

**Anti-Unfair Competition Law of the People's Republic of China (2019
Amendment)[Effective]**

中华人民共和国反不正当竞争法(2019 修正) [现行有效]

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Anti-Unfair Competition Law of the People's Republic of China

中华人民共和国反不正当竞争法

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(1993年9月2日第八届全国人民代表大会常务委员会第三次会议通过 2017年11月4日第十二届全国人民代表大会常务委员会第三十次会议修订 根据 2019年4月23日第十三届全国人民代表大会常务委员会第十次会议《关于修改〈中华人民共和国建筑法〉等八部法律的决定》修正)

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Chapter I General Provisions

第一章 总 则

Article 1 This Law is enacted for the purposes of promoting the sound development of the socialist market economy,

第一条 为了促进社会主义市场经济健康发展，鼓励和保护

encouraging and protecting fair competition, preventing acts of unfair competition, and safeguarding the lawful rights and interests of businesses and consumers.

Article 2 Businesses shall, in their production and distribution activities, adhere to the free will, equality, fairness, and good faith principles, and abide by laws and business ethics.

For the purposes of this Law, "act of unfair competition" means that in its production or distribution activities, a business disrupts the order of market competition and causes damage to the lawful rights and interests of the other businesses or consumers, in violation of this Law.

For the purposes of this Law, "business" means a natural person, a legal person, or a non-legal person organization that engages in the production or distribution of commodities or the provision of services (commodities and services are hereinafter collectively referred to as "commodities").

Article 3 The people's governments at all levels shall take measures to prevent acts of unfair competition and create an environment and conditions favorable for fair competition.

The State Council shall establish a coordination mechanism of anti-unfair competition work to research and decide major anti-unfair competition policies and coordinate the handling of major issues on maintaining the order of market competition.

Article 4 The departments performing the functions of industry and commerce administration of the people's governments at and above the county level shall investigate and dispose of acts of unfair competition, unless a law or administrative regulation requires any other department to do so.

Article 5 The state encourages, supports, and protects public scrutiny, from all organizations and individuals, of acts of unfair competition.

State organs and their employees shall not support or harbor acts of unfair competition.

公平竞争，制止不正当竞争行为，保护经营者和消费者的合法权益，制定本法。

第二条 经营者在生产经营活动中，应当遵循自愿、平等、公平、诚信的原则，遵守法律和商业道德。

本法所称的不正当竞争行为，是指经营者在生产经营活动中，违反本法规定，扰乱市场竞争秩序，损害其他经营者或者消费者的合法权益的行为。

本法所称的经营者，是指从事商品生产、经营或者提供服务（以下所称商品包括服务）的自然人、法人和非法人组织。

第三条 各级人民政府应当采取措施，制止不正当竞争行为，为公平竞争创造良好的环境和条件。

国务院建立反不正当竞争工作协调机制，研究决定反不正当竞争重大政策，协调处理维护市场秩序的重大问题。

第四条 县级以上人民政府履行工商行政管理职责的部门对不正当竞争行为进行查处；法律、行政法规规定由其他部门查处的，依照其规定。

第五条 国家鼓励、支持和保护一切组织和个人对不正当竞争行为进行社会监督。

国家机关及其工作人员不得支持、包庇不正当竞争行为。

Industry organizations shall strengthen industry self-regulation, provide guidance and rules for their members to compete according to the law, and maintain the order of market competition.

Chapter II Acts of Unfair Competition

Article 6 A business shall not commit the following acts of confusion to mislead a person into believing that a commodity is one of another person or has a particular connection with another person:

(1) Using without permission a label identical or similar to the name, packaging or decoration, among others, of another person's commodity with certain influence.

(2) Using without permission another person's name with certain influence, such as the name (including abbreviations and trade names) of an enterprise, the name (including abbreviations) of a social organization, or the name (including pseudonyms, stage names and name translations) of an individual.

(3) Using without permission the principal part of a domain name, the name of a website, or a web page with certain influence, among others, of another person.

(4) Other acts of confusion sufficient to mislead a person into believing that a commodity is one of another person or has a particular connection with another person.

Article 7 A business shall not seek transaction opportunities or competitive edges by bribing the following entities or individuals with property or by any other means:

(1) An employee of the other party to a transaction.

(2) The entity or individual authorized by the other party to a transaction to handle relevant affairs.

(3) An entity or an individual that uses power or influence to affect a transaction.

A business may, in a transaction, explicitly pay a discount to the other party to the transaction, or pay a commission to an intermediary. In either case, the business shall faithfully make an entry in its account book. The business

行业组织应当加强行业自律，引导、规范会员依法竞争，维护市场竞争秩序。

第二章 不正当竞争行为

第六条 经营者不得实施下列混淆行为，引人误认为是他人商品或者与他人存在特定联系：

（一）擅自使用与他人有一定影响的商品名称、包装、装潢等相同或者近似的标识；

（二）擅自使用他人有一定影响的企业名称（包括简称、字号等）、社会组织名称（包括简称等）、姓名（包括笔名、艺名、译名等）；

（三）擅自使用他人有一定影响的域名主体部分、网站名称、网页等；

（四）其他足以引人误认为是他人商品或者与他人存在特定联系的混淆行为。

第七条 经营者不得采用财物或者其他手段贿赂下列单位或者个人，以谋取交易机会或者竞争优势：

（一）交易相对方的工作人员；

（二）受交易相对方委托办理相关事务的单位或者个人；

（三）利用职权或者影响力影响交易的单位或者个人。

经营者在交易活动中，可以以明示方式向交易相对方支付折扣，或者向中间人支付佣金。经营者向交易相对方支付折扣、向中间人支付佣金的，应当如实入账。

receiving the discount or commission shall also faithfully enter it into its account book.

A bribery committed by an employee of a business is deemed to have been committed by the business, unless the business has evidence that the act of the employee is irrelevant to seeking a transaction opportunity or competitive edge for the business.

Article 8 A business shall not conduct any false or misleading commercial publicity in respect of the performance, functions, quality, sales, user reviews, and honors received of its commodities, in order to defraud or mislead consumers.

A business shall not help another business conduct any false or misleading commercial publicity by organizing false transactions or any other means.

Article 9 A business shall not commit the following acts of infringing upon trade secrets:

(1) Acquiring a trade secret from the right holder by theft, bribery, fraud, coercion, electronic intrusion, or any other illicit means.

(2) Disclosing, using, or allowing another person to use a trade secret acquired from the right holder by any means as specified in the preceding subparagraph.

(3) Disclosing, using, or allowing another person to use a trade secret in its possession, in violation of its confidentiality obligation or the requirements of the right holder for keeping the trade secret confidential.

(4) Abetting a person, or tempting, or aiding a person into or in acquiring, disclosing, using, or allowing another person to use the trade secret of the right holder in violation of his or her non-disclosure obligation or the requirements of the right holder for keeping the trade secret confidential.

An illegal act as set forth in the preceding paragraph committed by a natural person, legal person or unincorporated organization other than a business shall be treated as infringement of the trade secret.

Where a third party knows or should have known that an employee or a former employee of the right holder of a

接受折扣、佣金的经营者也应当如实入账。

经营者的工作人员进行贿赂的，应当认定为经营者的行为；但是，经营者有证据证明该工作人员的行为与为经营者谋取交易机会或者竞争优势无关的除外。

第八条 经营者不得对其商品的性能、功能、质量、销售状况、用户评价、曾获荣誉等作虚假或者引人误解的商业宣传，欺骗、误导消费者。

经营者不得通过组织虚假交易等方式，帮助其他经营者进行虚假或者引人误解的商业宣传。

第九条 经营者不得实施下列侵犯商业秘密的行为：

（一）以盗窃、贿赂、欺诈、胁迫、电子侵入或者其他不正当手段获取权利人的商业秘密；

（二）披露、使用或者允许他人使用以前项手段获取的权利人的商业秘密；

（三）违反保密义务或者违反权利人有关保守商业秘密的要求，披露、使用或者允许他人使用其所掌握的商业秘密；

（四）教唆、引诱、帮助他人违反保密义务或者违反权利人有关保守商业秘密的要求，获取、披露、使用或者允许他人使用权利人的商业秘密。

经营者以外的其他自然人、法人和非法人组织实施前款所列违法行为的，视为侵犯商业秘密。

第三人明知或者应知商业秘密权利人的员工、前员工或者其他单

trade secret or any other entity or individual has committed an illegal act as specified in paragraph 1 of this Article but still acquires, discloses, uses, or allows another person to use the trade secret, the third party shall be deemed to have infringed upon the trade secret.

For the purpose of this Law, "trade secret" means technical, operational or other commercial information unknown to the public and is of commercial value for which the right holder has taken corresponding confidentiality measures.

Article 10 A business's premium campaign shall not fall under the following circumstances:

(1) The information on the types of premiums, conditions for claiming premiums, amount of a prize, or premiums, among others, in the premium campaign is ambiguous, affecting a claim for a premium.

(2) A premium campaign is conducted by offering non-existent premiums or intentionally pre-determining premium winners.

(3) In the case of a lottery-based premium campaign, the amount of the top prize exceeds 50,000 yuan.

Article 11 A business shall not fabricate or disseminate false or misleading information to damage the goodwill or product reputation of a competitor.

Article 12 A business engaging in production or distribution activities online shall abide by the provisions of this Law.

No business may, by technical means to affect users' options, among others, commit the following acts of interfering with or sabotaging the normal operation of online products or services legally provided by another business:

(1) Inserting a link or forcing a URL redirection in an online product or service legally provided by another business without its consent.

位、个人实施本条第一款所列违法行为，仍获取、披露、使用或者允许他人使用该商业秘密的，视为侵犯商业秘密。

本法所称的商业秘密，是指不为公众所知悉、具有商业价值并经权利人采取相应保密措施的技术信息、经营信息等商业信息。

第十条 经营者进行有奖销售不得存在下列情形：

（一）所设奖的种类、兑奖条件、奖金金额或者奖品等有奖销售信息不明确，影响兑奖；

（二）采用谎称有奖或者故意让内定人员中奖的欺骗方式进行有奖销售；

（三）抽奖式的有奖销售，最高奖的金额超过五万元。

第十一条 经营者不得编造、传播虚假信息或者误导性信息，损害竞争对手的商业信誉、商品声誉。

第十二条 经营者利用网络从事生产经营活动，应当遵守本法的各项规定。

经营者不得利用技术手段，通过影响用户选择或者其他方式，实施下列妨碍、破坏其他经营者合法提供的网络产品或者服务正常运行的行为：

（一）未经其他经营者同意，在其合法提供的网络产品或者服务中，插入链接、强制进行目标跳转；

(2) Misleading, defrauding, or forcing users into altering, shutting down, or uninstalling an online product or service legally provided by another business.

(3) Causing in bad faith incompatibility with an online product or service legally provided by another business.

(4) Other acts of interfering with or sabotaging the normal operation of online products or services legally provided by another business.

Chapter III Investigation of Suspected Acts of Unfair Competition

Article 13 The supervisory inspection departments may take the following measures in investigating suspected acts of unfair competition:

(1) Entering business premises suspected of acts of unfair competition for inspection.

(2) Questioning businesses, interested persons, and other relevant entities and individuals under investigation, and requiring them to provide relevant explanations or other materials relating to the acts under investigation.

(3) Consulting or duplicating agreements, account books, documents, files, records, business letters, and other materials relating to the suspected acts of unfair competition.

(4) Seizing or impounding property relating to the suspected acts of unfair competition.

(5) Inquiring about the bank accounts of businesses suspected of acts of unfair competition.

Before the measures in the preceding paragraph are taken, a written report shall be filed with the primary person in charge of the supervisory inspection department for an approval. Before the measures in subparagraphs (4) and (5) in the preceding paragraph are taken, a written report shall be filed with the primary person in charge of the supervisory inspection department of the people's government at or above the level of a districted city for an approval.

(二) 误导、欺骗、强迫用户修改、关闭、卸载其他经营者合法提供的网络产品或者服务；

(三) 恶意对其他经营者合法提供的网络产品或者服务实施不兼容；

(四) 其他妨碍、破坏其他经营者合法提供的网络产品或者服务正常运行的行为。

第三章 对涉嫌不正当竞争行为的调查

第十三条 监督检查部门调查涉嫌不正当竞争行为，可以采取下列措施：

(一) 进入涉嫌不正当竞争行为的经营场所进行检查；

(二) 询问被调查的经营者、利害关系人及其他有关单位、个人，要求其说明有关情况或者提供与被调查行为有关的其他资料；

(三) 查询、复制与涉嫌不正当竞争行为有关的协议、账簿、单据、文件、记录、业务函电和其他资料；

(四) 查封、扣押与涉嫌不正当竞争行为有关的财物；

(五) 查询涉嫌不正当竞争行为的经营者的银行账户。

采取前款规定的措施，应当向监督检查部门主要负责人书面报告，并经批准。采取前款第四项、第五项规定的措施，应当向设区的市级以上人民政府监督检查部门主要负责人书面报告，并经批准。

The supervisory inspection departments shall abide by the Administrative Compulsion Law of the People's Republic of China and other relevant laws and regulations in their investigations of suspected acts of unfair competition, and disclose the investigation and disposition results to the public in a timely manner.

Article 14 When the supervisory inspection departments investigate suspected acts of unfair competition, the businesses, interested persons, and other relevant entities and individuals under investigation shall faithfully provide relevant materials or information.

Article 15 The supervisory inspection departments and their employees shall have an obligation to keep the trade secrets known in their investigations confidential.

Article 16 Any entity or individual shall have the right to report a suspected act of unfair competition to the supervisory inspection department, which shall process the report in a timely manner as legally required after receiving it.

The supervisory inspection departments shall publish their telephone numbers, mailing boxes, or e-mail addresses for receiving reports, and keep informants confidential. In the case of a report with the informant choosing not to withhold its identity and with relevant facts and evidence provided, the supervisory inspection department shall notify the informant of the disposition result.

Chapter IV Legal Liability

Article 17 A business causing any damage to another person in violation of this Law shall assume civil liability according to the law.

A business whose lawful rights and interests are damaged by any act of unfair competition may institute an action in a people's court.

The amount of compensation for the damage caused to a business by any act of unfair competition shall be determined as per the actual loss of the business incurred for the infringement or if it is difficult to calculate the actual loss, as per the benefits acquired by the tortfeasor from the infringement. If a business infringes upon a trade secret in bad faith with serious circumstances, the amount of

监督检查部门调查涉嫌不正当竞争行为，应当遵守《中华人民共和国行政强制法》和其他有关法律、行政法规的规定，并应当将查处结果及时向社会公开。

第十四条 监督检查部门调查涉嫌不正当竞争行为，被调查的经营者、利害关系人及其他有关单位、个人应当如实提供有关资料或者情况。

第十五条 监督检查部门及其工作人员对调查过程中知悉的商业秘密负有保密义务。

第十六条 对涉嫌不正当竞争行为，任何单位和个人有权向监督检查部门举报，监督检查部门接到举报后应当依法及时处理。

监督检查部门应当向社会公开受理举报的电话、信箱或者电子邮件地址，并为举报人保密。对实名举报并提供相关事实和证据的，监督检查部门应当将处理结果告知举报人。

第四章 法律责任

第十七条 经营者违反本法规定，给他人造成损害的，应当依法承担民事责任。

经营者的合法权益受到不正当竞争行为损害的，可以向人民法院提起诉讼。

因不正当竞争行为受到损害的经营者的赔偿数额，按照其因被侵权所受到的实际损失确定；实际损失难以计算的，按照侵权人因侵权所获得的利益确定。经营者恶意实施侵犯商业秘密行为，情节严重的，可以在按照上述方法

compensation may be determined to be more than one time but not more than five times the amount determined by the aforesaid method. The amount of compensation shall also include reasonable disbursements made by the business to prevent the infringement.

Where a business violates Article 6 or Article 9 of this Law, and it is difficult to determine the actual loss suffered by the right holder due to the infringement or the benefits acquired by the tortfeasor from the infringement, a people's court may, based on the circumstances of the infringement, render a judgment to award compensation in the amount of not more than five million yuan to the right holder.

Article 18 Where a business commits any act of confusion in violation of Article 6 of this Law, the supervisory inspection department shall order it to cease the illegal act, and confiscate illegal commodities. If the amount of illegal operations is 50,000 yuan or more, it may also be fined not more than five times the amount of illegal operations; or if there is no amount of illegal operations or the amount of illegal operations is less than 50,000 yuan, it may also be fined not more than 250,000 yuan. If the circumstances are serious, its business license shall be revoked.

A business whose registered enterprise name is in violation of Article 6 of this Law shall, in a timely manner, undergo name modification registration; and before its name is modified, the original enterprise registration authority shall substitute its unified social credit code for its name.

Article 19 Where a business bribes another person in violation of Article 7 of this Law, the supervisory inspection department shall confiscate its illegal income, and impose a fine of not less than 100,000 yuan nor more than three million yuan on it. If the circumstances are serious, its business license shall be revoked.

Article 20 Where, in violation of Article 8 of this Law, a business conducts any false or misleading commercial publicity of its commodities or help another business conduct any false or misleading commercial publicity by organizing false transactions or any other means, the supervisory inspection department shall order it to cease the illegal act, and impose a fine of not less than 200,000 yuan nor more than one million yuan or if the

确定数额的一倍以上五倍以下确定赔偿数额。赔偿数额还应当包括经营者为制止侵权行为所支付的合理开支。

经营者违反本法第六条、第九条规定，权利人因被侵权所受到的实际损失、侵权人因侵权所获得的利益难以确定的，由人民法院根据侵权行为的情节判决给予权利人五百万元以下的赔偿。

第十八条 经营者违反本法第六条规定实施混淆行为的，由监督检查部门责令停止违法行为，没收违法商品。违法经营额五万元以上的，可以并处违法经营额五倍以下的罚款；没有违法经营额或者违法经营额不足五万元的，可以并处二十五万元以下的罚款。情节严重的，吊销营业执照。

经营者登记的企业名称违反本法第六条规定的，应当及时办理名称变更登记；名称变更前，由原企业登记机关以统一社会信用代码代替其名称。

第十九条 经营者违反本法第七条规定贿赂他人的，由监督检查部门没收违法所得，处十万元以上三百万元以下的罚款。情节严重的，吊销营业执照。

第二十条 经营者违反本法第八条规定对其商品作虚假或者引人误解的商业宣传，或者通过组织虚假交易等方式帮助其他经营者进行虚假或者引人误解的商业宣传的，由监督检查部门责令停止违法行为，处二十万元以上一百万元以下的罚款；情节严重

circumstances are serious, a fine of not less than one million yuan nor more than two million yuan on it, and in the latter case, its business license may be revoked.

A business publishing any false advertisements in violation of Article 8 of this Law shall be punished in accordance with the Advertising Law of the People's Republic of China.

Article 21 Where a business or any other natural person, legal person or unincorporated organization infringes upon a trade secret in violation of Article 9 of this Law, the supervisory inspection department shall order the violator to cease the illegal act, shall confiscate any illegal income, and impose a fine of not less than 100,000 yuan nor more than 1 million yuan, or, if the circumstances are serious, a fine of not less than 500,000 yuan nor more than 5 million yuan.

Article 22 Where a business conducts a premium campaign in violation of Article 10 of this Law, the supervisory inspection department shall order it to cease the illegal act, and impose a fine of not less than 50,000 yuan nor more than 500,000 yuan on it.

Article 23 Where a business causes any damage to the goodwill or product reputation of a competitor in violation of Article 11 of this Law, the supervisory inspection department shall order it to cease the illegal act and eliminate adverse effects, and impose a fine of not less than 100,000 yuan nor more than 500,000 yuan or if the circumstances are serious, a fine of not less than 500,000 yuan nor more than three million yuan on it.

Article 24 Where a business interferes with or sabotages the normal operation of online products or services legally provided by another business in violation of Article 12 of this Law, the supervisory inspection department shall order it to cease the illegal act, and impose a fine of not less than 100,000 yuan nor more than 500,000 yuan or if the circumstances are serious, a fine of not less than 500,000 yuan nor more than three million yuan on it.

Article 25 Where a business engages in any unfair competition in violation of this Law, if it voluntarily eliminates or mitigates the harmful consequences of its illegal act, among other statutory circumstances, a lighter or mitigated administrative punishment may be imposed on

的，处一百万元以上二百万元以下的罚款，可以吊销营业执照。

经营者违反本法第八条规定，属于发布虚假广告的，依照《中华人民共和国广告法》的规定处罚。

第二十一条 经营者以及其他自然人、法人和非法人组织违反本法第九条规定侵犯商业秘密的，由监督检查部门责令停止违法行为，没收违法所得，处十万元以上一百万元以下的罚款；情节严重的，处五十万元以上五百万元以下的罚款。

第二十二条 经营者违反本法第十条规定进行有奖销售的，由监督检查部门责令停止违法行为，处五万元以上五十万元以下的罚款。

第二十三条 经营者违反本法第十一条规定损害竞争对手商业信誉、商品声誉的，由监督检查部门责令停止违法行为、消除影响，处十万元以上五十万元以下的罚款；情节严重的，处五十万元以上三百万元以下的罚款。

第二十四条 经营者违反本法第十二条规定妨碍、破坏其他经营者合法提供的网络产品或者服务正常运行的，由监督检查部门责令停止违法行为，处十万元以上五十万元以下的罚款；情节严重的，处五十万元以上三百万元以下的罚款。

第二十五条 经营者违反本法规定从事不正当竞争，有主动消除或者减轻违法行为危害后果等法定情形的，依法从轻或者减轻行政处罚；违法行为轻微并及

it according to the law; or if the illegal act is minor and corrected in a timely manner without any harmful consequences, no administrative punishment shall be imposed on it.

Article 26 Where a business receives any administrative punishment for engaging in unfair competition in violation of this Law, the supervisory inspection department shall enter it into the credit record of the business, and publish it according to the provisions of the relevant laws and administrative regulations.

Article 27 Where the property of a business held civilly, administratively, and criminally liable for a violation of this Law is insufficient to cover all the liabilities, its property shall be first used for its assumption of civil liability.

Article 28 Where a supervisory inspection department's performance of duties under this Law is interfered with or its investigation is refused or impeded, the supervisory inspection department shall order the violator to take corrective action, and may impose a fine of not more than 5,000 yuan on the violator which is an individual or a fine of not more than 50,000 yuan on the violator which is an entity, and the public security authority may impose a public security administration punishment on the violator.

Article 29 A party may, according to the law, apply for administrative reconsideration or file an administrative lawsuit against a decision of the supervisory inspection department.

Article 30 Disciplinary action shall be taken according to the law against an employee of a supervisory inspection department who abuses power, commits dereliction of duties, makes falsehood for personal gains, or divulges any trade secret known in investigation.

Article 31 Where a violation of this Law is criminally punishable, the offender shall be held criminally liable according to the law.

Article 32 In the civil trial procedure for infringement of a trade secret, if the right holder of the trade secret provides prima facie evidence that it has taken confidentiality

时纠正，没有造成危害后果的，不予行政处罚。

第二十六条 经营者违反本法规定从事不正当竞争，受到行政处罚的，由监督检查部门记入信用记录，并依照有关法律、行政法规的规定予以公示。

第二十七条 经营者违反本法规定，应当承担民事责任、行政责任和刑事责任，其财产不足以支付的，优先用于承担民事责任。

第二十八条 妨害监督检查部门依照本法履行职责，拒绝、阻碍调查的，由监督检查部门责令改正，对个人可以处五千元以下的罚款，对单位可以处五万元以下的罚款，并可以由公安机关依法给予治安管理处罚。

第二十九条 当事人对监督检查部门作出的决定不服的，可以依法申请行政复议或者提起行政诉讼。

第三十条 监督检查部门的工作人员滥用职权、玩忽职守、徇私舞弊或者泄露调查过程中知悉的商业秘密的，依法给予处分。

第三十一条 违反本法规定，构成犯罪的，依法追究刑事责任。

第三十二条 在侵犯商业秘密的民事审判程序中，商业秘密权利人提供初步证据，证明其已

measures for the claimed trade secret and reasonably indicates that the trade secret has been infringed upon, the alleged tortfeasor shall prove that the trade secret claimed by the right holder is not a trade secret as described in this Law.

If the right holder of a trade secret provides prima facie evidence to reasonably indicate that the trade secret has been infringed upon, and provide any of the following evidence, the alleged tortfeasor shall prove the absence of such infringement:

(1) Evidence that the alleged tortfeasor has a channel or an opportunity to access the trade secret and that the information it uses is substantially the same as the trade secret.

(2) Evidence that the trade secret has been disclosed or used, or is at risk of disclosure or use, by the alleged tortfeasor.

(3) Evidence that the trade secret is otherwise infringed upon by the alleged tortfeasor.

Chapter V Supplemental Provision

Article 33 This Law shall come into force on January 1, 2018.

经对所主张的商业秘密采取保密措施，且合理表明商业秘密被侵犯，涉嫌侵权人应当证明权利人所主张的商业秘密不属于本法规定的商业秘密。

商业秘密权利人提供初步证据合理表明商业秘密被侵犯，且提供以下证据之一的，涉嫌侵权人应当证明其不存在侵犯商业秘密的行为：

（一）有证据表明涉嫌侵权人有渠道或者机会获取商业秘密，且其使用的信息与该商业秘密实质上相同；

（二）有证据表明商业秘密已经被涉嫌侵权人披露、使用或者有被披露、使用的风险；

（三）有其他证据表明商业秘密被涉嫌侵权人侵犯。

第五章 附 则

第三十三条 本法自 2018 年 1 月 1 日起施行。