

TITLE 34
CONSUMER PROTECTION

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CHAPTER 1
General Provisions

SECTIONS

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§ 101. Short title.

This chapter may be cited as the “Consumer Protection Act.”

Source: COM PL 3C-59 § 1; TT Code 1970, 33 TTC 351; TT Code 1980, 33 TTC 351.

Cross-reference: The statutory provisions on Commercial Law are found in title 33 of this code. The statutory provisions on the National Food Safety Act are found in chapter 10 of title 41 of this code.

§ 102. Definitions.

(1) “Person” means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(2) “Trade” and “commerce” mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of the Trust Territory.

Source: COM PL 3C-59 § 2; TT Code 1970, 33 TTC 352; TT Code 1980, 33 TTC 352.

§ 103. Unlawful acts or practices.

The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful:

- (1) passing off goods or services as those of another;
- (2) causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causing likelihood of confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) using deceptive representations or designations of geographic origin in connection with goods or services;
- (5) representing 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;
- (6) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;

- (7) representing 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) disparaging the goods, services, or business of another by false or misleading representation of fact;
- (9) advertising goods or services with intent not to sell them as advertised;
- (10) advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (11) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (12) engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;
- (13) engaging in any act or practice which is unfair or deceptive to the consumer.

Source: COM PL 3C-59 § 3; TT Code 1970, 33 TTC 353; TT Code 1980, 33 TTC 353.

Case annotation: The Consumer Protection Act abolishes any common law action for unfair competition. Businesses do not have standing to sue competitors for violations of 34 F.S.M.C. 103, including passing off goods or services as those of another. Because Congress has legislated comprehensively in this field, it should be Congress that decides whether to provide businesses with a private cause of action against competitors for engaging in unfair competition. *Foods Pacific, Ltd. v. H.J. Heinz Co. Australia*, 10 FSM R. 409, 416 (Pon. 2001).

§ 104. Exemptions.

Nothing in this chapter shall apply to:

- (1) actions or transactions carried out by the Trust Territory Government, any branch thereof, or any other governmental agency; or
- (2) acts done by the publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station in the publication or dissemination of an advertisement, when the owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement, did not prepare the advertisement, and did not have a direct financial interest in the sale or distribution of the advertised product or service.

Source: COM PL 3C-59 § 4; TT Code 1970, 33 TTC 354; TT Code 1980, 33 TTC 354.

§ 105. Restraint of prohibited acts.

- (1) Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act, or practice declared in section 103 of this chapter to be unlawful, and that proceedings would be in the public interest, he may bring a civil action in the name of the Trust Territory against such person to restrain by temporary or permanent injunction the use of such method, act, or practice.
- (2) The notice must state generally the relief sought and must be served at least three days before the hearing of the action.

(3) The action may be brought in the High Court in the district in which such person resides or has his principal place of business.

(4) The Court is authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter, and such injunctions shall be issued without bond.

(5) The Court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful.

Source: COM PL 3C-59 § 5; TT Code 1970, 33 TTC 355; TT Code 1980, 33 TTC 355.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 106. Private and class actions.

(1) Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by section 103 of this chapter, may bring an action under the rules of civil procedure in the High Court in the district in which the seller or lessor resides or has his principal place of business or is doing business, to recover actual damages or \$100, whichever is greater. The Court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper.

(2) Any person entitled to bring an action under subsection (1) of this section may, if the unlawful method, act, or practice has caused similar injury to numerous other persons similarly situated and if they adequately represent such similarly situated persons, bring an action on behalf of themselves and other similarly injured and situated persons to recover damages as provided for in subsection (1) of this section. In any action brought under this section, the Court may in its discretion order, in addition to damages, injunctive or other equitable relief.

(3) Upon commencement of any action brought under subsection (1) of this section, the Clerk of Courts shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney General.

(4) In any action brought by a person under this section, the Court may award, in addition to the relief provided in this section, reasonable attorney's fees and costs.

(5) Any permanent injunction, judgment, or order of the Court made under section 105 of this chapter shall be *prima facie* evidence in an action brought under this section that the respondent used or employed a method, act, or practice declared unlawful by section 103 of this chapter.

Source: COM PL 3C-59 § 6; TT Code 1970, 33 TTC 356; TT Code 1980, 33 TTC 356.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 107. Nonnegotiability of consumer paper.

(1) If any contract for sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer requires or involves the execution of a promissory note or instrument or other evidence of indebtedness of the buyer, such note, instrument, or evidence of indebtedness shall have printed on the face thereof the words “consumer paper,” and such note, instrument, or evidence of indebtedness with the words “consumer paper” printed thereon shall not be a negotiable instrument.

(2) Notwithstanding the absence of such notice on a note, instrument, or evidence of indebtedness arising out of a consumer credit sale or consumer lease as described in this section, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. Any agreement to the contrary shall be of no force or effect in limiting the rights of a consumer under this section.

(3) The assignee’s liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee.

(4) Failure to imprint the words “consumer paper” on such note, instrument, or evidence of indebtedness shall subject the seller or other responsible person to appropriate civil and criminal sanctions as provided in this chapter.

Source: COM PL 3C-59 § 7; TT Code 1970, 33 TTC 357; TT Code 1980, 33 TTC 357.

Editor’s note: Prior to the 1982 edition of this code, subsections (2), (3), and (4) were originally one subsection.

Cross-reference: The statutory provisions on Commercial Law are found in title 33 of this code.

§ 108. Assurances of voluntary compliance.

(1) In the administration of this chapter, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act, or practice deemed to be violative of the chapter from any person who has engaged in or is about to engage in such method, act, or practice.

(2) Any such assurance shall be in writing and shall be filed with and subject to the approval of the High Court in the district in which the alleged violator resides or has his principal place of business.

(3) Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest, pursuant to section 105 of this chapter.

Source: COM PL 3C-59 § 8; TT Code 1970, 33 TTC 358; TT Code 1980, 33 TTC 358.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 109. Investigation authorized.

(1) When it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this chapter, or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in such act or practice, he may execute in writing and cause to be served upon any person who is believed to have information, documentary material, or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify, or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand.

(2) At any time before the return date specified in an investigative demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the High Court in the district where the person served with the demand resides or has his principal place of business.

Source: COM PL 3C-59 § 9; TT Code 1970, 33 TTC 359; TT Code 1980, 33 TTC 359.

Cross-reference: FSM Const., art. IV, § 5. The provisions of the Constitution are found in Part I of this code.

The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

§ 110. Authority of Attorney General to issue subpoenas, administer oaths, conduct hearings, and promulgate rules and regulations.

(1) To accomplish the objectives and to carry out the duties prescribed by this chapter, the Attorney General, in addition to other powers conferred upon him by this chapter, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms, and promulgate such rules and regulations as may be necessary, which rules and regulations upon approval of the High Commissioner shall have the force of law.

(2) None of the powers conferred by this chapter shall be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture.

(3) Information obtained pursuant to the powers conferred by this chapter shall not be made public or disclosed by the Attorney General or his employees beyond the extent necessary for law enforcement purposes in the public interest.

Source: COM PL 3C-59 § 10; TT Code 1970, 33 TTC 360; TT Code 1980, 33 TTC 360.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

Editor's note: Minor changes made in phraseology in the 1982 edition of this code.

§ 111. Service of notices, demands, or subpoenas.

Service of any notice, demand, or subpoena under this chapter shall be made personally within the Trust Territory, but if such cannot be obtained, substituted service therefor may be made in the following manner:

- (1) personal service thereof without the Trust Territory; or
- (2) the mailing thereof by registered or certified mail to the last known place of business, residence, or abode within or without the Trust Territory of such person for whom the same is intended; or
- (3) as to any person other than a natural person, in the manner provided in the rules of civil procedure as if a complaint or other pleading which institutes a civil proceeding had been filed; or
- (4) such service as the High Court may direct in lieu of personal service within the Trust Territory.

Source: COM PL 3C-59 § 11; TT Code 1970, 33 TTC 361; TT Code 1980, 33 TTC 361.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 112. Orders for enforcement of subpoenas or investigative demands.

(1) If any person fails or refuses to file any statement or report, to or obey any subpoena or investigative demand issued by the Attorney General, the Attorney General may, after notice, apply to the High Court in the district in which the person resides or has his principal place of business, and, after hearing thereon, request an order:

- (a) granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;
- (b) vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of the Trust Territory, or revoking or suspending the business permit in the Trust Territory of a foreign corporation, or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and
- (c) granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand.

(2) Any disobedience of any final order entered under this section by any Court shall be punished as a

contempt thereof.

Source: COM PL 3C-59 § 12; TT Code 1970, 33 TTC 362; TT Code 1980, 33 TTC 362.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 113. Civil and criminal penalties.

(1) Any person who violates the terms of an injunction issued under section 105 of this chapter shall forfeit and pay to the Trust Territory a civil penalty of not more than \$10,000 per violation. For the purposes of this section, the High Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General, acting in the name of the Trust Territory, may petition for recovery of civil penalties.

(2) In any action brought under section 105 of this chapter, if the Court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by section 103 of this chapter, the Attorney General, upon petition to the Court, may recover, on behalf of the Trust Territory, a civil penalty of not exceeding \$1,000 per violation.

(3) For the purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of section 103 of this chapter.

Source: COM PL 3C-59 § 13; TT Code 1970, 33 TTC 363; TT Code 1980, 33 TTC 363.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 114. Forfeiture of corporate franchise.

Upon petition by the Attorney General, the High Court in the district in which the alleged violator has its principal place of business may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which violates the terms of any injunction issued under section 105 of this chapter.

Source: COM PL 3C-59 § 14; TT Code 1970, 33 TTC 364; TT Code 1980, 33 TTC 364.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.