

[ZA982321.DOC]\*

[translation released: 24/09/2001]

[file improved: 01/10/2001]

## LAW No. 232 OF 9TH JUNE 1998 OF THE REPUBLIC OF KAZAKHSTAN

### CONCERNING UNFAIR COMPETITION

*As amended by:*

*1) Law No. 125 of 15th December 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning Fair Competition». Articles 1, 3 replaced, 4, 5, 6 replaced, 7). Effective from the 2nd January 2001.*

This Law shall define the acts which are recognised as unfair competition, it shall establish a mechanism for prevention and elimination of unfair competition, and its consequences, as well as the liability for unfair competition acts.

#### **Article 1. The Fundamental Definitions**

*amended by 1) Law No. 125 of 15th December 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning Fair Competition».*

The following definitions have been used in this Law:

**discreditation** — deliberate actions aimed at undermining trust, denigration, disparagement of the reputation of a competitor, his goods, work or services;

**competitor** — an entity in market relations which manufactures products, or sells goods, or renders services, whose expansion or retention of volume leads to a decrease in the market share of another entity in market relations which manufactures similar products, or sells similar goods, or renders the same services;

**counterfeit products** — goods produced by certain entities of market relations for the purposes of unfair competition and misleading of consumers; [inserted by 1]

**unfair competition** — any act (failure to act) of a legal entity and (or) physical person, as well as of the state bodies and bodies of local government, directed at receiving of unearned advantages in entrepreneurial activity by way of eliminating or restricting competition;

## **Law No. 232**

**collusion** — any contractual relation of parties (vertical, horizontal or conglomerate) aimed at restriction or elimination of competition, obtaining of unreasonable advantages in entrepreneurial activity;

**entity in market relations** — a legal entity or a physical person which carry out entrepreneurial activity and act as participants in the circulation of goods, work, or services;

**authorised body** — a body appointed by the Government of the Republic of Kazakhstan for the implementation of state policies to assist and develop competition and prevent restriction and elimination of unfair competition.

### **Article 2. Legislation Concerning Unfair Competition**

1. Legislation concerning unfair competition shall be based on the Constitution of the Republic of Kazakhstan and it shall consist of the provisions of the Civil Code of the Republic of Kazakhstan, the present Law, and other regulatory legal acts of the Republic of Kazakhstan which are adopted in accordance with them.

2. Should an international treaty ratified by the Republic of Kazakhstan establish any different rules than those contained in legislation concerning unfair competition, then the rules of a given international treaty shall apply.

### **Article 3. The Scope of This Law**

*replaced by 1) Law No. 125 of 15th December 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning Fair Competition».*

~~This Law shall apply to legal entities and physical persons, state bodies and bodies of local government of the Republic of Kazakhstan, as well as foreign legal entities whose acts restrict and eliminate free competition in commercial markets of the Republic of Kazakhstan. *[excluded by 1]*~~

### **Article 3. The Scope of this Law**

*introduced by 1) Law No. 125 of 15th December 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning Fair Competition».*

This Law shall apply to the physical persons and legal entities, state bodies and bodies of local self-government of the Republic of Kazakhstan, as well as foreign physical persons and legal entities, stateless persons, those whose actions eliminate free competition in markets of goods (work, services) of the Republic of Kazakhstan.».

### **Article 4. Inadmissibility of Restriction Or Elimination of Competition**

*amended by 1) Law No. 125 of 15th December 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Law of*

*the Republic of Kazakhstan «Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning Fair Competition».*

1. Any activity associated with restriction or elimination of competition by way of violating of the rights of other entrepreneurs to free competition, as well as any activity which violates the rights and legitimate interests of consumers shall not be allowed.

2. State bodies and local government bodies shall be prohibited to adopt regulatory legal acts and any other acts and (or) commit acts aimed at the creation of favourable or discriminatory conditions for the functioning of individual entities of market relations or their groups, elimination or restriction of competition, and also at violation of the rights and interests of consumers, unless it is otherwise provided for by legislative acts.

3. Entities of market relations shall be prohibited to perform actions aimed at the elimination and restriction of competition, as well as at the creation of discriminatory conditions for the activities of entities of market relations, which carry out similar types of activities. [introduced by 1]

#### **Article 5. Types of Unfair Competition**

*amended by 1) Law No. 125 of 15th December 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning Fair Competition».*

The following shall be recognised as the forms of unfair competition:

1) illegal use of a commercial name, trade mark, service mark and (or) any other commercial designation of an entrepreneur which misleads or may mislead consumers with regard to the manufacturer or trader or goods (work, services);

2) emulating a competitor by way of direct reproduction of external appearance of competitor's goods, his business name, labelling of goods, trade mark, other commercial symbols, as well as advertising materials, firm's package, form, or other external design of goods, which may mislead a consumer with regard to the manufacturer or trader of given goods (work, services);

3) deliberate distribution of false information and statements with regard of goods (work, services) of a competitor, in particular with regard of origin, manufacturer, trader, as well as quality, consumer values, purposes, method and place of manufacture of goods (work, services), as well as other deliberately false information discrediting goods (work, services), good name and reputation of a competitor;

4) imposition by the seller, who has no competition, on the buyers of additional conditions with regard to selling, which due to their nature or commercial designation do not pertain to the subject matter of the agreement;

5) distribution of advertisements and other information containing improper comparison with goods (work, services) or business of another competitor;

6) deliberate distortion or concealment in promotional materials of information concerning true properties ~~and quality~~ , quality and prices [inserted by 1] of goods (work, services);

## **Law No. 232**

7) entering into and performance of any agreements between competitors with regard to prices, division of markets, elimination of other entrepreneurs and other conditions of activities aimed at elimination or substantial restriction of competition;

8) horizontal merger of entities in market relations, which lead to substantial restriction or elimination of competition;

9) obtaining, use or disclosure of scientific and technical information, business information or any other information which constitutes commercial or service secret, without its owner's authorisation;

9-1) gaining of advantages in competition by way of using dumping prices;  
*[introduced by 1]*

10) other acts which lead to elimination or restriction of competition, granting and (or) gaining of unreasonable advantages.

### **Article 6. Liability for Unfair Competition**

*replaced by 1) Law No. 125 of 15th December 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning Fair Competition».*

~~1. Legal entities and physical persons as well as state bodies and local governments and their officials shall be liable as provided for by this Law and other legislative acts of the Republic of Kazakhstan, for actions (failure to act) which violate freedom of competition.~~

~~2. In the event of violation of this Law, entities in market relations, state bodies and local government bodies as well as their officials shall be obliged as follows:~~

~~1) in accordance with the injunctions of the authorised body, to terminate violations associated with facts of unfair competition, dissolve or amend agreements (concerted actions), aimed at elimination or restriction of competition and perform any other acts specified by injunction;~~

~~2) compensate for losses (damages) caused as a result of unfair competition, in accordance with the procedure established by legislation.~~

### **Article 6. The Liability for Violation of This Law**

*introduced by 1) Law No. 125 of 15th December 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning Fair Competition».*

1. The liability for violation of this Law in the form of a fine shall arise in the following cases: [introduced by 1]

1) for evasion of compliance with injunctions of the authorised body, as issued in accordance with the requirements of this Law; [introduced by 1]

2) for failure to present to the authorised body documents, reference materials, and other information, as well as written explanations, or for presentation of deliberately unreliable or false information. The period for presentation of reference materials and other information shall be established by the authorised body and such period must not exceed 15 days; [introduced by 1]

## **Law No. 232**

3) for commission of acts (omission of act) as provided for by Article 5 of this Law; [introduced by 1]

4) for commission by official persons of state bodies and bodies of local self-government of actions contributing to the restriction or elimination of competition. [introduced by 1]

2. In cases of violation of this Law, the entities of market relations, state bodies, and the bodies of local self-government and their official persons shall be obliged as follows: [introduced by 1]

1) in accordance with the injunctions of the authorised body to terminate violations associated with the fact of unfair competition, to terminate or alter the agreements (agreed actions) aimed at the elimination or restriction of competition, and to perform other actions as provided for by said injunctions; [introduced by 1]

2) to recover losses (damage) caused as a result of unfair competition, in accordance with the procedure as established by legislative acts; [introduced by 1]

3) to transfer to the state budget the income received as a result of unfair competition, and also a fine in accordance with the procedure as established by legislative acts. Income which was received during the period of unlawful acts, but for not more than for the last reporting period which preceded the year in which such acts were discovered, shall be seized by the State Budget in cases where it is impossible to calculate the income received as a result of unfair competition. [introduced by 1]

### **Article 7. The Rights of the Authorised Body With Regard to Prevention of Unfair Competition**

*amended by 1) Law No. 125 of 15th December 2000 of the Republic of Kazakhstan. Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning the Introduction of Amendments and Additions to the Law of the Republic of Kazakhstan «Concerning Fair Competition».*

1. In order to implement State policies for the assistance and development of competition, as well as for prevention, restriction and elimination of unfair competition, the Government of the Republic of Kazakhstan shall appoint an authorised body.

2. The Authorised Body shall have the following rights:

1) to take decisions which are obligatory for the implementation by entities in market relations, with regard to termination of unfair competition and elimination of its consequences, as well as concerning the transfer to the State Budget of income received as a result of unfair competition; [added by 1]

2) to require and receive information, including written and verbal explanations from legal entities and physical persons, as well as state bodies and bodies of local government, their officials, as required for examining facts of unfair competition;

3) to examine cases of unfair competition and, in accordance with the procedure provided for by legislation, take decisions concerning the application of administrative punishments, forward to guilty parties their injunctions concerning termination of acts which restrict or eliminate competition;

4) to submit to the state bodies and local government bodies, their injunctions concerning abolition or amendments of unlawful acts which restrict or eliminate competition, which are obligatory for the implementation;

~~5) to file actions with courts to prevent unfair competition and eliminate its consequences, to exact proceeds received as a result of unfair competition for the~~

## **Law No. 232**

~~benefit of the State Budget, as well as to reimburse losses caused to a legal entity or an individual entrepreneur as well as consumers as a result of unfair competition; [excluded by 1]~~

5) petition to the court with lawsuits for suppression of unfair competition and elimination of its consequences, concerning seizure by the state budget of income received during the period of the performance of unfair competition, for recovery of losses caused to a legal entity or individual entrepreneur, as well as to consumers during the period of performance of unfair competition, for recognition of goods as counterfeit production; [introduced by 1]

6) to direct materials to the law-enforcement bodies in order to decide on the issue of instituting criminal cases on the basis of traces of crime, based on facts of unfair competition;

7) to exercise other powers established by the legislation of the Republic of Kazakhstan.

3. The injunctions concerning the elimination of violations of this Law as issued to entities of market relations, by state bodies, and bodies of local self-government shall be recognised as mandatory, unless such injunctions are challenged in accordance with the procedure as established by legislative acts. [introduced by 1]

### **Article 8. Confiscation of Illegally Received Profit and Compensation for Losses Caused by Unfair Competition**

1. Losses caused to a legal entity or a physical person, as well as to consumers as a result of unfair competition shall be subject to compensation in accordance with the procedure established by legislation. Income received as a result of unfair competition by an entity in market relations, pursuant to the court's decision, shall be subject to confiscation to the State Budget.

2. In accordance with the procedure established by legislative acts, fines shall be imposed for the performance of acts aimed at restriction or elimination of lawful competition.

### **Article 9. The Procedure for Challenging Decisions, Injunctions and Resolutions of the Authorised Body**

Legal entities and individual entrepreneurs, state bodies and local government bodies, as well as any other interested persons shall have the right to appeal to a court to recognise decisions, injunctions or resolutions of the Authorised Body as invalid, fully or partially, or to alter decisions concerning imposition of administrative sanctions.

**President of the Republic of Kazakhstan**  
**N. Nazarbaev**