

COMMERCIAL TORTS LAW, 5759-1999

Chapter One: **Unfair Competition**

Passing off

1. (a) A business shall not cause the goods he sells or the services he offers to be mistaken for the goods or services of another business or related to another business.
(Two) The use in good faith by a business of his own name, in order to sell his goods or offer his services, shall not of itself be regarded as passing-off.

False description

2. (a) A business shall not advertise, nor cause to be advertised, something that he knows or that he ought to know is untrue with respect to his own business, profession, goods or services or those of another business (hereinafter: "false description").
(Two) A person who distributes an advertisement of another person, or on behalf of another person, which contains a false description, or a person who decides to actually effect an advertisement containing a false description, shall not be liable under this section unless he knew that the description was a false description, or unless the description is, on its face, a false description.

Unfair interference

3. A business shall not unfairly prevent or burden the access of customers, employees or agents to the business, goods or services of another business.

Tortfeasor and victim

4. The obligations under this Chapter shall apply to a business who performs an act prohibited under this Chapter during the course of his business or in relation to it, to another business who is harmed or suffers damage as a result of the breach of the obligation, during the course of his business or in relation to it.

Chapter Two:
Misappropriation of Trade Secrets

Definitions

5. In this Chapter:

“Owner” – Including someone who has legal possession of a trade secret;

“Trade secret” or “secret” – Commercial information of every kind, which is not public knowledge or which cannot readily and legally be discovered by the public, the secrecy of which grants its owner an advantage over his competitors, provided that its owner takes reasonable steps to protect its secrecy; “Use” – Including the transfer to another person.

Prohibition against misappropriation of a trade secret

6. (a) A person shall not misappropriate another’s trade secret.

(Two) Any of the following acts constitutes a misappropriation of a trade secret:

(1) The taking by illegal means of a trade secret without its owner’s consent; for this purpose it shall make no difference whether the secret was taken from its owner or from another person in possession of the trade secret;

(2) Use of a trade secret without its owner’s consent, the use being contrary to a contractual or fiduciary obligation imposed upon the user in favor of the owner of the secret;

(3) The receiving of a trade secret or use of it without its owner’s consent, the receiver or user knowing, or it being obvious at the time of receipt or use, that the secret was transferred to such person in a manner prohibited by paragraphs (1) or (2) or that the secret was transferred to any other person in such prohibited manner prior to reaching the present receiver or user.

(Three) The revealing of a trade secret by reverse engineering shall not of itself be considered an illegal means under paragraph (b)(1); for the purposes of this subsection, “reverse engineering” – disassembly or analysis of a product or process with the aim of deciphering a trade secret by working backwards.

Exceptions to liability

7. (a) A person shall not be liable for misappropriation of a trade secret if one of the following applies:

(1) The knowledge latent in the trade secret came into his possession in the course of his employment with the owner of the trade secret and such knowledge became part of his general professional skills;

(2) Use of the trade secret is justified as a matter of public policy.

(Two) Should a person make use of a trade secret as set out in paragraph (a)(2) and gain a benefit as a result of such, the court may, if it sees fit in the circumstances of the case, order such person to return the benefit in whole or in part to the owner of the secret.

Bona fide purchase for value

8. (a) A person shall not be liable under section 6(b)(3) for use made of a trade secret if he purchased and received the trade secret in good faith for consideration, unless the court is of the view that liability should be imposed for misappropriation of a trade secret in order that justice be done between the parties.

(Two) Should the court impose liability as set out in section 8(a) the court may exempt the person held liable for misappropriation of the trade secret from the remedies available to the owner of the secret, in whole or in part.

Essential similarity

9. Use of a trade secret shall also include use of a secret which has been altered, so long as there is an essential similarity between the trade secret and the information actually used.

Presumption of use

10. The defendant will be presumed to have used a trade secret belonging to the plaintiff if the following apply:

- (1) The trade secret was known to the defendant or he had access to it;
- (2) The information which the defendant was using is essentially similar to the information that is the subject of the trade secret.

Chapter Three:
Tortious Acts and Remedies

Tortious act

11. The violation of the provisions of Chapters One and Two is a tortious act, and the Civil Wrongs Ordinance [New Version] (hereinafter: the “Civil Wrongs Ordinance”) shall apply subject to the provisions of this law.

Applicable remedies

12. The remedies set out in secs. 13 through 21 shall not apply to tortious acts set out in secs. 2 and 3.

Statutory damages

13. (a) The court may, at the plaintiff's request, award damages for every wrong, without proof of actual damage, in an amount of not more than NIS 100,000.
(Two) For the purposes of this section, acts carried out as part of one single set of activities shall be regarded as a single wrong.
(Three) The Minister of Justice may, by order, change the amounts set out in subsec. (a), with the approval of the Constitution, Law and Justice Committee of the Knesset.

Review of injunction

14. Where an injunction has been granted in favour of the owner of a trade secret, the opposing party may at any time request a review of such injunction, on the grounds that the trade secret has been made public; where the court finds that the applicant has gained an unfair advantage from the possession of the secret before its publication, the court may, so long as such advantage persists, leave the injunction in force.

Giving of accounts

15. The court may require the defendant to give an account to the plaintiff, in the manner set out in the Regulations, with respect to the details of the wrong.

Appointment of receiver

16. (a) Where it is proven to the court's satisfaction, by affidavit or by any other form of testimony, that there is a real suspicion that a wrong has been committed, the court may appoint, by order, a receiver who will be authorized to enter the premises of the defendant or those of a person other than the defendant (hereinafter: a "third party") in order to search and seize goods produced through the commission of the wrong or which were used for the purpose of such commission, or in order to seize evidence where there is a reasonable suspicion of concealment of evidence; in the search and seizure under this Chapter of a computer, computer material or output, as defined in the Computers Law 5755-19952, the provisions of secs. 23A and 32(b) of the Criminal Procedure (Arrest and Search) Ordinance [New Version] 5729-19693 shall apply, *mutatis mutandis*.
(Two) The receiver will be authorized to use such reasonable force as is necessary to carry out the order, provided that he is accompanied by a police officer; the court may order the police to assist the receiver in carrying out his duties under the order.
(Three) The entry, search and seizure shall be carried out by the receiver in the presence of two witnesses; the receiver will provide the court with a report on the search and seizure within three days of the date of carrying it out.

Ex parte order

17. (a) Where an application for the issue of an order appointing a receiver be filed and it is proven to the court's satisfaction, by affidavit or by other evidence, that there is a reasonable suspicion that the stay of proceedings until a hearing involving both parties is liable to cause serious harm to the party requesting the order or is liable to give rise to the disappearance of the goods, the court may issue the order *ex parte*.

(Two) Where an *ex parte* order is issued, a hearing involving both parties will be held as soon as possible and in any case no later than seven days after the *ex parte* order is issued, unless the court decides upon a later date for special reasons that it shall set out.

(Three) An order under the provisions of this section may be issued prior to the bringing of an action; where no action is brought within seven days after the issue of the order, the order will expire unless the court decides upon a later date for special reasons that it will set out.

Security

18. The court shall not grant a temporary order under this Chapter unless subject to the provision of adequate security, in favor of the party against which the order under secs. 16 or 17 is issued, to cover compensation for damage caused as a result of the issue of the order in case the action is dismissed or the order expires for any other reason, and subject to the provision of a bond as set out in sec. 19.

Bond

19. (a) A bond as mentioned in sec. 18 shall be deposited in the sum of no less than NIS 1,000 and no greater than NIS 25,000 as the court may determine; the bond shall be deposited in the form of cash or bank guarantee; the court may, if it is convinced that there are special reasons for so doing, make the issue of the order conditional upon the provision of another bond.

(Two) At the defendant's request, the court may increase the amount of the bond above the sum set out in subsec. (a) should it be convinced during the course of proceedings that this is justified.

(Three) If the action is dismissed or the temporary order expires, the court dealing with the action may order the bond forfeited, in whole or in part, in favor of the person against whom the order was issued under sec. 16 or 17, if the court is convinced that the application for the order was unreasonable in the circumstances; the forfeiture of the bond is not conditional upon the causing of actual damage to the person against whom the order was issued.

(Four) The forfeiture of the bond shall not of itself derogate from the right of the person in whose favor it was forfeited to be compensated for damage suffered by such person by means of the security set out in sec. 18 or in accordance with any law, by the bringing of a separate action.

Third party rights

20. (a) In granting an order under secs. 16 or 17 authorizing entry into premises owned by a third party, the court will consider, *inter alia*, the possibility –

- (1) That the third party has rights in the goods or in the evidence in respect of which the order is requested, and the quality of such rights;
- (2) That the third party is a party to the wrong.
- (Two) Where the goods or the evidence in respect of which an order under secs. 16 or 17 is requested are in the possession of a third party, the court will notify such third party of its right to join the proceedings within the time provided for such.
- (Three) Where a third party claims rights in goods or evidence seized under this Chapter, he may join the proceedings within 14 days of the date on which he was notified of their seizure.
- (Four) Where it becomes apparent to the court during the course of the hearing that a third party may have rights in goods or evidence seized under this Chapter, the court will notify such third party of its right to join the proceedings as a party, within the time provided for such; the third party may join the proceedings at any stage of the proceedings.
- (Five) Where a third party joins the proceedings, the court will hold a hearing in the presence of the third party as early as possible and in any event no later than 14 days after the date of request of the application for joinder of the third party.

Destruction of goods

21. The court may order, at the end of the proceedings in an action, any one of the following:
 - (1) the destruction of the goods produced in the course of the commission of a wrong or which were used to commit a wrong (in this section: the “goods”);
 - (2) if the plaintiff so requests, the transfer of ownership in the goods to the plaintiff, in consideration for payment of the value of the goods but for the commission of the wrong;
 - (3) the doing of any other act in respect of the goods.

Chapter Four: **Miscellaneous**

Jurisdiction of Labor Court

22. (a) The District Labor Court shall have exclusive jurisdiction:
 - (1) in an action between an employee and his employer (or successor), with respect to a question regarding breach of the provisions of Chapter Two, that arises out of an employer-employee relationship;
 - (2) in an action with respect to a question regarding breach of any of the provisions of Chapter Two that arises out of a contract establishing an employer-employee relationship, but which breach occurred before that relationship began, or after the relationship ended.
- (Two) In actions presided over by the Labor Court under this section, a single judge shall have jurisdiction to issue temporary injunctions and to grant the relief set out in secs. 15 through 20.

Non-disclosure of commercial secret

23. (a) The court may, on its own initiative or upon application, issue an order to ensure that a commercial secret revealed during the course of legal proceedings and belonging to a litigant or to any other person not be made public.

(Two) The court may, at the application of any person, issue an order during the course of legal proceedings, in respect of the manner of adducing evidence constituting a commercial secret.

(Three) In legal proceedings in a civil matter, the court may, at the application of any person, issue an order relating to the non-disclosure of evidence constituting a commercial secret, provided that it is of the opinion that the interest in non-disclosure of the evidence is greater than the need to disclose it for the purposes of the doing of justice, and that the issuing of an order under sub-secs. (a) and (b) would not protect the commercial secret.

(Four) In this section, the term “court” shall include a court, tribunal, body or person with judicial or para-judicial authority under any law.

Effect of law

24. Nothing in the provisions of this law shall be taken to derogate from the provisions of the Restrictive Trade Practices Law 5748-19884, or the provisions of any other law.

Enforcement and regulations

25. The Minister of Justice has responsibility for this law and he may make regulations concerning its enforcement, with the consent of the Constitution, Law and Justice Committee of the Knesset, and particularly with respect to the procedures of receivers appointed under this Law, including –

- (1) Provisions for the filing of reports under sec. 15;
- (2) Methods of filing an application for a receivership order;
- (3) Provisions for the joinder of a third party;
- (4) Rules for carrying out search and seizure of goods;
- (5) The manner of registering goods seized;
- (6) The manner of dealing with goods seized and their storage;
- (7) Rules for carrying out court orders regarding the destruction of goods;
- (8) Rules for respecting the confidentiality of matters discovered during searches.

Amendment of Courts Law – No. 26

26. The following shall be inserted in sec. 68(b) of the Courts Law [Consolidated Version] 5744-19845, after paragraph (7): “(8) for the protection of a commercial secret.”

Amendment of Consumer Protection Law – No. 8

27. In the Consumer Protection Law, 5741-19816 – (1) the following shall be inserted in sec. 2(a), after paragraph (19): “(20) since the origin of the property sold is in bankruptcy, receivership or the liquidation of a company.”;
(2) the following shall be inserted in sec. 31 after subsec. (a): “(a1) the right to relief for a wrong as aforesaid is granted to a consumer who is harmed by such wrong, and to a dealer who is harmed, during the course of his business, by the deceit as aforesaid in sec. 2. (a2) Chapter F1 shall not apply to a dealer harmed by a wrong as aforesaid during the course of his business.”

Amendment of Civil Wrongs Ordinance – No. 8

28. Sec. 59 of the Civil Wrongs Ordinance [New Version] is repealed.

Commencement

29. This law shall commence six months after the date of its promulgation.

Benjamin Netanyahu Tsahi Hanegbi
Prime Minister Minister of Justice
Ezer Weitzman Dan Tichon
President Speaker of the
Knesset

* Passed by the Knesset on the 3rd Iyyar, 5759 (19th April 1999); the Bill and an Explanatory Note were published in *Hatza'ot Chok* No. 2471, on 11th Tevet 5756 (5th January 1996), p. 346.

¹ *Dinei Medinat Yisrael (Nusach Chadash)* No. 10, p. 266.

² *Sefer Hachukim* 5755, p. 366.

³ *Dinei Medinat Yisrael (Nusach Chadash)* No. 12, p. 284.

⁴ *Sefer Hachukim* 5748, p. 128

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⁵ *Sefer Hachukim*, 5744, p. 198.

⁶ *Sefer Hachukim*, 5741, p. 248.

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<http://www.wipo.int>