

STATE OF NEW YORK

5368

2021-2022 Regular Sessions

IN SENATE

March 3, 2021

Introduced by Sen. OBERACKER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to deceptive acts and practices in the conduct of any business, trade or commerce

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 349 of the general business law is amended by
2 adding a new subdivision (k) to read as follows:

3 (k) For purposes of this article, in addition to any other deceptive
4 act or practice determined by law, it shall also constitute a deceptive
5 act or practice in the conduct of any business, trade or commerce, for
6 any person, firm, corporation or association or agent or employee there-
7 of, to make an unsolicited threat concerning an alleged violation of
8 intellectual property rights.

9 (1) For purposes of this subdivision, an unsolicited threat concerning
10 an alleged violation of intellectual property rights shall consist of:

11 (i) threatening civil litigation, where such threat relates to an
12 alleged violation of intellectual property rights, unless the party so
13 threatened makes a payment of money to a person, firm, corporation or
14 association or agent or employee thereof, by a date certain; or

15 (ii) demanding payment from a person by a date certain, where such
16 demand relates to an alleged violation of intellectual property rights,
17 unless the person so demanded makes a payment of money by a date
18 certain, and that unless such initial demanded payment is made by the
19 demandee by such date certain, then such demanded payment will increase
20 to a higher demanded amount after such date certain.

21 (2) This subdivision shall not apply to an attorney licensed to prac-
22 tice law before the courts of the state of New York, and/or licensed to
23 practice intellectual property law before the federal courts of the
24 United States, where such attorney has been duly retained and employed
25 by the registered holder of intellectual property rights, in accordance

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 with federal law, and is making such demand consistent with ethical
2 guidelines governing the conduct of attorneys, in the course of such
3 attorney's representation of such registered holder, during a non frivo-
4 lous dispute for an alleged violation of such registered holder's intel-
5 lectual property rights.

6 § 2. This act shall take effect immediately.