CHAPTER 7

Fair Trade Act

**SECTION 39‑7‑10.** Short title.

 This chapter may be known and cited as the “Fair Trade Act.”

HISTORY: 1962 Code Section 66‑91; 1952 Code Section 66‑91; 1942 Code Section 6639; 1937 (40) 301.

LIBRARY REFERENCES

87 C.J.S., Trade‑Marks, Trade‑Names, and Unfair Competition Sections 246 et seq.

LAW REVIEW AND JOURNAL COMMENTARIES

The South Carolina Unfair Trade Practices Act: Sleeping Giant or Illusive Panacea? 33 S.C. L. Rev. 479 (March 1982).

NOTES OF DECISIONS

In general 1

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Prior to the decision of the State Supreme Court in Rogers‑Kent, Inc. v General Electric Co. (1957) 231 SC 636, 99 SE2d 665. Miles Laboratories, Inc. v Seignious (1939, DC SC) 30 F Supp 549. Calvert Distilling Co. v Brandon (1938, DC SC) 24 F Supp 857.

The South Carolina Fair Trade Act (Code 1962 Sections 66‑91 through 66‑95) violates SC Const, Art 1, Section 5 (now Art 1, Section 3), and is therefore ineffective. Bulova Watch Co. v. Rogers‑Kent, Inc., 1960, 181 F.Supp. 340.

This article, in so far as it applies to nonsigners of a minimum price contract, is unconstitutional upon the ground that it constitutes a deprivation of property without due process of law in violation of SC Const, Art 1, Section 5 (now Art 1, Section 3). Rogers‑Kent, Inc. v. General Elec. Co. (S.C. 1957) 231 S.C. 636, 99 S.E.2d 665. Antitrust And Trade Regulation 455; Constitutional Law 4267

**SECTION 39‑7‑20.** Definitions.

 The following terms, as used in this chapter are defined as follows:

 (1) “Commodity” means any subject of commerce;

 (2) “Producer” means any grower, baker, maker, manufacturer, bottler, packer, converter, processor or publisher;

 (3) “Wholesaler” means any person selling a commodity other than a producer or retailer; and

 (4) “Retailer” means any person selling a commodity to consumers for use.

HISTORY: 1962 Code Section 66‑92; 1952 Code Section 66‑92; 1942 Code Section 6639; 1937 (40) 301.

**SECTION 39‑7‑30.** Permissible provisions in contract for sale of commodity bearing trademark.

 No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trademark, brand or name of the producer, distributor or owner of such commodity and which is in fair and open competition with commodities of the same general class produced by others shall be deemed in violation of any law of the State by reason of any of the following provisions which may be contained in such contract:

 (1) That the buyer will not resell such commodity at less than the minimum price stipulated by the vendor; or

 (2) That the producer or vendee of a commodity require upon the sale of such commodity to another that such purchaser agree that he will not, in turn, resell at less than the minimum price stipulated by such producer or vendee.

 Such provisions in any contract shall be deemed to contain or imply conditions that such commodity may be resold without reference to such agreement in the following cases:

 (a) In closing out the owner’s stock for the purpose of discontinuing dealing in such commodity if such stock is first offered to the producer or distributor of such stock at the original invoice price at least ten days before such stock shall be offered for sale to the public;

 (b) When the goods are damaged or deteriorated in quality and one week’s notice is given to the public thereof by publication in a newspaper published in the county in which the seller’s place of business is located; or

 (c) By any officer acting under the orders of any court.

HISTORY: 1962 Code Section 66‑93; 1952 Code Section 66‑93; 1942 Code Section 6639; 1937 (40) 301.

LIBRARY REFERENCES

87 C.J.S., Trade‑Marks, Trade‑Names, and Unfair Competition Sections 252 et seq.

LAW REVIEW AND JOURNAL COMMENTARIES

Trademark doctrines for global electronic commerce, 49 S.C. L. Rev. 695 (Summer 1998).

**SECTION 39‑7‑40.** Sale below stipulated price shall constitute unfair competition.

 Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract containing either of the provisions mentioned in Section 39‑7‑30, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby.

HISTORY: 1962 Code Section 66‑94; 1952 Code Section 66‑94; 1942 Code Section 6639; 1937 (40) 301.

LIBRARY REFERENCES

87 C.J.S., Trade‑Marks, Trade‑Names, and Unfair Competition Sections 257 et seq.

United States Supreme Court Annotations

Construction of McGuire Act (15 USC Section 45(a)) concerning the applicability of state fair trade laws to nonsigning reseller. 12 L Ed 2d 1207.

**SECTION 39‑7‑50.** Exemptions.

 This chapter shall not apply to any contract or agreement between producers, between wholesalers or between retailers as to the sale or resale prices.

HISTORY: 1962 Code Section 66‑95; 1952 Code Section 66‑95; 1942 Code Section 6639; 1937 (40) 301.

LIBRARY REFERENCES

87 C.J.S., Trade‑Marks, Trade‑Names, and Unfair Competition Section 251.