

Interpretation.

**159.** In this Part unless the context otherwise requires—

“integrated circuit” means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of material and which is intended to perform an electronic function ;

“layout design” is synonymous with “topography” and means the three dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture ;

“right holder” means the natural person who, or the legal entity which, is to be regarded as the beneficiary of the protection referred to in section 146.

## PART VIII

### CHAPTER XXXII

#### UNFAIR COMPETITION AND UNDISCLOSED INFORMATION

Unfair  
competition and  
undisclosed  
information.

**160.** (1) (a) Any act or practice carried out or engaged in, in the course of industrial or commercial activities, that is contrary to honest practices shall constitute an act of unfair competition.

(b) The provisions of this section shall apply independently of, and in addition to, other provisions of the Act protecting inventions, industrial designs, marks, trade names, literary, scientific and artistic works and other intellectual property.

(2) (a) Any act or practice carried out or engaged in, in the course of industrial or commercial activities, that causes, or is likely to cause, confusion with respect to another's enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(b) Confusion may, in particular, be caused with respect to —

- (i) a mark, whether registered or not ;
- (ii) a trade name ;
- (iii) a business identifier other than a mark or trade name ;
- (iv) the appearance of a product ;
- (v) the presentation of products or services ;
- (vi) celebrity or a well known fictional character.

(3) (a) Any act or practice carried out or engaged in, in the course of industrial or commercial activities, that damages, or is likely to damage, the goodwill or reputation of another's enterprise shall constitute an act of unfair competition, whether or not such act or practice actually causes confusion.

(b) Damaging another's goodwill or reputation may, in particular, result from the dilution of the goodwill or reputation attached to—

- (i) a mark, whether registered or not ;
- (ii) a trade name ;
- (iii) a business identifier other than a mark or a trade name ;

- (iv) the appearance of product ;
- (v) the presentation of products or services;
- (vi) celebrity or a well-known fictional character.

(c) For the purposes of these provisions, “dilution of goodwill or reputation” means the lessening of the distinctive character or advertising value of a mark, trade name or other business identifier, the appearance of a product or the presentations of products or services or of a celebrity or well known fictional character.

(4) (a) Any act or practice carried out or engaged in, in the course of any industrial or commercial activity, that misleads, or is likely to mislead, the public with respect to an enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(b) Misleading may arise out of advertising or promotion and may, in particular occur with respect to —

- (i) the manufacturing process of a product ;
- (ii) the suitability of a product or service for a particular purpose ;
- (iii) the quality or quantity or other characteristics of products or services ;
- (iv) the geographical indication of products or services ;
- (v) the conditions on which products or services are offered or provided ;
- (vi) the price of products or services or the manner in which it is calculated.

(5) (a) any false or unjustifiable allegation, in the course of industrial or commercial activities, that discredits, or is likely to discredit, an enterprise of another person or the activities of such enterprise, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(b) Discrediting may arise out of advertising or promotion and may, in particular, occur with respect to—

- (i) the manufacturing process of a product ;
- (ii) the suitability of a product or service for a particular purpose ;
- (iii) the quality or quantity or other characteristics of products or services ;
- (iv) the conditions on which products or services are offered or provided ;
- (v) the price of products or services or the manner in which it is calculated.

(6) (a) Any act or practice, in the course of industrial or commercial activities, that results in the disclosure, acquisition or use by others, of undisclosed information without the consent of the person lawfully in control of that information (in this section referred to as “the rightful holder”) and in a manner contrary to honest commercial practices shall constitute an act of unfair competition.

(b) Disclosure, acquisition or use of undisclosed information by others without the consent of the rightful holder may, in particular, result from—

- (i) industrial or commercial espionage ;
- (ii) breach of contract ;
- (iii) breach of confidence ;
- (iv) inducement to commit any of the acts referred to in sub-paragraphs (i) to (iii) ;

- (v) acquisition of undisclosed information by a third party who knew or was grossly negligent in failing to know, that an act referred to in sub-paragraphs (i) to (iv) was involved in the acquisition.

(c) For the purposes of this Act, information shall be considered “undisclosed information” if—

- (i) it is not, as a body or in the precise configuration and assembly of its components, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question ;
- (ii) it has actual or potential commercial value because it is secret ; and
- (iii) it has been subject to reasonable steps under the circumstances by the rightful holder to keep it secret.

(d) Any act or practice, in the course of industrial or commercial activities, shall be considered an act of unfair competition if it consists of results in—

- (i) an unfair commercial use of secret test or other data, the origination of which involves considerable effort and which have been submitted to appropriate authority for the purposes of obtaining approval of the marketing of pharmaceutical or agricultural or chemical products which utilize new chemical entities ; or
- (ii) the disclosure of such data, except where necessary to protect the public, or unless steps have been taken to ensure that the data is protected against unfair commercial use.

(e) The undisclosed information for the purpose of this Act shall include—

- (i) technical information related to the manufacture of goods or the provision of services ; or

- (ii) business information which includes the internal information which an enterprise has developed so as to be used within the enterprise.

In this section the word “enterprise” has the same meaning as in section 101 of the Act.

(7) Any person or enterprise or association of producers, manufacturers or traders aggrieved by any act or practice referred to in this Part, may institute proceedings in Court to prohibit the continuance of such act or practice and obtain damages for losses suffered as a result of such act or practice. The provisions of Chapter XXXV of this Act relating to infringement shall apply, *mutatis mutandis*, to such proceeding.

(8) (a) Any person, who willfully and without lawful authority, discloses any undisclosed information shall be guilty of an offence under this Act and shall on conviction after trial before a Magistrate be liable to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(b) The provisions of Chapter XXXVIII of the Act shall apply, *mutatis mutandis*, to the offence specified under this subsection.

(9) The rights conferred by the provisions of subsection (6) shall be in addition to, and not in derogation of, any common law rights.

## PART IX

### CHAPTER XXXIII

#### GEOGRAPHICAL INDICATIONS

**161.** (1) Any interested party shall be entitled to prevent—

- (i) the use of any means in the designation or presentation of goods that indicates or suggests that the goods including an agricultural product, food, wine or spirit in question originates in a

Protection of geographical indications.