

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2978

By: Kinnamon

AS INTRODUCED

An Act relating to consumer protection; amending 78 O.S. 1991, Sections 52, 53, as amended by Section 1, Chapter 139, O.S.L. 1997, 54 and 55 (78 O.S. Supp. 1997, Section 53), which relate to the Oklahoma Deceptive Trade Practices Act; adding definitions; adding certain actions as deceptive trade practices; allowing the Attorney General or district attorney to bring certain actions; providing certain immunity from liability for certain telephone service providers for listing a fictitious or assumed business name; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 78 O.S. 1991, Section 52, is amended to read as follows:

Section 52. As used in this act, unless the context otherwise requires:

~~(1)~~ 1. "Article" means a product as distinguished from a trademark, label, or distinctive dress in packaging;

~~(2)~~ 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;

~~(3)~~ 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;

~~(4)~~ 4. "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service;

5. "Local telephone directory" means a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one telephone company;

6. "Local telephone number" means a telephone number that has the three-number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800, 888 or 900 exchange numbers listed in a local telephone directory;

7. "Mark" means a word, name, symbol, device, or any combination of the foregoing in any form or arrangement;

~~(5)~~ 8. "Person" means an individual, corporation, 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;

~~(6)~~ 9. "Service mark" means a mark used by a person to identify services and to distinguish them from the services of others;

~~(7)~~ 10. "Trademark" means a mark used by a person to identify goods and to distinguish them from the goods of others;

~~(8)~~ 11. "Trade name" means a word, name, symbol, device, or any combination of the foregoing in any form of arrangement used by a person to identify his business, vocation, or occupation and to distinguish it from the business, vocation, or occupation of others.

SECTION 2. AMENDATORY 78 O.S. 1991, Section 53, as amended by Section 1, Chapter 139, O.S.L. 1997 (78 O.S. Supp. 1997, Section 53), is amended to read as follows:

Section 53. ~~(a)~~ A. A person engages in a deceptive trade practice when in the course of ~~his~~ business, vocation, or occupation, ~~he~~ the person:

~~(1)~~ 1. Passes off goods or services as those of another;

~~(2)~~ 2. Knowingly makes a false representation as to the source, sponsorship, approval, or certification of goods or services;

~~(3)~~ 3. Knowingly makes a false representation as to affiliation, connection, association with, or certification by another;

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

~~(5)~~ 5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits or quantities of goods or services or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;

~~(6)~~ 6. Represents that goods are original or new if they are not;

~~(7)~~ 7. Represents that goods or services are a particular standard, quality, or grade, or that goods are a particular style or model, if they are another;

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

~~(9)~~ 9. Advertises goods or services which differ from those offered for sale in the advertisements;

~~(10)~~ 10. Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

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

~~(12)~~ 12. Advertises the price of an item after deduction of a rebate unless the actual selling price is advertised and clear and conspicuous notice is given in the advertisement that a mail-in rebate is required to achieve the lower net price;

13. Misrepresents the geographic location of the supplier by listing a fictitious business name or an assumed business name in a local telephone directory if:

- a. the name misrepresents the geographic location of the supplier,
  - b. the listing fails to identify the locality and state of the business of the supplier,
  - c. calls to the local telephone number are routinely forwarded or otherwise transferred to a business location that is outside the calling area covered by the local telephone directory, and
  - d. the business location of the supplier is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory;
- or

14. Lists a fictitious business name or assumed business name in a directory assistance database if:

- a. the name misrepresents the geographic location of the supplier,
- b. calls to the local telephone number are routinely forwarded or otherwise transferred to a business location that is outside the local calling area, and
- c. the business location of the supplier is located in a county that is not contiguous to a county in the local calling area.

~~(b)~~ B. Evidence that a person has engaged in a deceptive trade practice shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

~~(c)~~ C. The deceptive trade practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other statutes of this state.

SECTION 3. AMENDATORY 78 O.S. 1991, Section 54, is amended to read as follows:

Section 54. ~~(a)~~ A. Any person damaged or likely to be damaged by a deceptive trade practice of another may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such deceptive trade practice. Proof of actual monetary damages, loss of profits or intent shall not be required; ~~but, if.~~ If in such action damages are alleged and proved, the plaintiff, in addition to injunctive relief, shall be entitled to recover from the defendant the actual damages sustained by ~~him~~ the person.

~~(b)~~ B. The Attorney General or a district attorney may bring an action to enjoin a deceptive trade practice. The Attorney General or district attorney may also seek:

1. An injunction;
2. An order that the supplier make payment of the money unlawfully received from aggrieved consumers to be held in escrow for distribution to aggrieved consumers; and

3. An order that the supplier pay to the state the reasonable expenses and investigation fees.

C. In any action instituted under the provisions of this act, the court may, in its discretion, award reasonable attorneys' fees to the prevailing party. If in any such action the court finds either (1) that the defendant has willfully engaged in a deceptive trade practice or (2) that the plaintiff has acted in bad faith in instituting the action, the court shall award reasonable attorneys' fees to the prevailing party.

~~(e)~~ D. The relief provided for in this section is in addition to and not in exclusion of remedies otherwise available against the same conduct pursuant to the common law or other statutes of this state.

~~(d)~~ E. Any duly organized and existing trade association, whether incorporated or not, is hereby authorized to institute and prosecute a suit or suits for injunctive relief hereunder as the real party in interest, for or on behalf of one or more of its members, when a deceptive trade practice directly or indirectly affects or threatens to affect or injure such member or members.

SECTION 4. AMENDATORY 78 O.S. 1991, Section 55, is amended to read as follows:

Section 55. ~~(a)~~ A. This act does not apply to:

~~(1)~~ 1. Conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency;

~~(2)~~ 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)~~ 3. Actions or appeals pending on the date that this act becomes effective; or

~~(4)~~ 4. Motor vehicle dealers who are new car franchise dealers covered under the provisions of the Motor Vehicle Commission Law as set forth in ~~47 O.S. 1961,~~ Sections 561 ~~to 568~~ through 580.2 of Title 47 of the Oklahoma Statutes, inclusive.

~~(b)~~ B. This act shall be interpreted to apply to the use by a person of any service mark, trademark, certification mark, collective mark, trade name, or other trade identification which was used and not abandoned prior to the effective date of this act, if the use was in good faith and is otherwise lawful except for the provisions of this act.

C. For purposes of paragraphs 13 and 14 of subsection A of Section 53 of this title, a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance database unless the telephone company or other provider of a telephone or directory assistance service is the same person as the supplier who has committed the deceptive act.

SECTION 5. This act shall become effective July 1, 1998.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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