

## Unfair Competition Act

The Unfair Competition Act of 16 April 1993 defines as an unlawful act anything that violates or threatens another's interests. The Act lists examples of actions constituting acts of unfair competition:

### **Misleading designation of an enterprise**

This includes naming an enterprise with the intent to mislead clients as to its identity, e.g. using another enterprise's company name or an acronym of another company's name.

### **Misleading designation of products or services**

Labelling products or services shall be considered an act of unfair competition, if it may be misleading for a client as to the key attributes of these products or services, such as their origin, quantity, quality, components, usage, and the risks involved in using them. Giving a product or service a false or misleading geographical designation or protected designation of place of origin is also an act of unfair competition.

### **Infringement of a business's confidential information**

Confidential information is company information of commercial value, not revealed to the public (technical, technological, organisational, know-how etc), and which a business has taken necessary steps to keep confidential. The following are to be considered acts of unfair competition: transferring, revealing, using, or purchasing from an unauthorised person another business's confidential information.

### **Inciting to non-performance of an agreement or personnel duties**

Inciting an entrepreneur's employee to non-performance, or improper performance of duties, or an entrepreneur's client to termination or non-performance of an agreement with that entrepreneur, so as to obtain profit or to harm that entrepreneur, is considered an act of unfair competition.

### **Counterfeiting**

Imitating an existing product constitutes an act of unfair competition, if it misleads a client as to the identity of a product or its producer. Imitating a product's functional attributes is allowed, unless it involves imitating a product's characteristic form, thus misleading the client as to the identity of that product or its producer.

### **Distributing unfair information**

Distributing unfair or misleading information about one's own or someone else's business is an act of unfair competition if it is aimed at gain-

ing benefits or causing losses.

### **Impeding market entry**

The Act describes actions deemed to impede the entry of other businesses into the market as acts of unfair competition. These include selling products/services below the cost of production or purchase (dumping prices), unreasonably dissimilar treatment of clients, and charging payments for accepting products other than with a commercial margin of profits.

The Act also provides that making access to the market more difficult for small businesses by selling products or services in retail stores larger than 400m<sup>2</sup> at prices below the cost of production or purchase shall be an act of unfair competition. This excludes end-of season sales, products nearing the end of their shelf-life, and store liquidations.

### **Bribing a person performing a public function**

Bribing a person performing a public functions, which is also a crime, according to the provisions of the Criminal Code, constitutes an act of unfair competition.

### **Stealing television signals**

The distribution of television and radio programmes is subject to protection. Production, import, distribution, sale or other usage of devices aimed at unlawful access to protected services (such as cable or satellite TV), constitutes an act of unfair competition.

### **Promotion**

Selling products or services to clients while granting to some or all purchasers free prizes, being a product or services other than the ones which are sold, shall be considered an act of unfair competition unless the prize is a product or a service of a minor value (or sample) or is an award in a promotional lottery, organised in accordance with the provisions of the Gaming Act, or in a contest, whose results do not depend on chance.

Since August 2007, it is not expressly prohibited by the Unfair competition act to construe an offer concerning a promotional lottery in a way which provides a consumer with a certainty of winning if only he or she makes an order or pays a lump sum for purchased goods. Although, under the Act on combating unfair market practices, it may be understood as an unfair and misleading practice.

### **Pyramid sale systems**

Pyramid sales are defined as a system in which the purchase of products or services is offered by promising some material benefits to purchasers, in lieu of encouraging other persons to enter into same transactions.

Organising such a sale system shall not be considered an act of unfair competition, if:

- The promised material benefit comes from income gained from

the sale of goods or services at prices, which may not grossly exceed a real market value for those goods and services; and

- A person resigning from participation in the system is entitled to re-sell to the organiser all products, purchased within the preceding six months, for not less than 90% of purchase price

### **Sale in discount stores under own brand**

Introducing into the market through chains of discount stores of private label products, i.e. a brand owned by an owner of a chain of stores or its subsidiaries, shall be an act of unfair competition if such products constitute not less than 20% of turnover.

### **'Argentinian' systems**

Performing commercial activities through so-called consortium systems (the 'Argentinian' systems) involves managing property collected by a group, to which consumers belong, created to finance the purchase of products or services for the benefit of a group.

Argentinian systems were made subject to provisions of the Act due to several cases of infringing consumers' rights in hitherto existing consortium systems. In particular, those infringements concerned obstructions in resigning from a system before its expiration, refusals to repay initial payments to consumers who resigned from a system, entering into agreements with consumers which included prohibited contract clauses, etc.

The Act on combating unfair market practices of 23 August 2007 repealed the regulations of the Unfair competition act concerning consortium systems.

Under the Act on combating unfair market practices, performing commercial activities through a consortium system is understood as an unfair market practice. This solution enables a consumer whose interest is threatened or infringed to raise a claim against the entrepreneur performing commercial activities through consortium system and request for example: relinquishment of such a practice, removing its effects, repairing the damage pursuant to general rules, and making one statement or repeated statements of appropriate content and form.

### **Liability stemming from an act of unfair competition**

Committing an act of unfair competition may give rise to civil or criminal legal liability.

### **Civil law liability**

An entrepreneur whose interest has been violated or threatened due to an act of unfair competition may request the entrepreneur who committed an act of unfair competition, to:

- Cease the prohibited activities
- Remove the effects of those activities

- Make a certain public declaration
- Compensate any loss caused
- Release unlawfully gained profits
- Pay an appropriate amount of money for agreed public purposes - if an act of unfair competition was caused by fault.

It should be noted that the above demands (except for some cases) may also be submitted by an organisation, whose statutory purpose is protection of entrepreneurs' interests.

### **Criminal law liability**

The Act introduces criminal liability for committing some of acts of unfair competition provided for in this act. Committing one of the offences (or misconducts) described in this act is made subject to a penalty or a fine, restriction of freedom and even imprisonment (up to eight years). Prosecution of offences (or misconducts) provided for in the Act on unfair competition is initiated based on a motion (request) from the harmed person.