jackson v. Culinary Sch. of Washington*, 788 F. Supp. 1233, 1252 (D.D.C. 1992). The CPAA enacts a broad scheme to protect consumers from unscrupulous merchants connected with the supply side of the consumer transaction.” *Saucier v. Countrywide Home Loans*, 64 A.3d 428 (D.C. 2013). Moreover, because this is a remedial statute, the CPAA must “be construed and applied liberally to promote its purpose.” Although its protections apply to a wide range of transactions, courts continue to recognize that “a valid claim for relief under the CPPA must originate out of a consumer transaction.” *Cronin v. Adam A. Weschler & Son, Inc.*, 904 F. Supp. 2d 37, 44, (D.D.C. 2012) (citing *Ford v. ChartOne, Inc.*, 908 A.2d 72, 81 (D.C. 2006)); *Cannon v. Wells Fargo Bank, N.A.*, 926 F. Supp. 2d 152, 172 (D.D.C. 2013) (“the act applies only to consumer-merchant relationships”) (*Snowder v. District of Columbia*, 949 A.2d 590, 599 (D.C. 2008) (observing that the CPPA “was designed to police trade practices arising only out of consumer-merchant relationships”).

#### 3. Prohibited Activities

Section 28-3904 of the Act defines various specific unlawful trade practices including, *inter alia*, misrepresentation as to source, sponsorship, approval, characteristics, uses, or certification of goods or services; misrepresentation or failure to state a material fact which has

a tendency to mislead; representing that a transaction confers or involves rights, remedies or obligations that it does not have or involve (or that are prohibited by law); using innuendo or ambiguity as to a material fact, which has a tendency to mislead; passing off goods or services as those of another; and deceptively representing the geographic origin of goods or services. Committing an unlawful trade practice as defined by §28-3904 constitutes a violation of the Act regardless of whether any consumer actually is misled, deceived, or damaged thereby, *Hughes v. Abell*, 867 F. Supp. 2d 76 (D.D.C. 2012); *Tolson v. Hartford Fin. Servs. Grp., Inc.*, No. 16-440 (JDB), 2017 (D.D.C. Sept 29, 2017) (noting “these provisions apply ‘whether or not any consumer is in fact misled, deceived or damaged’ by the unlawful trade practice alleged. The CPPA also authorizes any ‘consumer’ to ‘bring an action seeking relief from the use of a trade practice in violation of a law of the District.’”), and the misrepresentation need not be intentional, *Wetzel v. Capital City Real Estate, LLC*, 77 A.3d 1000, 1005 (D.C. Ct. App. 2013) (quoting *Grayson v. AT&T Corp.*, 15 A.3d 219, 251 (D.C. App. 2011)). The Act does not apply to the professional services of lawyers. *Piétrangelo v. Walmer, Butler, Pakering Hale & Dorr, LLP*, 68 A.3d 697 (D.C. 2013); D.C. Code Ann. §28-3903(c)(2)(C). However, it does apply to non-lawyers who purport to practice law, *See Banks v. D.C. Dep’t of Consumer and Regulatory Affairs*, 634 A.2d 433, 437 (D.C. App. 1993), and persons who perform medical services. *Caulfield v. Stark*, 893 A.2d 170, 176 (D.C. 2006); *Dorn v. McTigue*, 157 F. Supp. 2d 37 (D.D.C. 2001). The Payday Loan Consumer Protection Amendment Act of 2007, the Home Equity Protection Act of 2007 and the Mortgage Disclosure Amendment Act of 2007 expanded the scope of unlawful trade practices to cover all activities that violate any provision of Chapter 30 of Title 28 of the D.C. Code (which relates to interest and usury) that violate any provision of the Home Equity Protection Act of 2007; or that fail to comply with the disclosure requirements of §26-1113(a-1) (which relates to mortgage disclosures). D.C. Code Ann. §28-3904(ff)-(hh).

#### 4. Remedies

##### a. [D.C.] Administrative Enforcement

Upon concluding that an unlawful trade practice may have occurred, the Director of the Department of Consumer and Regulatory Affairs may present a charge to the Office of Adjudication which, after hearing the evidence and determining that a violation has occurred, can order cessation of the unlawful trade practice, and restitution for money, time, and property, as well as punitive damages, treble damages, or reasonable attorney’s fees, as are reasonable and

necessary to identify, correct or prevent the conduct which violated District law. D.C. Code Ann. §28-3905(e)-(g).

#### **b. Criminal Enforcement**

The Act does not provide for criminal penalties.

#### **c. Civil Penalties**

Any person (defined in D.C. Code Ann. §28-3901(a)(1) as an individual, corporation, organization or group of individuals, however organized) guilty of committing an unlawful trade practice under the Act, or violating or failing to adhere to an order prohibiting such a practice, is liable to the Department of Consumer and Regulatory Affairs for a civil penalty not exceeding \$1,000 for each such violation. D.C. Code Ann. §28-3905(i)(3)(A).

#### **d. Private Actions and Remedies**

The Act explicitly authorizes a “consumer” to bring an action seeking relief from the use of an unlawful trade practice. D.C. Code Ann. §28-3905(k)(1)(A). In addition, amendments to the Act made in 2013 expanded the section authorizing private actions to provide that an individual may bring an action on behalf of that individual or both the individual and the general public, D.C. Code Ann. §28-3905(k)(1)(B), and that a nonprofit organization may bring an action on behalf of itself or any of its members or on any such behalf and on behalf of the general public. D.C. Code Ann. §28-3905(k)(1)(C). The individual must be seeking relief from a trade practice “when that trade practice involves consumer goods or services that the individual purchased or received in order to test or evaluate qualities pertaining to use for personal, household or family purposes,” D.C. Code Ann. §28-3905(k)(1)(B). And the nonprofit organization must be seeking relief from a trade practice “including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate the qualities pertaining to use for personal, household or family purposes.” D.C. Code Ann. §28-3905(k)(1)(C). The 2013 revisions also allow a public interest organization, on behalf of the interests of a consumer or a class of consumers, to bring an action seeking relief from an unlawful trade practice “if the consumer or class could bring an action” under the law. D.C. Code Ann. §28-3905(k)(1)(D)(i). However, such an action brought by a public interest organization will be dismissed “if the court determines that the public interest organization does not have sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” D.C. Code Ann. §28-3905(k)(1)(D)(ii). Any party bringing an action under the Act in the Superior Court of the District of Columbia

may recover or obtain any of the following: the greater of treble damages or \$1,500 per violation payable to the consumer; reasonable attorney's fees; punitive damages; and an injunction against the use of the unlawful trade practice. In representative actions, additional relief may be necessary to restore to the consumer money or property, real or personal, which may have been acquired by means of the unlawful trade practice; or any other relief which the court deems proper. D.C. Code Ann. §28-3905(k)(2). *See also Ford v. ChartOne, Inc.*, 908 A.2d 72, 81 (D.C. 2006). Section 28-3905(k) does not mandate treble damages recovery; it merely allows such recovery. *Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc.*, 832 F. Supp. 419 (D.D.C. 1993), *cert denied*, 528 U.S. 1073 (2000). Treble damages and punitive damages under the Act were intended to serve different purposes and are both recoverable. *Dist. Cablevision Ltd. P'Ship v. Passin*, 828 A.2d 714 (D.C. 2003); *Byrd v. Jackson*, 902 A.2d 778 (D.C. 2006). As the Consumer Protection Procedures Act does not include a provision imposing aider-and abettor liability, it is assumed that only those who actually violate the Act can be found liable. *Armstrong*, 832 F. Supp. at 425.

#### **e. Class Actions**

Although not characterized as a class action, the Director of the Department of Consumer and Regulatory Affairs may bring an action on behalf of one or more consumers. D.C. Code Ann. §28-3905(p). The Act also authorizes a suit brought by a person acting for the interests of the general public. D.C. Code Ann. §28-3905(k)(l)(B) & (C); *Nat'l Consumers League v. Gen. Mills, Inc.*, 680 F. Supp. 2d 132, 137 (D.D.C. 2010) (noting that Act expressly authorizes suits brought on behalf of the general public, which is a representative action, and is separate and distinct from a class action).

Amendments to the Act made in 2013 provide that an action under the Act can be brought either by an individual (on behalf of that individual, or on behalf of both the individual and the general public) seeking relief from a trade practice "when that trade practice involves consumer goods or services that the individual purchased or received in order to test or evaluate qualities pertaining to use for personal, household or family purposes," D.C. Code Ann. §28-3905(k)(l)(B), or by a nonprofit organization (on behalf of itself or any of its members, or on any such behalf and on behalf of the general public) seeking relief from a trade practice "including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate the qualities pertaining to use for personal, household or family purposes." D.C. Code Ann. §28-3905(k)(l)(C). In

addition, a public interest organization, on behalf of the interests of a consumer or a class of consumers, can bring an action seeking relief from an unlawful trade practice “if the consumer or class could bring an action” under the law, so long as the organization has a sufficient nexus to the interest involved of the consumer or class to adequately represent those interests. D.C. Code Ann. §28-3905(k)(l)(D)(i) & (ii).

#### f. Notice

No provision.

#### g. Standing

Any “consumer,” as defined in §28-3901(a)(2) of the Act, may bring an action seeking relief from the use of an unlawful trade practice. D.C. Code Ann. §28-3905(k)(1)(A). The statute provides that a violation may be shown “whether or not any consumer is in fact misled, deceived or damaged thereby.” D.C. Code Ann. §28-3904. *Hughes v. Abell*, 867 F. Supp. 2d 76, 89 (D.D.C. 2012). The courts, however, have applied traditional standing requirements to claims brought by private plaintiffs under the Act. See, e.g., *Garrison v. AT&T Corp.*, 15 A.3d 219, 244 (D.C. App. 2011) (“[t]he laws [under the Act] does not relieve a plaintiff of the requirement to show a concrete injury-in-fact to himself”); *Logan v. Lasalle Bank Nat'l Ass'n*, 80 A.3d 1014, n.12 (D.C. App. 2013) (noting that “some cognizable injury [must] be alleged to ensure standing in CPPA cases in the Superior Court”) cf. *Williams v. Purdue Pharma Co.*, 297 F. Supp. 2d 171, 177 (D.D.C. 2003) (noting that “standing required individualized proof’ of both the fact and extent of the injury” (quoting *Consumer Fed'n of Am v. Upjohn Co.*, 346 A.2d 725, 728 (D.C. 1975)). The amendments made to the Act in 2013 authorize suits by individuals, nonprofit organizations and public interest organizations, but do explicitly clarify that a public interest organization bringing suit on behalf of the interests of a consumer or a class of consumers will be dismissed “if the court determines that the public interest organization does not have a sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” D.C. Code Ann. §28-3905(k)(l)(D)(ii).

#### h. Consumer Products

The Act’s “consumer” definition focuses on the nature of the goods and services, *i.e.*, whether they are primarily for personal, household, or family use. As an adjective, for example, as applied to “goods and services,” consumer describes anything that “[a] person does or would purchase, lease (as a lessee), or receive and normally use for personal, household, or family purposes;” or a person described in §28-3905(k)(1)(B) or (C) (see above) “purchases or receives in order to

test or evaluate qualities pertaining to use for personal, household or family purposes.” Courts have found that the concept of consumer goods and services covered by the Act also include consumer credit, franchises, and business opportunities, but does not extend to landlord-tenant relations. D.C. Code Ann. §28-3901(a)(7). *Modern Mgmt. Co. v. Wilson*, 997 A.2d 37, 62 (D.C. App. 2010) (“[G]oods and services under the statute are defined as any and all parts of the economic output of society, at any stage or related or necessary point in the economic process, and includes consumer credit, franchises, business opportunities, real estate transactions, and consumer services of all types.”) (citations omitted); see also *Shaw v. Marriott Int’l, Inc.*, 605 F.3d 1039, 1043 (D.C. Cir. 2010) (business traveler and think tank employee did not engage in consumer transactions while staying in hotels since purpose of their stay was to further the business of their employers); *Ali v. Tolbert*, 636 F.3d 622 (D.C. Cir. 2011) (“The D.C. Court of Appeals has repeatedly concluded that the [Act] was designed to police trade practices arising only out of consumer-merchant relationships”) (citations and quotations omitted); *Cronin v. Adam A. Weschler & Son, Inc.*, 904 F. Supp. 2d 37, 44 (D.D.C. 2012) (a valid claim for relief must originate out of a consumer transaction) (quotations omitted); *Falconi-Sam v. LEF Senate Square, LLC*, 142 A.3d 550 (D.C. 2016) (“the Council had no intention of ‘expand[ing] the reach of the CPPA’ ... and did not intend by that amendment to extend the private right of action created by the CPPA into the realm of landlord-tenant relations”) (quoting *Gomez v. Independence Mgmt of Delaware, Inc.*, 967 A.2d 1277, 1286 (D.C. 2009)).

#### **i. Jurisdiction of Courts**

The Superior Court of the District of Columbia has subject matter jurisdiction over private actions brought by consumers. D.C. Code Ann. §28-3905(c)(5).

#### **j. Rules**

The Department of Consumer and Regulatory Affairs Consumer Protection Revitalization Act of 2005 (D.C. Law 16-33) repealed Section 28-3903(a)(10) and 28-3903(a)(15), which had granted power to the Department of Consumer and Regulatory Affairs to issue rules governing procedure and policy. Section 28-3913 was added giving the Mayor the authority to issue rules necessary to carry out the Consumer Protection Procedures Act, which must be submitted to the Council for review.

#### **k. Administrative Investigative Authority**

The Department of Consumer and Regulatory Affairs may conduct

investigations, issue summonses, hold hearings, compel the attendance of witnesses, administer oaths, take testimony of any person under oath, issue subpoenas to compel the production of documents, papers, books, records, and other evidence concerning any unlawful trade practice, and issue cease and desist orders with respect thereto. D.C. Code Ann. §28-3903(a)(1)-(a)(3). In conducting its investigations, the Department, in its discretion, may receive and investigate any consumer complaint and initiate its own investigation of deceptive, unfair, or unlawful trade practices against consumers where the amount in controversy totals \$250 or more; or the case, or cases, indicates a pattern or practice of abuse on the part of a business or industry. D.C. Code Ann. §28-3903(a)(1). In addition, the Department, in its discretion, may appoint private attorneys from the District of Columbia bar who shall take action in the name of the Department, and shall promulgate regulations implementing this provision, in order to assist in the enforcement of any consumer complaint. D.C. Code Ann. §28-3903(a)(16).

### 5. Administrator

The D.C. Code was amended effective March 8, 1991 to establish the Department of Consumer and Regulatory Affairs as a consumer protection agency with full authority to administer the Consumer Protection and Procedures Act. D.C. Code Ann. §28-3902. See <http://dcra.dc.gov/>.

### 6. Leading Cases

*Howard v. Riggs Nat'l Bank*, 432 A.2d 701 (D.C. App. 1981); *Dist. Cablevision Int'l. P'ship v. Bassin*, 828 A.2d 714, 729 (D.C. 2003) (three year residential statute of limitations applies to claims brought under the Consumer Protection Procedure Act); *Shaw v. Marriott Int'l, Inc.*, 605 F.3d 1039, 1043 (D.C. Cir. 2010); *Grayson v. AT&T Corp.*, 15 A.3d 219, 251 (D.C. App. 2011).

## D. Uniform Deceptive Trade Practices Act

The District of Columbia has not adopted the Uniform Deceptive Trade Practices Act.

1.-5. Not applicable.

## E. Trademark Counterfeiting

### 1. Specific Statutes

D.C. Code Ann. §22-901 *et. seq.*; D.C. Code Ann. §22-1502.

## 2. Definition

Section 22-901 *et seq.*, which establishes the criminal offense of commercial counterfeiting, defines counterfeiting as when a person “willfully manufactures, advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute any items, or services bearing or identified by a counterfeit mark.” D.C. Code Ann. §22-902(a). The statute defines “counterfeit mark” as “(A) Any unauthorized reproduction or copy of intellectual property; or (B) Intellectual property affixed to any item knowingly sold, offered for sale, manufactured, or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property.” D.C. Code Ann. §22-901(1). Section 22-1502 does not define counterfeiting. However, it does identify actionable conduct as conduct of one who “willfully forges, or counterfeits, or makes use of any imitation calculated to deceive the public, though with colorable difference or deviation therefrom, of the private brand, wrapper, label, trademark, bottle, or package usually affixed or used by any person to or with the goods, wares, or merchandise, preparation, or mixture of such person, with intent to pass off any work, goods, manufacture, compound, preparation, or mixture as the manufacture or production of such person which is not really such.” D.C. Code Ann. §22-1502.

### a. Registration Requirement

Section 22-901 suggests a registration requirement, defining protected “intellectual property” as “any trademark, service mark, trade name, label, term, picture, seal, word, or advertisement or any combination of these adopted or used by a person to identify such person’s goods or service and which is lawfully filed for record in the Office of the Secretary of State of any state or which the exclusive right to reproduce is guaranteed under the laws of the United States or the District of Columbia.” D.C. Code Ann. §22-901(2). Section 22-1502 does not condition protection on the existence of a trademark registration, suggesting that valid common law marks as well as federally registered marks are within the purview of the statute.

### b. Identity of Types of Goods

Neither §22-901 nor §22-1502 limits violations to goods which are substantially identical in visual appearance to those of the trademark owner.

## 3. Who Can Sue

Both §22-901 and §22-1502 are criminal in nature, providing for fines or imprisonment, or both. The U.S. Attorney for the District of

Columbia has prosecutorial responsibility pursuant to D.C. Code Ann. §23-101(c).

#### 4. Remedies

##### a. Civil

There are no civil remedies.

##### b. Criminal

Section 22-902 *et seq.* provides for tiered penalties. For the first conviction, the law provides for a fine of not more than the amount set forth in §22-3571.01 (D.C. statute setting forth fines for criminal offenses, tiered based on the corresponding term of imprisonment) or imprisonment for not more than 180 days or both; for the second conviction, or if the offense involves more than 100 but fewer than 1,000 items, or involves items with a total retail value greater than \$1,000 but less than \$10,000, the law provides for a fine of not more than the amount set forth in §22-3571.01 or imprisonment for not more than 3 years, or both; and for the third or subsequent conviction, or if the offense involves the manufacture or production of items bearing counterfeit marks involving 1,000 or more items, or involve items with a total retail value of \$10,000 or greater, the law provides for a fine not exceeding the amount set forth in §22-3572.01 or imprisonment for not more than 10 years, or both, D.C. Code Ann. §22-902(b)(1)-(3). The fines assessed should be no less than twice the retail value of the items bearing, or services identified by, a counterfeit mark (unless extenuating circumstances are shown by the defendant). D.C. Code Ann. §22-902 (d). In addition, counterfeit items are subject to seizure. Section 22-1502 provides for criminal penalties including a fine of not more than the amount set forth in §22-3572.01 or imprisonment of not more than 180 days, or both, D.C. Code Ann. §22-1502. *See Stabilisierungsfonds Fur Wein v. Kaiser Stuhl Wine Distribs. Pty. Ltd.*, 647 F.2d 200 (D.C. Cir. 1981) (D.C. Code §22-1402 [now codified as §22-1502] imposes criminal penalties on anyone who willfully forges or counterfeits or makes use of any imitation calculated to deceive the public with an intent to pass off the imitation as the imitated product.)

#### 5. Protective Provisions for Defendants

There are no special protective provisions for defendants. However, one of the elements of a violation of §22-1502 is that the counterfeiter must act with an intent to pass off its products as those of another.

## F. False Advertising

---

### 1. Statute

D.C. Code Ann. §§22-1511 et seq. *See also Sections C and I, supra.*; D.C. Code Ann. §28-3904(h).

### 2. Prohibited Practices

Under §22-1511, it is prohibited to display or distribute through a variety of means “any false, untrue, or misleading statement, representation, or advertisement with the intent to” (1) “sell, barter, or exchange any goods, wares, or merchandise or anything of value”; (2) “deceive, mislead, or induce any person, firm, association, or corporation to purchase, discount, or in any way invest in or accept as collateral security any bonds, bill, share of stock, note, warehouse receipt, or any security”; (3) “deceive, mislead, or induce any person, firm, association, or corporation to purchase, make a loan upon or invest in any property of any kind”; and it also is prohibited to “use any of the aforesaid methods with the intent or purpose to deceive, mislead, or induce any other person, firm, or corporation for a valuable consideration to employ the services of any person, firm, association, or corporation so advertising such services.” D.C. Code Ann. §22-1511. Each publication of a false advertisement is a separate offense. *See Green v. United States*, 312 A.2d 788 (D.C. App. 1973), *cert. denied*, 419 U.S. 827, *reh’g denied*, 419 U.S. 1041 (1974) (substantially the same advertisement was published for sixty days in the same daily newspaper resulting in sixty separate offenses). D.C. Code Ann. §28-3904(h) prohibits “advertis[ing] or offer[ing] goods or services without the intent to sell them or without the intent to sell them as advertised or offered.”

### 3. Limitations

There are no express limitations.

### 4. Who Can Sue

The U.S. Attorney for the District of Columbia or an Assistant U.S. Attorney can bring suit under D.C. Code §22-1512 in the Superior Court of the District of Columbia. A consumer, individual, nonprofit organization or public interest organization meeting certain qualifications can initiate a claim under D.C. Code Ann. §28-3904(h), *see Section C supra* for additional information. D.C. Code §28-3905(k).

### 5. Remedies

*Criminal.* A person, firm or association may be punished by a fine of

not more than the amount set forth in §22-3571.01 or imprisonment of not more than sixty days, or both. D.C. Code Ann. §22-1513.

A corporation may be punished by a fine of not more than the amount set forth in §22-3571.01 and its president or other officials responsible for the violation of §22-1511 may, in the discretion of the court, be imprisoned for not more than sixty days, D.C. Code Ann. §22-1513. For remedies under §28-3904(h), *see* Section C.4. *supra*.

## 6. Leading Cases

*Green v. United States*, 312 A.2d 788 (D.C. App. 1973), *cert. denied*, 419 U.S. 827, *reh'g denied*, 419 U.S. 1041 (1974); *Robles v. United States*, 115 A.2d 303 (D.C. App. 1955).

---

## G. Corporate Name Reservation Prior to Incorporation

---

### 1. Statute

D.C. Code Ann. §33-401 et seq. regarding the definition of terms for uniform partnerships were repealed effective January 1, 1998.

### 2. Reservation

#### a. Time Period

The District of Columbia has adopted a uniform procedure for the reservation of business names. A person may reserve the name of an entity for the exclusive use of the applicant for a period of one hundred twenty days. D.C. Code Ann. §29-103.03(a). For this purpose, entity is broadly defined to include a business corporation, non-profit corporation, general partnership (including a limited liability partnership), limited partnership (including a limited liability partnership), limited liability company, general cooperative association, limited cooperative association, unincorporated nonprofit association, trust (statutory, business or common law business, but not testamentary or inter vivos), or any other person that has a legal existence separate from any interest holder or has the power to acquire an interest in real property in its own name. D.C. Code Ann. §29-101.02(10)(A).

#### b. Renewal

There is no written provision for the renewal of a corporate name reservation. Although it was previously the practice of the Corporations Division to permit one renewal for an additional period of sixty days, the statutory extension of the initial reservation period to one hundred twenty days is likely to make this practice moot.

### c. Fees

The following fees are required for reservation of a name, or renewal of reservation of a name, for all other business entities:

(1) \$50 for business corporations, limited liability companies, and general partnerships. D.C. Dept. of Consumer and Regulatory Affairs, Corporate Registration, at <https://dcra.dc.gov/service/corporation>;

(2) \$40 for nonprofit corporations, D.C. Dept. of Consumer and Regulatory Affairs, Corporate Registration, at <https://dcra.dc.gov/service/domestic-nonprofit-corporation>; and

(3) \$220 for limited partnerships (including limited liability partnerships), D.C. Dept. of Consumer and Regulatory Affairs, Corporate Registration, at <https://dcra.dc.gov/service/domestic-limited-partnership>.

### d. Prerequisite to Incorporation

There is no requirement to reserve the name of a corporation or other business entity prior to its incorporation or formation.

## 3. Conflicting Names

The name of a domestic filing entity or a foreign entity seeking to obtain a certificate of authority to do business in the District of Columbia shall be distinguishable from the name of another domestic filing entity, or limited liability partnership, the name of a foreign entity or foreign limited liability partnership registered to do business in the District of Columbia, or another name that is reserved or registered. D.C. Code Ann. §29-103.01.

However, a certificate of authority may be issued to a registered foreign entity that has a name that is not distinguishable from name of another entity if it adopts an alternate name that is distinguishable from another name that is reserved or registered in the District of Columbia. The foreign entity may then do business in the District of Columbia under: (1) the alternate name; (2) its entity name, as long as its jurisdiction of formation is clearly identified; or (3) an authorized assumed or fictitious name. D.C. Code Ann. §29-105.06.

## 4. Restrictions on Use of "Corp." and Similar Terms

The name of a professional corporation shall not contain the words "company," "incorporated," "corporation" or "limited," or an abbreviation of those words. D.C. Code Ann. §29-103.02(c).

The name of a limited partnership that is not a limited liability limited partnership shall not contain the phrase "limited liability limited partnership," "registered limited liability limited partnership" or an abbreviation thereof. D.C. Code Ann. §29-103.02(d).

The name of a limited partnership that is a limited liability limited

partnership shall not contain the abbreviation "L.P." or "LP". D.C. Code Ann. §29-103.02(d).

### **5. Required or Authorized Use of "Corp." or Similar Terms**

A corporate name shall contain the word "corporation," "incorporated," "company" or "limited," or its abbreviation or words or abbreviation of foreign equivalent of one of these words. D.C. Code Ann. §29-103.02(a).

There are no statutory requirements for the name of a nonprofit corporation. D.C. Code Ann. §29-103.02(b). The name of a professional corporation shall contain the words "professional corporation" or "chartered" or an abbreviation thereof. D.C. Code Ann. §29-103.02(c).

The name of a limited partnership that is not a limited liability limited partnership shall contain the words "limited partnership" or an abbreviation thereof. D.C. Code Ann. §29-103.02(d).

The name of a limited liability limited partnership shall contain the words "limited liability limited partnership" or an abbreviation thereof. D.C. Code Ann. §29-103.02(e).

The name of a limited liability partnership (that is not a limited liability limited partnership) shall contain the words "limited liability partnership" or an abbreviation thereof. D.C. Code Ann. §29-103.02(f).

The name of a limited liability company (that is not a professional limited liability company) shall contain the words "limited liability company" or "limited company" or an abbreviation thereof. D.C. Code Ann. §29-103.02(g).

The name of a professional limited liability company shall contain the words "professional limited liability company" or an abbreviation thereof. D.C. Code Ann. §29-103.02(h).

The name of a general cooperative shall contain the words "cooperative association" or an abbreviation thereof. D.C. Code Ann. §29-103.02(i).

The name of a limited cooperative association shall contain the words "limited cooperative association" or "limited cooperative" or an abbreviation thereof. D.C. Code Ann. §29-103.02(j).

The name of a statutory trust may (but is not required to) contain the words or abbreviations "company," "association," "club," "foundation," "fund," "institute," "society," "union," "syndicate," "limited," "trust" or other words or abbreviations of similar import. D.C. Code Ann. §29-103.02(k).

### **6. Search Provisions**

There are no written regulations or statements of policy, practice, or

procedure governing the determination of whether one corporate name is deceptively similar to another. *Eaton Yale & Towne, Inc. v. Goldstein*, 335 F. Supp. 1043, 1044 (D.D.C. 1971). However, when an application for the reservation of a business name is requested, the practice of the Corporations Division is to search its computer records of business entities formed in the District of Columbia and licensed to do business in the District of Columbia.

### **7. Policy Regarding Identical Words**

The name of any domestic business entity or any foreign business entity seeking to obtain a certificate of authority to do business in the District of Columbia shall not be the same as, or deceptively similar to, the name of any similar business entity, any business entity organized under an act of Congress authorizing formation of business entities under the laws of the District of Columbia, any business entity created pursuant to a special act of Congress to transact business in the District of Columbia, any foreign business entity previously authorized to transact business in the District of Columbia, or the name of a business entity that is the subject of an previously filed name reservation. D.C. Code Ann. §29-301.08(3), 29-101.101(1), 29-301.07(2), 29-301.66(1), and 29-3004(c)(e); and §33-201.02(a)(3).

### **8. Substantive Rights**

No substantive trademark or service mark rights result from mere incorporation or other formation of a business entity under a particular name. *Wra v. Democrats, Inc. v. Woodland*, 898 A.2d 356, 360 (D.C. 2006).

### **9. Prohibited Terms**

No entity name shall contain the words 'bank,' 'banking,' 'credit union,' 'insurance' or other words of similar import without prior approval. D.C. Code Ann. §29-103.01(e).

### **10. Administrative Agency**

Corporations Division  
Department of Consumer and Regulatory Affairs  
1100 4th Street SW  
Washington, D.C. 20024  
(202) 442-4400  
dcra@dc.gov  
<http://www.dcra.dc.gov>

### **11. Forms**

Applications for the reservation of a name, or the renewal of a

reservation of a name, for any business entity are available through <https://corponline.dcra.dc.gov/>.

## 12. Fees

See section 2.c. above.

---

## H. Trade Name Registration (Fictitious Name Statutes)

---

### 1. Purpose

The District of Columbia's trade name registration statute is codified at D.C. Code Ann. §47-2855.01 *et seq.* There is no statement of the purpose of this statute.

### 2. Entities Required to File

Individuals, estates, business or nonprofit entities, public corporations, government or governmental subdivisions, agencies, or instrumentalities, or any other legal entity carrying on, conducting or transacting business in the District of Columbia under any trade name must register that trade name. D.C. Code Ann. §47-2855.02. Registered trade names may include the words "company," "and sons" or "and associates." D.C. Code Ann. §47-2855.01(7)(B).

### 3. Limited Partnerships

Foreign and domestic limited partnerships are required to register their trade name(s) under which they carry on, conduct or transact business in the District of Columbia. D.C. Code Ann. §47-2855.02(a)(2).

### 4. Where to File

Trade name registrations must be filed with the District of Columbia Department of Consumer and Regulatory Affairs. <https://dcra.dc.gov/service/register-trade-name>.

### 5. Fees

The filing fee for registering, renewing, cancelling or amending a trade name registration by a domestic or foreign filing entity is \$55.00 each. See D.C. Dept. of Consumer and Regulatory Affairs, Registration at <http://dcra.dc.gov/book/fees-corporate-registration-services/general-corporate-filing-all-entities>.

### 6. Publication

There are no publication requirements.

## **7. Foreign Corporations**

*See* H.2, above.

## **8. Civil Penalties**

No civil penalties are provided for failure to register a trade name. The failure to register or renew a trade name does not impair the validity of any contract or corporate act. D.C. Code Ann. §47-2855.03(e). The failure to register or renew a trade name does result in a prohibition against maintaining any court action in any of the courts of the District of Columbia until the trade name has been properly registered. D.C. Code Ann. §47-2855.03(d). However, the failure to register a trade name will not prevent a person or persons from defending any suit in the court of the District of Columbia. D.C. Code Ann. §47-2855.03(e).

## **9. Criminal Penalties**

Under D.C. Code Ann. §22-2405, a person who willfully makes a written false statement of a material fact on a trade name registration, renewal, cancellation or amendment form submitted to the Department of Consumer and Regulatory Affairs can be subject to criminal penalties of up to the amount set forth in §22-3571.01, imprisonment up to 180 days or both, provided that the form indicates the availability of criminal penalties.

## **10. Certificate**

Once a trade name registration has been issued by the District of Columbia Department of Consumer and Regulatory Affairs, a certificate of trade name registration is mailed to the trade name registrant.

## **11. Renewal or Deletion**

If a trade name registration is related to a person registered with a master business license, the trade name registration has the same expiration date as the master business license. Otherwise, a trade name registration remains in effect for two years from the date of issuance. An amendment to a trade name registration must be filed when a change occurs in any of the following: (1) the true and real name, be it individual name, corporate name or partnership name, of a person conducting business with a registered trade name; or (2) the mailing address set forth in a trade name registration; or (3) the registered agent's name set forth on the application. D.C. Code Ann. §47-2855.03(a). A notice of cancellation of a trade name registration must be filed when the use of a trade name is discontinued. D.C. Code Ann. §47-2855.03(b). A new application for registration as well as a notice of cancellation must be filed when any of the following occur:

(1) an addition, deletion or any change of person or persons conducting business under a trade name registration; or (2) a change in the wording or spelling of a registered trade name. D.C. Code Ann. §47-2855.03(c).

## 12. Substantive Rights

There is no statutory provision regarding substantive rights. Registration with other agencies does not preclude any person from filing a similar trade name with the Department of Consumer and Regulatory Affairs. Similarly, acceptance of a trade name with the Department of Consumer and Regulatory Affairs is not a warranty or assurance of the applicant's right to operate under the trade name registered.

## 13. Search

There is no statutory provision regarding trade name searches or indexes.

## 14. Agent

All domestic filing entities, domestic limited liability partnerships and registered foreign entities must designate and maintain a registered agent. *See* D.C. Code Ann. §2-104.6.

## 15. Mail Registration

Registration may be accomplished by mail or online.

### I. [D.C.] Statutory and Common Law Unfair Competition or Passing Off Provisions

The District of Columbia does not have a general statute prohibiting "unfair competition" per se. However, Section 28-3904(s) of the District of Columbia Consumer Protection Procedures Act, D.C. Code Ann. §28-3901 *et seq.*, regarding commercial transactions, consumer protection procedures and more specifically, unlawful trade practices, provides that it shall be a violation of D.C. law, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to pass off goods or services as those of another. In addition, it is a violation of D.C. law, whether or not any consumer is in fact misled, deceived or damaged thereby, to represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have, D.C. Code Ann. §28-3904(a); or for any person to use deceptive representation or designations of geographic origin in connection with goods or services. D.C. Code Ann. §28-3904(t).

1.-5. Not applicable.

## 6. Common Law Action for Unfair Competition

District of Columbia courts recognize common law actions for unfair competition, though there is not an abundance of case law. See *Breaking the Chain Found., Inc. v. Capitol Educ. Support, Inc.*, 589 F. Supp. 2d 25, 29 (D.D.C. 2008); *Ward One Democrats, Inc. v. Woodland*, 898 A.2d 356, 361 (D.C. App. 2006); *Blacks in Gov't v. Nat'l Ass'n of Blacks Within Gov't*, 601 F. Supp. 225, 227 (D.D.C. 1983); *Stabilisierungsfonds Fur Wein v. Kaiser Stuhl Wine Distribs. Pty., Ltd.*, 647 F.2d 200, 205 n.12 (D.C. Cir. 1981); *McGraw-Hill Publ'g Co. v. Am. Aviation Assocs.*, 117 F.2d 293, 294 (D.C. Cir. 1940).

## 7. Elements of a Common Law Cause of Action

The elements of an action for unfair competition and trademark infringement at common law are essentially the same as those required under the Federal Trademark Act. See *AARP v. Sycle*, 2013 U.S. Dist. LEXIS 168713 (D.D.C. No. 27, 2013); *John C. Flood of Virginia, Inc. v. John C. Flood, Inc.*, 753 F. Supp. 2d 90, 94 (D.D.C. 2010) ("The elements necessary to prevail on common law causes of action for trademark infringement and unfair competition mirror Lanham Act claims.") (citing *Info. Superhighway, Inc. v. Talk Am., Inc.*, 395 F. Supp. 2d 44, 56 (S.D.N.Y. 2005)); *Ward One Democrats, Inc. v. Woodland*, 898 A.2d 356 (D.C. App. 2006); *Breaking the Chain Found., Inc. v. Capitol Educ. Support, Inc.*, 589 F. Supp. at 29; *Blacks in Gov't*, 601 F. Supp. at 228; *Am. Ass'n for the Advancement of Science v. The Hearst Corp.*, 498 F. Supp. 244, 264 (D.D.C. 1980) (discussion of Section 43(a) of the Federal Trademark Act applies to unfair competition under the common law of the District of Columbia). To prevail on a claim of unfair competition under the common law of the District of Columbia in this context, the plaintiff must show (1) that it owns a valid trademark, (2) that its trademark is distinctive or has acquired a secondary meaning, and (3) that there is a substantial likelihood of confusion between the plaintiff's mark and the alleged infringer's mark." *AARP v. Sycle*, 991 F. Supp. 2d 224, 229 (D.D.C. 2013) (citing *Globalaw Ltd. v. Carmon & Carmon Law Office & Globalaw, Inc.*, 452 F. Supp. 2d 1, 26-7 (D.D.C. 2006)); *Malarkey-Taylor Assocs., Inc. v. Cellular Telecomm. Indus. Ass'n*, 929 F. Supp. 473, 476 (D.D.C. 1996).

Arbitrary and fanciful marks are considered inherently distinctive and are protected immediately upon adoption and use. *Blacks in Gov't*, 601 F. Supp. at 227 *supra*. For marks which are not inherently distinctive, secondary meaning must be shown. 227-28; *see also Am. Ass'n for the Advancement of Science*, 498 F. Supp. at 262, *supra*, which

refers to secondary meaning as “some association, or ‘quasi secondary meaning’ in the minds of the buying class between plaintiff’s products and its source.”

Likelihood of confusion is an essential element of unfair competition at common law in the District of Columbia. *See generally Am. Ass’n for the Advancement of Science*, 498 F. Supp. at 254; *Blacks in Gov’t.*, 601 F. Supp. at 258; *Armco Steel Corp. v. Int’l Armament Corp.*, 249 F. Supp. 954, 959 (D.D.C. 1966).

There is no requirement that the parties be in competition. *Am. Ass’n for the Advancement of Science*, 498 F. Supp. at 259-60; *Armco Steel Corp.*, 249 F. Supp. at 959 *supra*.

Intent and motive are not dispositive considerations in determining whether there is passing off. *McGraw-Hill Publ’g Co.*, 117 F.2d at 296. *See also Blinded Veterans Assoc. v. Blinded Am. Veterans Found.*, 872 F.2d 1035, 1045 (D.C. Cir. 1989).

The common law tort of unfair competition extends beyond the area of trademarks. Under D.C. law “the common-law tort of unfair competition °is not defined in terms of specific elements, but by the description of various acts that would constitute the tort if they resulted in damage.” *Intelsat U.S. Sales Corp. v. Juch-Tech, Inc.*, 935 F. Supp. 2d 101 (D.D.C. 2013) (citing *Furnish & Co., Inc. v. McClave*, 130 F. Supp. 2d 48, 57 (D.D.C. 2000)). Acts may include “defamation, disparagement of a competitor’s goods or business methods,” and tortious interference with business relations. *Id.* (citing cases).

## 8. Remedies

Injunctive relief and damages are available.

## 9. Leading Cases

*See I.7, above. See also Partido Revolucionario Dominicano (PRD) v. Partido Revolucionario Dominicano*, 312 F. Supp. 2d 1 (D.C.C. 2004).

## J. Statutes of Special Application and Personal Name Statutes

---

### 1. Special Statutory Sections

#### (a) Industry Specific Statutes

(1) *Retail Service Station Act of 1976*. D.C. Code Ann. §36-301.01 *et seq.* All refiners, producers, manufacturers, marketers, wholesalers, distributors, suppliers, jobbers, resellers, retailers, retail dealers, or sellers of motor fuels, including any operator of a retail service station, are required to file a written declaration with the Mayor which includes, *inter alia*, a listing of the trademarks, service marks, and trade names associated with the motor fuel and petroleum products.

D.C. Code Ann. §36-302.01. The declaration must be filed prior to the sale, supply, or distribution of any motor fuels, and it is a violation of the Act for any person to sell, supply, or distribute any motor fuel in the District of Columbia without having first filed a current valid declaration. D.C. Code Ann. §36-302.01.

No producer, refiner or manufacturer of motor fuels can open a retail service station in the District of Columbia regardless of whether the service station is operated under the trademark of such an entity unless the service station is operated by a person who is not an employee, servant, commissioned agent or subsidiary of such an entity. D.C. Code Ann. §36-302.02. However, the Mayor may grant permission to a refiner, producer or manufacturer temporarily to operate a retail service station for not longer than ninety days upon a showing of special or unusual circumstances. D.C. Code Ann. §36-302.04.

Whenever the Mayor has reason to believe that a person is violating or has violated this provision, he shall serve written notice of the violation and an order directing that person to cease and desist from the violation. If there is no compliance, the Mayor may apply to any court of competent jurisdiction for injunctive relief. Any violation of this provision constitutes a misdemeanor punishable by a fine of not more than \$1,000 or by imprisonment for not more than ninety days or both, with each act of the violation constituting a separate offense to which the above penalties apply. Civil fines, penalties and fees may be imposed as alternative sanctions. D.C. Code Ann. §36-302.05.

(2) *Registration of Beverage Bottles.* D.C. Code Ann. §36-101 *et seq.* Manufacturers and vendors of mineral waters and other beverages allowed to be sold in bottles on which their names or marks are impressed may file a description of the bottles and the names or marks with the Recorder of Deeds. D.C. Code Ann. §36-101. Upon such filing and publication of the description in a local newspaper for at least two weeks, the unauthorized use or sale of a registered bottle is punishable by a fine of \$.50 per bottle for the first offense and \$5 for every subsequent offense. D.C. Code Ann. §36-102.

(3) *Milk Containers.* D.C. Code Ann. §36-121 *et seq.* Any person, firm, partnership, or corporation engaged in the bottling, sale, or distribution of milk or cream in containers on which the name, trademark, or other device designating the owner appears may register the name, mark, or device by filing a description of it with the Recorder of Deeds, publishing it in a local newspaper, filing an affidavit of publication with the Recorder of Deeds, and filing a copy of the registration and affidavit of publication with the Health

Department. D.C. Code Ann. §36-121. The unauthorized use or sale of a registered container is a misdemeanor punishable by a fine of not more than \$50 for the first offense and not more than \$100 for each subsequent offense. D.C. Code Ann. §36-130. Search warrants authorizing the seizure of unlawfully held containers and injunctive relief also are available. D.C. Code Ann. §36-125, 36-131.

(4) *Registration of Containers for Beverages Composed Principally of Milk.* D.C. Code Ann. §36-151 *et seq.* Persons engaged in producing, manufacturing, bottling, or selling any lawful beverage composed principally of milk in containers on which their name, trademark, or other distinctive mark, and the word "Registered" appears, may register the container by filing a description by facsimile or an original container with the Recorder of Deeds and publishing the description in a daily or weekly newspaper published in the District of Columbia for at least two weeks. D.C. Code Ann. §36-152. The unauthorized use, defacing, or sale of the registered container is a misdemeanor. The first offense is punishable by a fine of not less than \$.50 for each container, or by imprisonment for not less than ten days nor more than one year, or both. Each subsequent offense is punishable by a fine of not less than \$1 nor more than \$5 for each container, or by imprisonment for not less than twenty days nor more than one year, or both. D.C. Code Ann. §36-153. Search warrants authorizing the seizure of such containers also are available. D.C. Code Ann. §36-155. Nothing in the statute prevents the owner of a trademark from filing an action in tort against any person guilty of a violation. D.C. Code Ann. §36-157.

(b) *Registration of Labor Union Labels.* D.C. Code Ann. §36-201 *et seq.* A union or association of employees in the District of Columbia may register a label, brand, mark, name or other character to designate the products of its members and may register the device by filing a drawing of it with the Recorder of Deeds and paying a \$1 fee. D.C. Code Ann. §36-201. The union or association may maintain an action in Superior Court to enjoin the unauthorized manufacture, use, display, or sale of counterfeit or colorable imitations of a registered device or goods bearing the device, and may also recover damages and profits. D.C. Code Ann. §36-202. Any person who violates this statute is guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500, or by imprisonment for not less than three months nor more than one year, or both. D.C. Code Ann. §36-203.

## 2. Use of Personal Name

There is no personal name statute in the District of Columbia.

---

## K. Right of Publicity

---

### 1. Recognition

No common law right of publicity appears to have been recognized. Cf. *Klein v. McGraw-Hill, Inc.*, 263 F. Supp. 919, 921 (D.D.C. 1966) (District of Columbia recognizes a right of privacy but refused to award profits realized by a publisher which used an individual's picture in a textbook because the individual's accomplishments were a matter of public interest). The District of Columbia does follow Restatement (Second) of Torts §652C, which recognizes appropriation of the name or likeness of another as grounds for an invasion of privacy claim. See *Teltschik v. Williams*, 683 F. Supp. 2d 33, 55 (D.D.C. 2010) (citing *Walker v. Independence Fed. Sav. & Loan Ass'n*, 555 A.2d 1019, 1023 (D.C.1989)).

### 2. Applicable Statute

There is no statutory provision recognizing a right of publicity.

3.-8. Not applicable.

---

## L. Criminal Statutes

---

### 1. Statutory Provision

(a) *Trademark Counterfeiting*. D.C. Code Ann. §22-1502. See discussion at E, above.

(b) *Fraudulent Advertising*. D.C. Code Ann. §22-1511 *et seq.* See discussion at F, above.

(c) *Unauthorized Use or Sale of Registered Beverage Bottles*. D.C. Code Ann. §36-101 *et seq.* See discussion at J, above.

(d) *Unauthorized Use or Sale of Registered Milk Containers*. D.C. Code Ann. §36-121 *et seq.* See discussion at J, above.

(e) *Unauthorized Use or Sale of Registered Containers Composed Principally of Milk*, D.C. Code Ann. §36-151 *et seq.* See discussion at J, above.

(f) *Unauthorized Use of Registered Labor Union Labels*. D.C. Code Ann. §§36-201 *et seq.* See discussion at J, above.

---

## M. Trade Disparagement or Trade Libel

---

### 1. Statute or Common Law Doctrine

Section 28-3904(g) of the District of Columbia Consumer Protection Procedures Act, D.C. Code Ann. §28-3901 *et seq.*, provides that "[i]t

shall be a violation of this chapter, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to ... disparage the goods, services or business of another by false or misleading representations of material facts.”

Trade disparagement or trade libel also may be recognized as an act of unfair competition at common law. See *Bus. Equip. Ctr., Ltd. v. DeJur-Amsco Corp.*, 465 F. Supp. 775, 788 (D.D.C. 1978); *B & W Mgmt., Inc. v. Tasea I. Co.*, 451 A.2d 879, 881 n.3 (D.C. 1982) (dictum).

## 2. Elements of Cause of Action

An act need not be defamatory but may consist of an adverse expression of opinion; the prerequisites for liability are falsity, special damages, and lack of privilege. See *Golden Palace Inc. v. Nat'l Broad. Co., Inc.*, 386 F. Supp. 107, 109 (D.D.C. 1974), *aff'd without published opinion*, 530 F.2d 1094 (D.C. Cir. 1976). The tort also is known as “injurious falsehood,” and “[t]o state a claim, the plaintiff must allege pecuniary harm resulting from the defendant’s unprivileged publication of false statements, with knowledge or reckless disregard of the falsity, concerning the plaintiff’s property or product.” *Art Metal-U.S.A., Inc. v. United States*, 773 F.2d 1151, 1155-56 & n.6 (D.C. Cir. 1985). However, in a libel action brought by a corporation against a mass-media defendant, actual malice must be shown with convincing clarity if the defendant establishes that the publication concerned matters of legitimate public interest. *Martin-Marietta Corp. v. Evening Star Newspapers*, 411 F. Supp. 947, 956 (D.D.C. 1976); *Metastorm, Inc. v. Gartner. Grp.*, 28 F. Supp. 2d 665, 669 (D.D.C. 1998).

## 3. Presumption

None.

## 4. Remedies

Both contract and tort damages principles apply. D.C. Code Ann. §28-3905(g)(2)-(5). Additionally, under D.C. Code Ann. §28-3905(k), a consumer may bring an action under the Consumer Protection Procedures Act in the Superior Court of the District of Columbia seeking relief and may recover under the following remedies: (a) treble damages, or \$1,500 per violation, whichever is greater; (b) reasonable attorney’s fees; (c) punitive damages; (d) injunctive relief; (e) in representative actions, additional relief as may be necessary to restore to the consumer money or property, real or personal, which may have been acquired by means of the unlawful trade practice; or (f) any other relief the court deems proper. See Section C.4, *supra*.

**5. Punitive Damages**

Punitive damages are available for violations of the Consumer Protection Procedures Act. D.C. Code Ann. §28-3905(k)(2)(C). Additionally, punitive damages are generally available to punish tortfeasors and deter similar conduct where the conduct was willful and outrageous, constitutes gross fraud, or is aggravated by evil motive, actual malice, deliberate violence or oppression. *See e.g., Ford v. Chartone, Inc.*, 908 A.2d 72, 81 (D.C. 2006); *Nepera Chem., Inc. v. Sea-Land Serv.*, 794 F.2d 688, 698 n. 75 (D.C. Cir. 1986).

**6. Single Publication**

None.

**7. Defenses**

General tort defenses apply.

**N. Franchising or Business Opportunity Statutes**

---

**1. Statute**

The Franchising Act of 1988, D.C. Code Ann. §§29-1121-1128, has been repealed.

2.-20. Not applicable.

SAMPLE