

Chapter 407.

***Commercial Advertisement (Protection of Local Industry) Act 1985.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 407.

***Commercial Advertisement (Protection of Local Industry) Act 1985.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Commercial Advertisement (Protection of Local Industry) Act 1985,***

Being an Act—

- (a) to ensure the development of a Papua New Guinea advertising industry; and
- (b) to increase the employment opportunities for Papua New Guinea citizens in advertising production; and
- (c) to reduce the outgoing of foreign exchange revenues for advertising purposes; and
- (d) to foster a truly Papua New Guinean advertising identity,

and for related purposes.

**PART I. – PRELIMINARY.**

**1. PURPOSE OF THE ACT.**

It is declared for the purposes of Section 38 of the *Constitution (general qualification of qualified rights)* that because of—

- (a) the general lack of sophistication and educational standards of many people in the country; and
- (b) the general tendency of the public to rely on almost any form of advertisement,

the purpose of this Act is to restrict or regulate the right of freedom of expression and publication granted by Section 46 (*freedom of expression*) of the *Constitution* in order to protect and foster Papua New Guinean culture in so far as the same could be adversely affected by advertisements—

- (c) not indigenous to the country; and

- (d) capable of unduly creating images and impressions not commensurate with Papua New Guinean culture and life style.

## 2. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**actor**” means a person who is used for the purpose of advertising goods and services and includes the use of such person as a model for photographic depiction, play-acting, miming, speaking, singing and any other purpose associated with such things;

“**advertiser**” means the person or persons on whose behalf any advertising material is published and includes the advertising agent (if any) used by the advertiser;

“**advertising agent**” means any person who, by any means, for a fee, reward, commission, wage or salary, produces or assists in the production of, or placement of, advertising material with a publisher on behalf of the advertiser;

“**advertising material**” means every form of publication in the country inviting the public to purchase, lease, hire or use the goods or services advertised or to do certain other things, but does not include advertisements in a journal, magazine, or newspaper, on radio or broadcast television or other like form, originated and published outside the country and intended for the world at large, unless the advertisement is extracted, removed or taken whole or in part and used as original for the purpose of an advertisement in the country, but not including any writing, letter, device, sign, photography, film, broadcast television production or radio production intended or appearing to be intended for the purpose of propagating, advancing or supporting any principles or views or the dissemination of information or for any like purpose and not being for the purpose of inducing, coercing or inviting the public to purchase, lease or hire goods or services;

“**artist**” means any person who produces by any means or mode, irrespective of its artistic quality, paintings, sculptures, drawings, writing, engravings, photographs, graphic designs or any works of artistic craftsmanship not falling within those categories;

“**cable television**” means any network or group of television receiving apparatus located within more than 10 separate dwelling houses or hotels receiving the same visual and audio film signals by cable from a common transmitter or video apparatus;

“**cinema**” means any land or premises on land (except a private dwelling house) used for the exhibition of films, but it does not, in relation to any year, include—

- (a) any church, chapel, or other place of religious worship, or any hall or other premises used in connection with, and for the purposes of, any church, chapel or other such place, if the number of days on which films are exhibited in that year at the church or other such place (exclusive of any exhibition forming part of a religious service) does not exceed six; or
- (b) any premises used in that year for providing entertainment at which the exhibition of film is only part of the programme, if the total playing time of the film or films exhibited in the course of any one of those entertainments does not exceed 25 minutes;

**“the commencement date”** means 28 June 1985, the date on which the *Commercial Advertisement (Protection of Local Industry) Act 1985* came into force;

**“film”** means any film intended for use in a cinematograph, video, broadcast television, cable television or any similar apparatus and may also include any sequence of visual images recorded on material of any description (whether translucent or not) so as to be capable, by use of that material—

- (a) of being shown as a moving picture; or
- (b) of being recorded on other material (whether translucent or not), by the use of which it can be so shown and the sound production incorporated on it;

**“foreign enterprise”** means foreign enterprise as defined in the *Investment Promotion Act 1992*;

**“goods”** includes—

- (a) land, buildings, electricity, vehicles, vessels, aircraft, animals, articles and things of any description; and
- (b) rights in respect of goods;

**“newspaper”** includes a paper or pamphlet that—

- (a) contains—
  - (i) any public news, intelligence or the record of an occurrence; or
  - (ii) remarks or observations on any public news, intelligence or occurrence, or any political matter; and
- (b) is published for sale periodically;

**“service”** means—

- (a) any service supplied or carried on by any person or body of persons, incorporated or unincorporated, engaged in an industrial, commercial business, profit-making or remunerative undertaking or enterprise (including a professional practice); or

- (b) any right or privilege for which remuneration is payable in the form of royalty, stampage, tribute or other levy based on volume or value of goods produced; or
- (c) any rights under an agreement—
  - (i) for the hiring of goods; or
  - (ii) for the hire, use or occupation of any wharf or dock; or
  - (iii) for the provision of lodging; or
- (d) any benefit under a contract of work and labour, or of work and labour and the supply of materials; or
- (e) lotteries or any games of chance or competition;

**“point of sale advertising material”** means any advertising material used by the seller, hirer, lessor or vendor of goods and services and displayed on, in or contiguous to the place of business of the seller of any goods and services but does not include packaging material incorporating advertising on that material;

**“promotional material”** includes any goods produced for the purpose of distributing to the public, without cost to the public, in order to induce or coerce the public to purchase, lease, hire or use goods or services but does not include journals, magazines, posters, documents, point of sale material or newspapers of any kind;

**“publish”** in relation to advertising material means to place the advertising material before the public or a section of the public by any means.

**3. ACT TO BIND STATE.**

This Act binds the State.



**PART II. – PROHIBITION OF CERTAIN ADVERTISEMENTS .**

**4. RESTRICTIONS ON PERSONS PRODUCING ADVERTISEMENTS.**

(1) Subject to this Act the production, creation or mode of creation or placement of advertising material for publication in the country shall be produced, created or made or placed for publication in the country by–

- (a) citizens who are resident in the country; or
- (b) non-citizens who–
  - (i) are ordinarily resident in the country; and
  - (ii) are employed in a position that has been approved by the Head of the Department that administers the *Employment of Non-citizens Act 1978* or have issued to them a work permit under that Act, allowing them to work for remuneration in the country for that purpose; or
- (c) a corporation–
  - (i) registered in the country; and
  - (ii) if it is a foreign enterprise–granted a certificate for the purpose of producing and placing advertising material for publication under Section 25 of the *Investment Promotion Act 1992*.

(2) Subject to this Act, any advertising material or any composite part of such advertising material produced, created or made outside the country shall not be published in the country–

- (a) by newspaper; or
- (b) in a cinema; or
- (c) by radio; or
- (d) by broadcast television or cable television; or
- (e) by any other means.

**5. EXEMPTION OF CERTAIN ADVERTISEMENTS.**

Where the technical facilities for the production of, or mode of production of, any advertising material is not available within the country the advertising material may, to the extent of such technical unavailability, be produced outside the country for publication in the country.

**6. CONTENT OF ADVERTISING MATERIAL.**

The production, creation or mode of creation, of advertising material includes–

- (a) graphic design; or
- (b) photographic material; or

- (c) animation; or
- (d) acting; or
- (e) film material; or
- (f) artistic work; or
- (g) original script writing; or
- (h) the production of music (not including recorded background music which is not related to the sales message of the advertising materials),

but does not include the manufacture of the material on which the advertising material is printed or filmed.

## 7. RESTRICTIONS ON FILMING.

Photographic material or film for use as advertising material for publication in the country and photographed or filmed inside or outside the country may be published in the country, provided the person or persons who created, designed, directed or carried out, the photography or filming are—

- (a) citizens of the country ordinarily resident in the country; or
- (b) non-citizens who—
  - (i) are ordinarily resident in the country; and
  - (ii) are employed in a position that has been approved by the Head of the Department that administers the *Employment of Non-citizens Act 1978* or have issued to them a work permit under that Act, allowing them to work for remuneration in the country; and
  - (iii) are employed under a written contract of employment to work in the country for a period greater than one year; or
- (c) a corporation—
  - (i) registered in the country; and
  - (ii) if it is a foreign enterprise—granted a certificate for the purpose of producing, by any means, advertising material, under Section 25 of the *Investment Promotion Act 1992*.

**PART III. – MISCELLANEOUS.**

**8. EXEMPTIONS.**

(1) Part II does not apply to–

- (a) the production, mode of production or creation of promotional material for distribution in the country; or
- (b) film, not for use on broadcast television or cable television, sold, leased or hired to persons in the country for viewing in any premises other than a cinema or for viewing on private non-broadcast television or non-cable television; or
- (c) material used to package goods for sale, lease or hire incorporating advertising material on the packaging; or
- (d) the production, creation, or mode of creation of, advertising material or point of sale advertising material, produced outside the country inviting the public to view–
  - (i) cinema films, television films or recordings of entertainers, sportsmen or actors from outside the country; and
  - (ii) live appearances of such entertainers, actors or sportsmen,  
provided the advertising material or point of sale advertising material, accurately represents or depicts the nature of the live or recorded entertainment, artistic or sporting exhibitions to be given in the country; or
- (e) the production and placement of advertising material produced, made and created in the country and not being a copy of advertising material produced, made or created outside the country, by any person or corporation, not being in the business of an advertising agent, resident in the country and intended to advertise the goods (owned, manufactured, produced or in possession of that person or corporation) or services of that person or corporation whether or not such person or corporation is in the business of selling, leasing or hiring such goods and services or goods or services; or
- (f) advertising material produced outside the country and incorporated in an advertisement published in the country on broadcast television or cable television or for viewing in cinema in the country, provided the content of the advertising material produced outside the country does not exceed 75% by duration of any such advertisement; or
- (g) printed materials produced outside the country for the international trade market and for free distribution within the country and containing technical specifications, even though the materials include some advertising, which are not published in newspapers, broadcast television, cable television or cinema in the country; or

- (h) drawings or photographs of goods, representation of logos, registered brand names, registered trademarks, slogans and like devices supplied internationally and used as part of, or to facilitate the design of, advertising materials created, produced and published in the country; or
- (i) photographic material or film for use as part of newspaper or point of sale advertising material created, produced and published in the country, provided the photographic material or film—
  - (i) depicts famous persons, places, events or objects which cannot be photographed or filmed in the country; and
  - (ii) is not a reproduction in whole or in part of advertising material created and produced outside the country; or
- (j) sound recordings produced outside the country and used as part of or to facilitate the design of advertising material created, produced and published in the country, provided such recordings do not contain reference to specific brand names or company names;
- (k)<sup>1</sup> the production, mode of production or creation of all advertising materials published in the country before 1 January 1987 except materials published only by means of video or cable or broadcast television; or
- (l)<sup>2</sup> the publication in any way of all advertising for the sole purpose of displaying in the country for educational purposes the history of advertising material or the use of advertising material in commerce and industry; or
- (m)<sup>3</sup> the production, mode of production or creation of all advertising material published solely as outdoor or indoor signs (including point of sale material) whether static or movable and not published by means of film, television or newspaper or any other means; or
- (n)<sup>4</sup> printed material which is supplied for goods and which contains instructions for use or maintenance of such goods and which is published only by free distribution to the public at the point of sale of such goods or packaged with the goods for delivery to the purchaser; or

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<sup>1</sup> Section 8(1)(k) inserted by *Commercial Advertisement (Protection of Local Industry) (Amendment No. 2) Act 1986* (No. 61 of 1986), s(a).

<sup>2</sup> Section 8(1)(l) inserted by *Commercial Advertisement (Protection of Local Industry) (Amendment No. 2) Act 1986* (No. 61 of 1986), s(a).

<sup>3</sup> Section 8(1)(m) inserted by *Commercial Advertisement (Protection of Local Industry) (Amendment No. 2) Act 1986* (No. 61 of 1986), s(a).

<sup>4</sup> Section 8(1)(n) inserted by *Commercial Advertisement (Protection of Local Industry) (Amendment No. 2) Act 1986* (No. 61 of 1986), s(a).

- (o)<sup>5</sup> advertising material published by means of broadcast television in the country which supports or promotes goods which are marketed or services which are offered internationally.

(2) Section 8(1)(f) ceases to apply after three years from the commencement date and any advertising material for publication in cinema or broadcast television or cable television in the country may contain by duration, for any one advertisement, a maximum of 20% of content of advertising material produced outside the country.

(3)<sup>6</sup> <sup>7</sup>The exemptions under Subsection (1)(k) and (o) shall cease to apply on 1 January 1988.

## **9. PENALTY FOR CONTRAVENTION.**

(1) Subject to this Act any advertiser or advertising agent or the proprietor, licensee, lessee or owner of a cinema, newspaper, radio, broadcast television, cable television or producer of advertising material, who publishes or assists, by any means, in the publication of advertising material that contravenes or fails to comply with Section 4, is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

Default penalty: A fine not exceeding K1,000.00.

(2) Where any corporation contravenes the provisions of this Act, every director and every person concerned in the management of the corporation is guilty of a like offence if the act which constituted the offence took place with his authority, permission or consent.

(3)<sup>8</sup> <sup>9</sup>Subsections (1) and (2) shall not come into force for a period of 540 days from the commencement date.

## **10. REGULATIONS.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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<sup>5</sup> Section 8(1)(o) inserted by *Commercial Advertisement (Protection of Local Industry) (Amendment No. 2) Act 1986* (No. 61 of 1986), s(a).

<sup>6</sup> Section 8(3) inserted by *Commercial Advertisement (Protection of Local Industry) (Amendment No. 2) Act 1986* (No. 61 of 1986), s(b). Amended by *Commercial Advertisement (Protection of Local Industry) (Amendment) Act 1987* (No. 4 of 1987), s(b).

<sup>7</sup> Section 8(3) inserted by *Commercial Advertisement (Protection of Local Industry) (Amendment No. 2) Act 1986* (No. 61 of 1986), s(b). Amended by *Commercial Advertisement (Protection of Local Industry) (Amendment) Act 1987* (No. 4 of 1987), s(b).

<sup>8</sup> Section 9(3) amended by *Commercial Advertisement (Protection of Local Industry) (Amendment) Act 1986* (No. 1 of 1986).

<sup>9</sup> Section 9(3) amended by *Commercial Advertisement (Protection of Local Industry) (Amendment) Act 1986* (No. 1 of 1986).

**s. 10.**                    *Commercial Advertisement (Protection of Local Industry) 9999*

Office of Legislative Counsel, PNG