**10.02 “TRADE OR COMMERCE” DEFINED**

Trade or commerce means advertising, offering for sale, selling, renting, leasing, or distributing any services, goods, property, or any other thing of value. Trade or commerce includes transactions between businesses and transactions with individual customers or consumers. [Trade or commerce also includes the solicitation of donations or contributions of money or property.]

**Use Note**

Use this instruction only when there is a dispute as to whether the defendant was engaged in trade or commerce. The bracketed language should be used as appropriate.

**Comment**

The Alaska Supreme Court has not stated whether the first element of a claim for unfair or deceptive trade practices, “that the defendant is engaged in trade or commerce,” presents an issue for the jury or the court, or what facts are relevant to its determination. Nor has the court defined what constitutes “trade or commerce.” The Alaska Supreme Court has noted that the “UTPA is a remedial statute” and it has “broadly construed the ‘engaged-in-commerce’ prong to encompass purchases of goods and services in business-to-business commercial transactions as well as in individual consumer transactions.” *Alaska Interstate Const., LLC v. Pac. Diversified Investments, Inc.*, 279 P.3d 1156, 1169 (Alaska 2012). In *Western Star Trucks, Inc. v. Big Iron Equip. Serv., Inc*., 101 P.3d 1047 (Alaska 2004), the court noted that there was “nothing…in the Alaska act that could serve to limit the Alaska act to goods and services offered to the public,” and “[t]he legislative history of the act indicates that while consumer protection was the dominant motive underlying the act, the act was not intended to be limited to consumer transactions.” *Id.* at 1052. Accordingly, the UTPA was construed to include commercial transactions, as well as consumer transactions. *Id.* In *Alaska Interstate Construction*, the court held that “[e]ven where a party has a fiduciary relationship with a business entity, the UTPA can apply if the parties also engage in arms-length commercial transactions.” *Id.* at 1171-72. The only transactions that have been excluded from the UTPA are real estate transactions. *State v. First National Bank of Anchorage,* 660 P.2d 406 (Alaska 1982); and *Aloha Lumber Corp. v. University of Alaska*, 994 P.2d 991 (Alaska 1999). *Alaska Interstate Constr.* and *Western Star Trucks, Inc.* therefore indicate that the phrase “trade or commerce” is to be construed broadly.