



Unfair Competition Quick Guide

Prepared by the Policy Subcommittee of the Unfair Competition Committee

May 2021

Contents

- Contents 2
- Intro/Summary 3
- Argentina 4
- Chile 6
- Colombia..... 9
- Costa Rica..... 11
- Czech Republic..... 14
- Denmark 17
- Finland 19
- Germany 24
- India..... 27
- Israel..... 34
- Italy 36
- Malaysia..... 38
- Malta..... 40
- Mexico..... 42
- Norway 44
- Panama..... 47
- Paraguay 49
- Peru 52
- Poland 54
- Spain 58
- Sweden 63
- United Arab Emirates..... 66
- United Kingdom 70
- Uruguay 72

Intro/Summary

During the 2018-19 and 2020-21 terms, INTA's Unfair Competition Committee ("UCC") surveyed practitioners in countries across the world regarding the unfair competition laws of their respective jurisdictions. In particular, the survey sought the following information with respect to each country: (1) whether national laws exist that prohibit unfair competition (and, if not, whether unfair competition is prohibited in other ways), (2) specific examples of prohibited unfair competition, (3) remedies available in the event of unfair competition, and (4) the proper venue for the assertion of unfair competition claims. The ultimate goal was to produce an easily accessible document that would serve as a practical, high-level resource for brand-owners and practitioners seeking a basic overview of a given country's unfair competition laws. This Unfair Competition Quick Guide ("Quick Guide") is that document, and the UCC hopes that you will find it helpful.

In general, the responses revealed that all surveyed countries – including countries in the Americas, Asia, Europe, and the Middle East – have laws that prohibit various forms of unfair competition and that incorporate many of the same basic principles. At the same time, the responses indicate that the nature of these laws may vary considerably. For example, while some countries have enacted a specific national unfair competition act, others provide for relief under different authority, including general consumer protection acts and/or common law. Similarly, every country surveyed considers false advertising to constitute a form of unfair competition, but many define "false advertising" differently. And although all countries surveyed allow for the possibility of damages where unfair competition has been proven, the likelihood of recovering such damages as a practical matter may vary, and some countries provide for the possibility of additional relief, such as an order for a retraction or public apology, or even criminal sanctions.

Overall, while this Quick Guide should serve as a valuable starting point for any inquiry into the unfair competition laws of a covered country, the UCC recommends consulting with a qualified local attorney for specific advice in relation to the facts and circumstances of any given situation. Please also note that, although the Quick Guide reflects the information provided directly by practitioners within each applicable jurisdiction, and although this information was verified in each case, neither INTA nor the UCC can guarantee its accuracy.

The UCC wishes to thank all who contributed to this Quick Guide for their efforts and support.

Argentina

Author: Héctor Ariel Manoff (Vitale, Manoff & Feilbogen)
Reviewer: Patricio María Albornoz (Bomchil)

I. Does this country have one or more national statutes/acts that address unfair competition?

Yes. Unfair Competition Act No. 22.802.

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

N/A

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes. Chapter III, Section 9 of Act No. 22.802.

b. Is comparative advertising considered unfair competition in this country?

No, if the conditions pursuant to the Civil and Commercial Code Art 1101 and case law are fulfilled, i.e. the comparative advertising must be truthful and objective and cannot discredit or detract from the products and services marketed by the competition in any way.

c. Is trade dress infringement considered unfair competition in this country?

No. It is not specifically established. The issue has been included in some claims but there are no positive decisions based on it.

d. Is confusion created by passing off considered unfair competition in this country?

It is not specifically established, but there is case law in this respect that provided remedies for some cases.

e. Are false allegations, including disparagement, considered unfair

competition in this country?

Yes.

f. Are misleading acts considered unfair competition in this country?

Yes.

IV. What are the remedies available?

- a. Injunctive relief (including preliminary injunctions, ex parte injunctions, etc.)
- b. Civil Damages
- c. Recovery of court costs

V. Are unfair competition claims brought before a court or other authority?

Claims are brought before the Federal and State Administrative Authorities and before the Courts.

Chile

Author: Andrés Melossi (Beuchat, Barros & Pfenniger)
Reviewer: Christopher Doxrud (Johanson & Langlois)

I. Does this country have one or more national statutes/acts that address unfair competition?

Yes. There are two legal statutes that address unfair competition:

Law 20,169, which provides a special statute in relation with unfair competition and

Law 19,039, regarding Trademarks and Patents, which provides in article 20 letter k) the prohibition of trademarks contrary to public order, moral or good customs, including the principles of fair competition and business ethics.

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

N/A

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes. The Law 20,169 prohibits in article 4 (b): The use of signs or the dissemination of facts or statements, incorrect or false, that mislead about the nature, provenance, components, characteristics, price, mode of production, brand, suitability for the purposes intended, quality or quantity, or in general, about the advantages actually provided by the goods or services offered, either by themselves or by others.

b. Is comparative advertising considered unfair competition in this country?

Yes. The Law 20,169 prohibits in article 4 (e): Any comparison of the goods, services, activities or establishments themselves or others with those of a third party, when it is based on any background that is not truthful and demonstrable, or, when otherwise violates the rules of this law

c. Is trade dress infringement considered unfair competition in this country?

Yes. It is not exactly provided by the law. However, the protection of the trade dress can be inferred from the following provision from article 4 (a) Law 20,169: "Any conduct that improperly takes advantage of the reputation of others, leading to confuse the goods, services, activities, distinctive signs or establishments with those of a third party."

d. Is confusion created by passing off considered unfair competition in this country?

Yes. The Law 20,169 prohibits in article 4 (a) the following: "Any conduct that improperly takes advantage of the reputation of others, leading to confuse the goods, services, activities, distinctive signs or establishments with those of a third party ...". From this provision it is possible to regard as an act of unfair competition any false representation likely to induce a person to believe that the goods or services are those of another.

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes. Article 4 (c) Law 20,169 considers as an act of unfair competition the use of any expression aimed at discrediting or ridiculing goods, services, commercial relationships or undermining the reputation of them without objective reference.

f. Are misleading acts considered unfair competition in this country?

Yes. The Law 20,169 considers in article 4 (c) as an act of unfair competition: "All information or incorrect or false assertions about the goods, services, activities, distinctive signs, establishments or commercial relationships of a third party, which are likely to undermine their reputation in the market".

IV. What are the remedies available?

- a. Injunctive relief (including preliminary injunctions, ex parte injunctions, etc.)
- b. Civil Damages (including general and punitive damages), an award of profits, or other monetary relief
- c. Corrective advertising/public apology/public retraction

Law 20,169, article 5 (c) provides, amongst other possibilities: The publication of the sentence or rectification at the expense of the defending party who lose the case.

- d. Recovery of legal fees
- e. Recovery of court costs
- f. Criminal penalties, criminal fines or imprisonment

Criminal fines only in case that a final ruling adopted by an ordinary judge, who ruled in favor of the plaintiff, is sent to the National Economic Prosecutor in order to request the Free Competition Chilean Court to adopt this kind of sanction.

V. Are unfair competition claims brought before a court or other authority?

Regular judges are entitled to prosecute and rule this kind of conflicts.

Colombia

Author: J. Ian (Raisbeck & Castro)
Reviewer: Gerardo Florez (Philippi Prietocarrizosa Ferrer Du & Uria)

I. Does this country have one or more national statutes/acts that address unfair competition?

Yes. Law 256 of 1996 and Title XVI of Andean Community Decision 486.

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

N/A

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes, based on misleading acts. Per article 11 of Law 256 of 996, as well as article 259(c) of Andean Community Decision 486.

b. Is comparative advertisement considered unfair competition in this country?

Yes, when the comparison uses false or incorrect indications or affirmations or omits correct ones, or when the comparison refers to elements which are not analogous or comparable. Per article 13 of Law 256 of 1996.

c. Is trade dress infringement considered unfair competition in this country?

Yes, based on acts of confusion. Per article 10 of Law 256 of 1996, as well as article 259(a) of Andean Community Decision 486.

d. Is confusion created by passing off considered unfair competition in this country?

Yes, based on acts of confusion. Per article 10 of Law 256 of 1996, as well as article 259(a) of Andean Community Decision 486.

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes. Per article 12 of Law 256 of 1996, as well as article 259(b) of Andean Decision 486.

f. Are misleading acts considered unfair competition in this country?

Yes. Per article 11 of Law 256 of 1996, as well as article 259(c) of Andean Decision 486.

IV. What are the remedies available?

- a. Injunctive relief (including preliminary *ex parte* injunctions)
- b. Civil damages, limited to actual damages and lost profit.
- c. Legal fees, as determined by the fees established by the Colombian Bar (Consejo Superior de la Judicatura)
- d. Any remedy requested by the plaintiff that the Judge considers pertinent and reasonable with respect to the object of litigation.

V. Are unfair competition claims brought before a court or other authority?

Unfair competition claims may be brought before the Civil Courts or before the Jurisdictional Directorate of the Superintendence of Industry and Commerce, at the plaintiff's choice. Both Courts follow the exact same procedure.

Costa Rica

Author: Cristina Mora
Reviewer: Simón A. Valverde (Arias Law)

I. Does this country have one or more national statutes/acts that address unfair competition?

YES, unfair competition is mainly addressed by the “Law for the Promotion of Competition and Effective Defense of the Consumer”, Law N° 7472, and also the “Law on Procedures for the Enforcement of Intellectual Property Rights”, Law N°. 8039.

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

As mentioned above, there are specific laws that regulate these matters.

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country.

a. Is false advertising considered unfair competition in this country?

Yes, false advertising is regulated by the “Law for the Promotion of Competition and Effective Defense of the Consumer”, N°7472, which states that the protection against false advertising is a basic and inalienable right of the consumer (article 32); that the publicity of goods and services must be carried out in accordance with the characteristics thereof in a way that is not misleading to the consumer; and that the publicity which does not follow said requirements must be rectified by the seller (article 37).

b. Is comparative advertising considered unfair competition in this country?

Yes, comparative advertising is addressed in article 37 of the “Law for the Promotion of Competition and Effective Defense of the Consumer”, Law N° 7472, which states that the use of comparative terms is forbidden if it consists in a broad claim on the superiority of the goods.

c. Is trade dress infringement considered unfair competition in this country?

Yes, although not expressly mentioned in the law, the matter is addressed in a general way, in article 17, of the “Law for the Promotion of Competition and Effective Defense of the Consumer”, Law N ° 7472, which states that any action which causes confusion regarding a competitor’s business establishment, goods or business activity is forbidden;

and in article 28 of the “Law on Procedures for the Enforcement of Intellectual Property Rights”, Law N°. 8039, which stipulates that any conduct aiming to copy a third-party’s trademarks, distinctive signs and any other protected elements in order to take advantage of the owner’s efforts and prestige is considered unfair competition.

d. Is confusion created by passing off considered unfair competition in this country?

Yes, although not expressly mentioned in the law, passing off is addressed in a general fashion in article 17 of the “Law for the Promotion of Competition and Effective Defense of the Consumer”, Law N° 7472, cited above, and in article 28 of the “Law on Procedures for the Enforcement of Intellectual Property Rights”, Law N°. 8039, which states that any conduct which can mislead consumers regarding the origin or characteristics of goods or services in order to take advantage of a third-party’s rights shall be deemed unfair competition.

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes, article 17 of the “Law for the Promotion of Competition and Effective Defense of the Consumer”, Law N° 7472, regulates this situation, stating that it is forbidden to make false claims to disparage a competitor’s business establishment, goods, activity or identity.

f. Are misleading acts considered unfair competition in this country?

Yes, article 17 of the “Law for the Promotion of Competition and Effective Defense of the Consumer”, Law N° 7472, and article 28 of the “Law on Procedures for the Enforcement of Intellectual Property Rights”, Law N°. 8039, cited above, state that acts which intend to mislead consumers are considered unfair competition.

IV. What are the remedies available?

- a. Injunctive relief (including preliminary injunctions, ex parte injunctions, etc.)
- b. Civil Damages (including general and punitive damages), an award of profits, or other monetary relief
- c. Corrective advertising/public apology/public retraction
- d. Recovery of legal fees
- e. Recovery of court costs
- f. Criminal penalties, criminal fines

The remedies mentioned above are available and are set forth in Laws N° 7472 and N°

8039, as well as in the new Procedural Civil Law, Law N° 9342. However, it should be noted that the criminal penalties and fines included in the law relate exclusively to trademark and copyright infringement.

V. Are unfair competition claims brought before a court or other authority?

Unfair competition claims can be brought before the Civil Courts and before the National Consumer Commission; however, the latter is only available for claims made by consumers.

Czech Republic

Author: Eva Lachmannová (Šindelka &Lachmannová)
Reviewer: Michal Matějka (PRK Partners)

I. Does this country have one or more national statutes/acts that address unfair competition?

Unfair competition is addressed by a dedicated part of the Civil Code (S. 2976 et seq. of the Act no. 89/2012 Sb., Civil Code, as amended).

In order for an act to qualify as an act of unfair competition, the act must meet the conditions of a general clause. According to the general clause, anyone who, in economic relations, conflicts with the good morals of competition by an act capable of causing harm to other competitors or customers will commit unfair competition. The act of unfair competition can then qualify also as one of specific conducts listed, or be assessed under the general clause only.

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

Not applicable.

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this country?

Yes. Misleading advertising is prohibited under S. 2977 of the Civil Code.

b. Is comparative advertising considered unfair competition in this country?

Comparative advertising, i.e. advertising that directly or indirectly identifies another competitor the goods or services of another competitor, is admissible only under specific conditions listed in S. 2980 of the Civil Code. If any of the conditions is not met, comparative advertising qualifies as unfair competition.

c. Is trade dress infringement considered unfair competition in this country?

Yes. Depending on particular circumstances, trade dress infringement can qualify as the special act of misleading designation of goods and services (S. 2978 of the Civil Code)

or causing danger of confusion (S. 2981 of the Civil Code).

d. Is confusion created by passing off considered unfair competition in this country?

Yes. Confusion created by passing off corresponds to the special clause of “causing danger of confusion” (S. 2981 of the Civil Code). Depending on the circumstances, the act could also qualify as falling under another special clause, namely misleading designation of goods and services (S. 2978 of the Civil Code).

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes. False and/or disparaging allegations about the conditions, performance or goods of another competitor are prohibited by S. 2984 of the Civil Code.

f. Are misleading acts considered unfair competition in this country?

Yes. The Civil Code prohibits misleading designation of goods and services, misleading advertising and also misleading use of signs of another party causing confusion. If the misleading act does not fall within the specific clauses, it can also be prohibited under the general clause only.

IV. What are the remedies available?

Persons, the rights of which have been endangered or harmed by the act of unfair competition, can seek:

- a. An injunction ordering the infringer to cease the act of unfair competition;
- b. An injunction ordering the infringer to remedy the defective state of affairs;
- c. An appropriate satisfaction of immaterial harm, including a monetary satisfaction;
- d. Recovery of damages cause by the act of unfair competition;
- e. Surrender or unjustified enrichment gained by the infringer;
- f. Publication of judgment on the expense of the infringer.

In cases where there is an urgent need, the court may order the infringer to cease the relevant conduct by a preliminary injunction.

V. Are unfair competition claims brought before a court or other authority?

Unfair competition claims are brought before courts.

Unfair competition claims by consumers can also be brought to designated out-of court-settlement bodies (e.g. Czech Trade Inspection, Czech Telecommunications Office etc.).

Denmark

Author: Sandur Torne Lassen (Chas. Hude A/S)
Reviewer: Malene Fagerberg (Njord Law Firm)

I. Does this country have one or more national statutes/acts that address unfair competition?

YES – the principal ones are:

- i. The Marketing Act
- ii. Trademark Act
- iii. Danish Civil Code
- iv. Danish Criminal Code

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

Case law is important but can be disregarded and/or amended.

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country.

a. Is false advertising considered unfair competition in this country?

Yes - Danish Marketing Act § 5 and § 20

b. Is comparative advertising considered unfair competition in this country?

No but it has to comply with the regulation on the matter (cf. principally the Danish Marketing Act § 21)

c. Is trade dress infringement considered unfair competition in this country?

Yes it could fall under the Danish Marketing Act but it would have to be a fairly similar infringement (almost 1:1).

d. Is confusion created by passing off considered unfair competition in this country?

Yes it could fall under the Danish Marketing Act but it would have to be a relatively similar

infringement (almost 1:1).

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes – Businesses must practice “good marketing practices” with due regard to consumers, other businesses and general social interests, cf. § 3. False allegations, including disparagement, could fall under this category but could also be subject to the criminal code.

f. Are misleading acts considered unfair competition in this country?

Yes - Danish Marketing Act § 3

IV. What are the remedies available?

- a. Injunctive relief (including preliminary injunctions, criminal complaints, civil litigation)
- b. Civil damages including some general / punitive damages / monetary relief
- c. Corrective advertising/public apology/public retraction can in some instances also apply
- d. Recovery of legal fees to some extent (typically not more than 25-50% of the actual costs)
- e. Recovery of court costs – typically all of the court fees and/or costs (for instance for expert testimony etc.) are covered
- f. Criminal penalties, criminal fines or imprisonment
- g. Restoring the state (of things) existing prior to the unlawful act, including the destruction or recall of products and the transmission of information or correction of declarations made.

V. Are unfair competition claims brought before a court or other authority?

Unfair competition claims are typically brought before a court but also the ombudsman can address these issues. Marketing issues regarding OTC pharmaceuticals can be addressed by other national bodies (e.g. ENLI).

Finland

Authors: Åsa Krook / Ida Keränen (Waselius & Wist)
Reviewers: Paula Sailas (Berggren)

I. Does this country have one or more national statutes/acts that address unfair competition?

In Finland, the Unfair Business Practices Act (1061/1978, as amended) (hereinafter the “UBPA”) regulates unfair competition.

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

N/A. Please see the answer above.

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes. According to section 2, subsection 1 of the UBPA, a false or misleading expression concerning one’s own business or the business of another may not be used in business if the said expression is likely to affect the demand for or supply of a product to harm the business of another.

b. Is comparative advertising considered unfair competition in this country?

In certain situations, yes. Comparative advertising is not considered unfair competition only if it fulfils the criteria set out in section 2a of the UBPA, according to which comparative marketing is permitted with respect to the comparison, if:

- 1) it is not false or misleading;
- 2) it concerns goods which are used for the same purposes or needs;
- 3) it objectively compares one or more essential, significant, verifiable and representative feature(s) of the goods or the prices of the goods;
- 4) it does not create a risk of confusion between the advertiser and a competitor or between their trademarks, company names or other distinguishable marks or goods;
- 5) it does not diminish or disparage the competitor’s trademark, company name or other distinguishable mark nor a commodity, activity or circumstances;
- 6) it does not improperly take advantage of the reputation of a competitor’s trademark, company name or other distinguishable mark or the designation of origin of a product

marketed by a competitor;

7) it does not present a commodity as an imitation or reproduction of a commodity with a protected trademark.

c. Is trade dress infringement considered unfair competition in this country?

Yes, based on established court praxis, provided certain criteria are met: The trade dress is distinctive and known among the relevant target group and the marketing of such similar trade dress is likely to cause consumer confusion, which again would normally be avoided by applying a non-similar trademark to the younger trade dress. Trade dress infringement cases are tried under the general clause in section 1 of the UBPA, according to which good business practice may not be violated nor may practices that are otherwise unfair to other entrepreneurs be used in business.

However, if the trade dress is protected by a figurative/3D trademark or with a design right, the infringement should be primarily assessed pursuant to the Finnish Trademarks Act (544/2019) or Registered Designs Act (221/1971, as amended).

d. Is confusion created by passing off considered unfair competition in this country?

Not specifically. However, this could be considered unfair competition pursuant to the general clause in section 1 of the UBPA, according to which good business practice may not be violated nor may practices that are otherwise unfair to other entrepreneurs be used in business.

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes. Please see the answer in a. above. Further, according to section 2, subsection 2 of the UBPA, an expression that refers to irrelevant circumstances or that is presented or formulated in an unsuitable manner may not be used in business if the said expression is likely to harm the business of another.

f. Are misleading acts considered unfair competition in this country?

Yes. According to section 2, subsection 1 of the UBPA, a false or misleading expression concerning one's own business or the business of another may not be used in business if the said expression is likely to affect the demand for or supply of a product to harm the business of another.

Also, according to the general clause in section 1 of the UBPA, good business practice may not be violated nor may practices that are otherwise unfair to other entrepreneurs be used in business.

IV. What are the remedies available?

A company may bring action in the Finnish Market Court against another company by

filing an application regarding unfair business practices under the UBPA. The company may claim that e.g. the defendant shall be ordered to cease the unfair activities and that such prohibition shall be reinforced with a penalty payment.

V. Are unfair competition claims brought before a court or other authority?

Claims regarding unfair competition may be brought before the Market Court. The Finnish Competition and Consumer Authority, which supervises competition and consumer related matters, may also be notified of unfair business practice.

Germany

Authors: Dr. Tobias Timmann (Freshfields Bruckhaus Deringer LLP)
Reviewers: Prof. Dr. Peter Ruess (Arnold Ruess Rechtsanwälte)

I. Does this country have one or more national statutes/acts that address unfair competition?

Yes, the Unfair Competition Act (Gesetz gegen den unlauteren Wettbewerb – UWG).

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

N/A

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes, such can be considered an unfair commercial practice pursuant to Sec. 5 UWG.

b. Is comparative advertising considered unfair competition in this country?

Yes, under the requirements of Sec. 6 Para. 2 UWG, e.g. if the comparison

- does not relate to goods or services meeting the same needs or intended for the same purpose;
- does not objectively relate to one or more material, relevant, verifiable and representative features of the goods concerned, or to the price of those goods or services;
- takes unfair advantage of, or impairs, the reputation of a distinguishing mark used by a competitor.

c. Is trade dress infringement considered unfair competition in this country?

This topic is mainly dealt with in the Trademark Act (Markengesetz – MarkenG), but may also be considered unfair in terms of the UWG, e.g. Sec. 4 No. 3 UWG.

d. Is confusion created by passing off considered unfair competition in this country?

Yes, Sec. 4 No. 3 UWG.

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes, Sec. 4 No. 1, Sec. 5 Para. 1 Sent. 2 UWG.

f. Are misleading acts considered unfair competition in this country?

Yes, Sec. 5, 5a UWG.

IV. What are the remedies available?

- a. Injunctive relief (including preliminary injunctions, ex parte injunctions, etc.), Sec. 8 UWG
- b. Removal and disposal, Sec. 8 UWG
- c. Recall of infringing products, Sec. 8 UWG
- d. Information claims, Sec. 242 BGB (German Civil Code)
- e. Civil damages (based on either absorption of infringer's profits, compensation of lost profits or a hypothetical royalty), Sec. 9 UWG
- f. Profit absorption in favor of the state, Sec. 10 UWG
- g. Fines or imprisonment Sec. 16-20 UWG
- h. Recovery of legal fees
- i. Recovery of court costs

V. Are unfair competition claims brought before a court or other authority?

Claims are exclusively brought before the Regional Courts, Sec. 13 UWG.

India

Authors: Neeti Wilson (Swati Sharma)
Reviewers: Hemanshu Kane

I. Does this country have one or more national statutes/acts that address unfair competition?

Unfair competition, a common law tort, has been addressed under the law of passing off under the Trade Marks Act, 1999.

Further, the Geographical Indications of Goods (Registration and Protection) Act, 1999, also has specific reference to "unfair competition" besides providing for remedies in case of passing off.

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

- Under the Trade Marks Act, unfair competition can be remedied as follows:

The Trade Marks Act focuses on unfair competition and trade practice. It has been enacted to guarantee protection to national and international brand owners, in conformity with the TRIPS Agreement. It regulates Unfair Trade Practices in comparative advertising and prevents trademark infringement in India which is a form of unfair competition. For example, unfair competition may include practices such as causing confusion in the marketplace by using similar titles or trade dress of products, misappropriating goodwill and reputation of a competitor, false advertising, etc., which issues can be addressed under the Trade Marks Act, 1999 (hereinafter referred to as the "Act"). To elaborate, the Act provides for punishment and penalty in case a person falsely applied the trademark of another without the assent of the proprietor – Sections 102 and 103. The Act also provides for penalty on a person for selling goods or providing services to which a false trade mark or a false trade description has been applied to – Section 104. The Act in Section 2 (1) (i) clearly defines "false trade description" as:

- (i) a trade description which is untrue or misleading in a material respect as regards the goods or services to which it is applied; or
- (ii) any alteration of a trade description as regards the goods or services to which it is applied, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue or misleading in a material respect; or
- (iii) any trade description which denotes or implies that there are contained, as regards the goods to which it is applied, more yards or meters than there are contained therein standard yards or standard meters; or

(iv) any marks or arrangement or combination thereof when applied

(a) to goods in such a manner as to be likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose merchandise or manufacture they really are;

(b) in relation to services in such a manner as to be likely to lead persons to believe that the services are provided or rendered by some person other than the person whose services they really are; or

(v) any false name or initials of a person applied to goods or services in such manner as if such name or initials were a trade description in any case where the name or initials

(a) is or are not a trade mark or part of a trade mark; and

(b) is or are identical with or deceptively similar to the name or initials of a person carrying on business in connection with goods or services of the same description or both and who has not authorised the use of such name or initials; and

(c) is or are either the name or initials of a fictitious person or some person not bona fide carrying on business in connection with such goods or services, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act;

The above listed activities will clearly qualify as "unfair competition".

- Section 22 of the Geographical Indications of Goods (Registration and Protection) Act, 1999, deals with infringement of registered geographical indications and Section 22(1)(b) specifically explains unfair competition if a registered geographical indication is infringed by a person who, not being an authorised user thereof uses any geographical indication in such manner which constitutes an act of unfair competition including passing off in respect of registered geographical indication.

or the purposes of the clause, "act of unfair competition" means any act of competition contrary to honest practices in industrial or commercial matters.

For the removal of doubts, it is clarified that the following acts shall be deemed to be acts of unfair competition, namely:

(i) all acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods or the industrial or commercial activities, of a competitor;

(ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods or the industrial or commercial activities, of a competitor;

(iii) geographical indications, the use of which in the course of trade is liable to mislead the persons as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

- The Consumer Protection Act, 1986 also deals with unfair trade practices. Section 2(1) (r) defines unfair trade practices and includes different forms of

what constitutes unfair trade practice in India, which leads to unfair competition. Section 14 of the Act also provides remedies in case of unfair trade practices.

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

- Yes, false advertising is considered unfair competition in India. The Consumer Protection Act, 1986, Section 6 of the Act grants consumers the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be so as to protect the consumer against unfair trade practices.
- Section 2(r) of the Act, under the definition of the term "unfair trade practice", covers the gamut of false advertisements including misrepresentations or false allurements.
- Under section 14, the consumer courts can, take the various measures and actions in case of unfair and restrictive trade practice. Such as, the court can issue interim orders stopping such advertisements, may award compensation for loss or suffering, the court can also direct the advertiser to issue corrective advertisement.
- In *Tata Sons Ltd. vs. Manoj Dodia and Ors.*¹ It was observed that 'reason for growing acceptance of transborder reputation is that a person using a well known trademark even in respect of goods or services which are not similar tries to take unfair advantage of the trans-border reputation which that brand enjoys in the market and thereby tries to exploit and capitalize on the attraction and reputation which it enjoys amongst the consumers. When a person uses another person's well known trademark, he tries to take advantage of the goodwill that well known trademark enjoys and such an act constitutes an unfair competition'.
- In *Tea Board, India vs. ITC Limited*² the use of "Darjeeling" was not in connection with the designation or presentation of any goods. GI Act was held to conceive of the use of any geographical indication which would constitute an act of unfair competition including passing-off. The judge was clear that the "expression "unfair competition including passing off" would not, by reason of the explanations in the relevant Sub-section, imply that every kind of passing-off would amount to unfair competition. The expression has to be understood to mean that certain kinds of passing-off, not all, would amount to unfair competition as defined. The phrase used is "unfair competition" and not "unfair practice" or "unfair trade practice," though it seems to have been borrowed from the TRIPS agreement and not uniquely coined. If every kind of passing-off amounted to unfair competition, Section 20(2) of the GI Act would be otiose".

b. Is comparative advertising considered unfair competition in this country?

¹ 2011(46)PTC 244 (Del)

² MIPR2011(2)160

- Yes/No, comparative advertising is considered unfair competition but up to a certain extent.
- The Trademark Act, 1999 in India is enacted to guarantee protection to national and international brand owners, in conformity with the TRIPS Agreement. It regulates Unfair Trade Practices in comparative advertising and prevents trademark infringement in India.
- To identify the products and services, the holder of a trademark has the exclusive rights. Sometimes these exclusive rights can be used in comparative advertisements. A registered trademark is infringed by a person if it exploits such registered trademark, as its trade name or part of its trade name, or the name of its business concern dealing in goods or services in respect of which trademark is registered. Trademark Act has made the grounds for such infringement. Section 29(8) and 30(1) deals with comparative advertisements.
- Section 29(8) of the Act outlines the situations in which there is the use of another's trademark in advertising which amounts to infringement. It is considered to be the unification of laws of unfair competition and unfair trade practices that have set considerations for the use of trademarks in comparative advertisements. According to this section, a registered trademark is infringed where an advertisement is harmful to the trademark's reputation, is destructive to the trademark's distinctive character, takes unfair advantage or considered to be contrary to honest practice.
- Section 30(1) provides with an exception when such use of marks is done according to the "Honest Practices" in industrial and commercial matters. And hence comparative advantage can be used in certain conditions such as if there is a bonafide use of Trademark, if in accordance with the honest practices, if it does not take an unfair advantage of the reputation of the mark.
- In the case of **PepsiCo. Inc. and Ors. v. Hindustan Coca-Cola Ltd. and Anr**:³ The concept of disparagement was explained by Delhi High Court where it was stated that a manufacturer can make a statement for making his goods at best level and he also makes statement for puffing of his goods and the same will not give a cause of action to the other traders or manufacturers of similar goods to institute proceedings. In doing so, there is no disparagement of the manufacturer's goods. A manufacturer is not entitled to say the competitor's goods are bad as to puff and promote his goods. Thus, it was concluded that comparative advertising cannot be permitted which denigrates the trade name or trademark of the competitor.

c. Is trade dress infringement considered unfair competition in this country?

- In India there is no separate provision for protection of trade dress, however, the common law of passing off provides protection of trade dress consisting of shape

³ 2003 (27) PTC 305 DEL

of goods their packaging and combination of colours etc, which is elucidated in Section 2 (zb) of the Trademarks Act 1999. In order to qualify for protection, the overall appearance or image of the product has to be distinctive either having inherent distinctiveness or acquired distinctiveness.

- In **Colgate Palmolive Co v Anchor Health and Beauty Care Pvt.Ltd**⁴ The plaintiff sought an interim injunction against the defendant for use of the trade dress and colour combination of red and white in relation to identical products i.e. tooth powder, when the marks being used by the two parties were completely distinct, being Colgate and Anchor. The court held that It is the overall impression that a consumer gets as to the source and origin of the goods from visual impression of colour combination, shape of the container, packaging etc. if an illiterate, unwary and gullible customer gets confused as to the source and origin of the goods which he has been using for longer period by way of getting the goods in a container having particular shape, colour combination and getup, it amounts to infringement and hence is to prevent this trademark infringement which amounts to unfair competition and practise.

d. Is confusion created by passing off considered unfair competition in this country?

- The action for passing off in India is under section 27 (2), 134 (1) (c) and Section 135 of Trademarks Act. Section 134 (1) (c) refers to jurisdiction/power of District courts to try the suit and even issue injunction in matter pertaining to Passing off suits. The plaintiff is supposed to establish its case and satisfy the court concerned the irreparable loss/injury caused to them and hence it is seen that through this act passing off is considered unfair competition in India, and section 134 provides the remedy for any action of passing off.
- It was held that in the case of **Laxmikant V. Patel vs. Chetanbhai Shah**⁵ the Supreme passing off comes into application when the following elements are present: (i) Goodwill need to be established by the person seeking benefit for passing off action, (ii) there must be deceptive similarity in the products in question, and (iii) the party asking for remedies for passing off might incur losses/ damages due to such action of passing off by other party. And hence if these three elements are present passing off will be considered to be unfair competition in India.

e. Are false allegations, including disparagement, considered unfair competition in this country?

- In India, there is no specific legislation covering the subject matter of disparagement. Legal consequences of disparagement is a civil suit. Person suffering from disparagement can claim for injunction or damages.
- However disparagement is allowed in certain cases, in particular if the statement so made was an opinion and therefore will not amount to any action and if the

⁴ 2008 SCC 627

⁵ 2002 3 SCC 65

defendant has a conditional or absolute privilege. Hence if these conditions are satisfied disparagement will not be considered as unfair competition. However, if these conditions are not satisfied disparagement will be considered as unfair competition and a person can be held as liable for the same.

f. Are misleading acts considered unfair competition in this country?

- Yes, misleading acts are considered as unfair competition in India. They are governed under the Consumer Protection Act under section 2(1)(r) of the Consumer Protection Act, 1986, in which it states that unfair trade practices include making a misleading or false representation regarding the need and usefulness of any good or service.

IV. What are the remedies available?

- a. Injunctive relief (including preliminary injunctions, ex parte injunctions, etc.)
- Section 14(1) (d) of the Consumer Protection Act provides that the redressal agency may order payment of compensation only in the event of negligence of the opposite party which resulted in loss or damage and not otherwise, i.e. even though the complainant has suffered loss or damage, he may not be entitled for compensation if he cannot prove negligence. However they are not allowed to provide any injunctive reliefs.
 - Under the Trademarks Act, 1999, a court may provide injunctive relief for passing off and infringement of trademark which leads to unfair trade practices under section 135 (i) of the Act.
 - Sections 102-105 of the Trade Marks Act, 1999 also provide for penalty and punishment in cases of false trade description and falsification of trademark of another.
 - The Trade Marks Act, 1999 provides that any person who falsifies any trade mark, falsely applies to goods any trade mark; or makes, disposes of, or has in his possession any die, block, machine, plate or other instrument for the purpose of falsifying, or of being used for falsifying a trade mark, applies any false trade description to goods etc. shall unless he proves that he acted without intent to defraud, be punishable with imprisonment or with fine, or with both. Also the statute provides makes a person liable to similar punishment if he sells goods or exposes them falsely or for having them in his possession for sale or for any purpose of trade or manufacture any goods or things to which any false trade description is applied. In *Ramnath vs. State of U.P*⁶ it was clarified that the proceedings for prosecution for offences under the Trade Marks Act can be subject matter of criminal prosecution as well.
- b. Civil Damages (including general and punitive damages), an award of profits, or other monetary relief:

⁶ AIR 1972 SC 232

- Under section 14 of the Consumer Protection Act, if the district forum upon completion of the procedure is satisfied that the allegations are well founded they will issue an order to the opposite party under section 14 (f) to discontinue the unfair or restrictive trade practice and not to repeat it. An appeal from the district forum will lie to the state commission and thereafter to the national commission. Any person aggrieved with the order of the national commission can appeal to the Supreme Court.
 - Under the Trade Marks Act, section 135(c) provides for awarding damages, or any other pecuniary remedy for infringement of trademark which leads to unfair trade practices.
- c. Corrective advertising/public apology/public retraction:
- Consumer Protection Act, section 14 (hc) refers to the power of the district forum to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement which causes unfair trade practices.
- d. Recovery of legal fees:
- Consumer Protection Act, section 14 (i) to provide for adequate costs to parties and legal fees.
- e. Criminal penalties, criminal fines or imprisonment
- The consumer protection bill, 2018 which is still to be passed by the parliament make a provision for false or misleading advertisement to be made which is prejudicial to the interest of consumers shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to INR 1 Million, for the first offence; and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to INR 5 Million.

V. Are unfair competition claims brought before a court or other authority?

Unfair competition claims can be brought before any civil court. They can also be brought before a District court under section 134 of the Trade Marks Act. And under section 12, 13, and 14 of the Consumer Protection Act, one can apply to the redressal agencies to provide relief for unfair trade practises and unfair competition claims.

Israel

Authors: Luiz Blanc, (Gilat, Bareket & Co., Reinhold Cohn Group)
Reviewers: Elad Tsabari (Elad Tsabari, Law Firm)

I. Does this country have one or more national statutes/acts that address unfair competition?

Yes. Commercial Torts Law, 5759-1999, primarily Section 1, and the Law of Unjust Enrichment, 1979

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

Besides the Commercial Torts Law, 5759-1999, and the Law of Unjust Enrichment, 1979, by Common Law/Case Law.

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes. Section 2 of the Commercial Torts Law, 5759-1999, forbids false publication regarding the tortfeasor's own business or regarding businesses of others.

b. Is comparative advertising considered unfair competition in this country?

According to Israeli case law, truthful comparative non-derogatory advertising presenting accurate facts about products or services of the advertiser itself, may not be forbidden if done in a strictly informative manner, since it serves the principle of free speech and increases the pool of knowledge CA 8483/02 Aloni Ltd v. McDonald, 58(4) P.D. 314 [2004] (the McDonald case).

c. Is trade dress infringement considered unfair competition in this country?

Yes. Section 1 of the Commercial Torts Law, 5759-1999, and the Law of Unjust Enrichment, 1979.

d. Is confusion created by passing off considered unfair competition in this country?

Yes. Also included under Section 1 of the Commercial Torts Law, 5759-1999. \

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes. Also included under Section 2 of the Commercial Torts Law, 5759-1999.

f. Are misleading acts considered unfair competition in this country?

Yes. Also included under Section 1 of the Commercial Torts Law, 5759-1999, if such acts may suggest a connection between the tortfeasor's business and the business of others. Also consumer deception contrary to the provisions of Section 2 of the Consumer Protection Law, 5741-1981

IV. What are the remedies available?

The remedies available to the plaintiff are among others the following:

- a. Injunctive relief (including preliminary injunctions, ex parte injunctions, etc.)
- b. Delivery up and destruction of infringing goods
- c. Search and seizure (Anton Piller orders)
- d. Damages (including statutory damages)
- e. Account of profits.
- f. Recovery of legal and court fees (but realistic costs are not awarded)

V. Are unfair competition claims brought before a court or other authority?

Claims based on unfair competition are brought before the Courts.

Italy

Authors: Lorenzo Litta (Spheriens)
Reviewers: Alessandro Masetti

I. Does this country have one or more national statutes/acts that address unfair competition?

Unfair competition is prohibited by Articles 2598-2601 of the Civil Code. It is also addressed by Legislative Decree No. 206/2005 (Consumer Code).

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

In addition to national law, EU law applies.

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes.

b. Is comparative advertising considered unfair competition in this country?

It is not, provided that it does not mislead, discredit nor harm the other competitors.

c. Is trade dress infringement considered unfair competition in this country?

Yes, but trade dress in Italy is dealt with by other kind of IP rights (such as, shape trademarks, colour trademarks, position trademarks etc.), the infringement of which is considered unfair competition.

d. Is confusion created by passing off considered unfair competition in this country?

Yes.

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes.

f. Are misleading acts considered unfair competition in this country?

Yes.

IV. What are the remedies available?

- a. Injunctive relief;
- b. Damages;
- c. Publication of the judgment.

V. Are unfair competition claims brought before a court or other authority?

Claims are brought before the Courts. Unfair competition matters are also brought before the Italian Competition Authority (“Autorità Garante della Concorrenza e del Mercato”, also “AGCM”).

Malaysia

Authors: Lee Lin Li (Tay & Partners)
Reviewers: Geetha Kandiah (KASS International)

I. Does this country have one or more national statutes/acts that address unfair competition?

Yes. Unfair competition in the field of intellectual property is governed by intellectual property statutes such as the Trade Marks Act 1976, Copyright Act 1987, Trade Descriptions Act 2011, Patents Act 1983, the common law of passing off and trade libel laws within the Defamation Act 1957. The Competition Act 2010 also addresses unfair competition (to avoid the abuse of dominance and monopolies in the marketplace).

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

N/A

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this country?

Yes. It is an offence under the Trade Descriptions Act 2011 and Consumer Protection Act 1999.

b. Is comparative advertising considered unfair competition in this country?

No. However, direct comparative advertising is arguably prohibited under sections 38(1)(b) and (c) of Trade Marks Act 1976 (Act 175) in the same way that section 4(1)(b) of the now repealed UK Trade Marks Act 1938 prohibits comparative advertising (sections 38(1)(b) of the Malaysian act is *pari materia* with section 4(1)(b) of the UK act).

c. Is trade dress infringement considered unfair competition in this country?

Yes. It is prohibited under the common law of passing off and if the trade dress is a registered trademark, it may also amount to trade mark infringement.

d. Is confusion created by passing off considered unfair competition in this country?

Yes. It is prohibited under the Trade Marks Act 1976 (Act 175) and the common law of passing off.

e. Are false allegations, including disparagement, considered unfair competition in this country?

False allegations which disparage a trader may amount to defamation. False representation is an offence under the Trade Descriptions Act 2011 and Consumer Protection Act 1999.

f. Are misleading acts considered unfair competition in this country?

Yes. Misleading conduct is prohibited under the Consumer Protection Act 1999 and the common law of passing off provided in the latter case, the plaintiff also establishes the other two elements of passing off, namely, goodwill and reputation and damage or likelihood of damage arising from the misrepresentation.

IV. What are the remedies available?

- a. Injunctive reliefs (e.g. restraining and mandatory injunctions including interlocutory injunctions, which may be by way of ex parte or inter partes depending on the urgency of the matter etc.)
- b. Declaration of ownership
- c. Order for delivery up or destruction of infringing goods upon oath
- d. Damages (including special, general and exemplary damages) or an account of profits
- e. Public apology
- f. Costs
- g. Criminal fines or imprisonment
- h. Any other relief deemed fit by the court

V. Are unfair competition claims brought before a court or other authority?

A claim for trade mark infringement, copyright infringement, patent infringement and passing off are commenced at the courts.

Malta

Authors: Dr. Luigi A. Sansone Isansone
Reviewers: Dr. Antoine Camilleri

- I. Does this country have one or more national statutes/acts that address unfair competition?**

Yes

- II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?**

N/A

- III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?**

- a. Is false advertising considered unfair competition in this in country?**

Yes

- b. Is comparative advertising considered unfair competition in this country?**

Yes

- c. Is trade dress infringement considered unfair competition in this country?**

Yes

- d. Is confusion created by passing off considered unfair competition in this country?**

Yes

- e. Are false allegations, including disparagement, considered unfair competition in this country?**

Yes

- f. Are misleading acts considered unfair competition in this country?**

Yes

IV. What are the remedies available?

As provided by art. 37 of the Commercial Code, Cap. 13 Laws of Malta, as follows:

37.(1) Any trader who contravenes any of the prohibitions contained in articles 32 to 36 inclusively, shall, at the choice of the injured trader, be liable either to an action for damages and interest or to a penalty. The injured trader may, further, demand that everything done contrary to the said prohibitions be destroyed, or that any other remedy be applied capable, according to circumstances, of removing the act constituting the unlawful competition.

(2) Any action for damages and interest brought under this article shall be governed by the rules of the civil law.

(3) The penalty, however, shall be fixed by the Civil Court, First Hall, or by the Court of Magistrates (Gozo) in its superior commercial jurisdiction at the suit of the injured trader, and shall not be less than four hundred and sixty-five euro and eighty-seven cents (€465.87) nor more than four thousand, six hundred and fifty-eight euro and seventy-five cents (€4,658.75), having regard to the seriousness of the fact, to its continuance, to the malice of the offending party and to all other particular circumstances of each case. Such penalty shall be paid to the injured trader in settlement of all his claims for damages and interest.

V. Are unfair competition claims brought before a court or other authority?

Before the First Hall of the Civil Court of Malta.

Mexico

Authors: Jaime Rodriguez (Olivares y Compañía)
Reviewers: José A. Arochi (Arochi & Lindner)

I. Does this country have one or more national statutes/acts that address unfair competition?

Yes. The Industrial Property Law (Article 386 s.I and II) and the Code of Commerce (Article 6 bis).

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

Not applicable, but it is also possible to invoke the provisions regarding unfair competition included in International Treaties, such as the Paris Convention for the Protection of the Industrial Property.

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes.

b. Is comparative advertising considered unfair competition in this country?

No, provided that said comparison is not biased, false or exaggerated in the terms of the Federal Law of Protection to the Consumer

c. Is trade dress infringement considered unfair competition in this country?

Yes.

d. Is confusion created by passing off considered unfair competition in this country?

Yes.

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes. Industrial Property Law (Article 386 s. XXXII.)

f. Are misleading acts considered unfair competition in this country?

Yes. Industrial Property Law (Article 213 s. XXII and XXIV)

IV. What are the remedies available?

- a. Injunctive relief (including preliminary injunctions, ex parte injunctions, etc.)
- b. Civil Damages only available after the ruling issued by IMPI becomes firm.
- c. Recovery of legal fees only available after the ruling issued by IMPI becomes firm.
- d. Recovery of court costs only available after the ruling issued by IMPI becomes firm.
- e. The new Law (Ley Federal de Protección a la Propiedad Industrial) now indicates that the Administrative Authority, the Mexican Industrial Property Office, can impose economic sanctions and also execute their collection, without the need for a Judicial Authority to intervene.

V. Are unfair competition claims brought before a court or other authority?

Claims are brought before the Industrial Property Office.

Norway

Authors: Vebjørn Krag Iversen
Reviewers: Anne Marie Sejersted

I. Does this country have one or more national statutes/acts that address unfair competition?

Yes. The Norwegian Competition Act (Lov om konkurranse mellom foretak og kontroll med foretakssammenslutninger (konkurranseloven) LOV-2004-03-05-12) and the Norwegian Marketing Act (No. Lov om kontroll med markedsføring og avtalevilkår mv. (markedsføringsloven), LOV-2009-01-09-2).

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes, see sections 7 and 8 of the Marketing Act.

b. Is comparative advertising considered unfair competition in this country?

Not as such, however according to the Regulation regarding Comparative Advertising (No: Forskrift om sammenlignende reklame, FOR-2000-12-19-1653) comparative advertising is only permitted under certain circumstances, e.g. that the advertising is not misleading.

c. Is trade dress infringement considered unfair competition in this country?

Yes, according to section 30 of the Marketing Act it is prohibited in the course of trade to use copies of distinguishing marks, products, advertising materials or other produced items in such a manner and under such circumstances that the use must be considered an unfair exploitation of the efforts or results of another person, and to present a risk of confusion.

d. Is confusion created by passing off considered unfair competition in this country?

Yes, under certain circumstances, please see Section 30 of the Marketing Act as well as case law on the subject matter.

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes, please see sections 2, 7 and 8 of the Marketing Act.

f. Are misleading acts considered unfair competition in this country?

Yes, please see sections 7, 8, 25 and 26 of the Marketing Act.

IV. What are the remedies available?

The Competition Act

- a. Administrative fines
- b. Orders imposing obligations (including preliminary orders), can be joint with a conditional fine
- c. Nullity
- d. Damages
- e. Fines or imprisonment for certain violations.

The Marketing Act

- a. Injunction against certain marketing practices (including preliminary injunctions, ex parte injunctions, etc.).
- b. Decisions concerning orders to rectify unlawful action, prohibitions against unlawful actions, compulsory fines and fines issued by the Consumer Council in certain cases regarding consumer issues.
- c. Fines or imprisonment for certain violations.
- d. Removal etc. of misleading presentations
- e. Payment of damages,
- f. Payment of compensation or license fee for negligent or intentional violations of section 30 of the Marketing Act.

V. Are unfair competition claims brought before a court or other authority?

The Competition Act

Claims are brought before the Norwegian Competition Authority and/or the Courts.

The Marketing Act

Claims are brought before the courts. For certain violations of consumer rights claims may also be brought before the Consumer Council and the Marketing Council (NO: Markedsrådet. Also matters regarding unfair competition between businesses according

to the Marketing Act section 25 to 30 may be brought before the Committee for the control of Unfair Competition (NO: Næringslivets Konkurranssutvalg – NKU). NKU is operated by several parties of the Norwegian business community, including the Confederation of Norwegian Enterprise (NHO), and will upon request provide non-binding opinions on disputes between business regarding unfair competition according to the mentioned sections of the Marketing Act.

Panama

Authors: Monique Ferrer
Reviewers: Yolianna Arosemena

I. Does this country have one or more national statutes/acts that address unfair competition?

Yes. Chapter II of Law No.5 of January 11, 2007 (that expedites company openings and sets forth other related dispositions) and Law 45 of October 31, 2007 (that sets forth regulations regarding consumer protection and protection of competition/antitrust). Article 283 of the Criminal Code.

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

N/A

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes. Law 5 of 2007, Chapter II, Article 15, numeral 2.

b. Is comparative advertising considered unfair competition in this country?

No. However according to IP Law, specifically Law 35 (modified by Law 61), Article 164, numeral 13, comparative advertising could be considered a trademark infringement when it is done with disparagement or dilution purposes.

c. Is trade dress infringement considered unfair competition in this country?

Panama does not have specific regulations in connection with 'trade dress'.

d. Is confusion created by passing off considered unfair competition in this country?

Yes. Law 5 of 2007, Chapter II, Article 15, numeral 1.

e. Are false allegations, including disparagement, considered unfair

competition in this country?

Yes. Law 5 of 2007, Chapter II, Article 15, numerals 1 and 2.

f. Are misleading acts considered unfair competition in this country?

Yes. Law 5 of 2007, Chapter II, Article 15, numerals 3 and 4

IV. What are the remedies available?

- a. Civil Damages and award of profits, or other monetary relief
- b. Recovery of legal fees
- c. Recovery of court costs
- d. Imprisonment of 18 months to 3 years

V. Are unfair competition claims brought before a court or other authority?

Claims are brought before the Courts.

Paraguay

Authors: Lorena Mersan
Reviewers: Cecilia Abente

I. Does this country have one or more national statutes/acts that address unfair competition?

Yes. Unfair competition is regulated under Title IV – Chapter II of Law No. 1034/83 – Merchant Law and Title III of the Paraguayan Trademark Law

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

The Paraguayan Legal System is mainly based on statutes/legislations, sanctioned by Congress and promulgated by the Executive Power and there are two regulations as mentioned above that address competition within the market and unfair competition.

Judicial precedents or case law could eventually be applied to a particular case, but only where there is a legal gap or a situation is not specifically provided for by the Law and purely as a secondary resource.

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes. As per the terms of Article 80 of the Paraguayan Trademark Law, acts contrary to good practice and honest dealing in industry or trade in general shall constitute unfair competition and, particularly, false descriptions of products or services through the use of words, symbols or other devices that might mislead the public as to the nature, quality or usefulness thereof; the use of false geographical indications on products or services by means of words, symbols or other devices that might mislead the public; and the use or dissemination of indications or claims liable to mislead or cause confusion as to the origin, manufacture, suitability for use or consumption or other characteristics of the firm's own or other products or services, constitute unfair competition.

Also, as per the terms of the Law on Consumer Protection, misleading advertising (or false advertising) is strictly prohibited.

b. Is comparative advertising considered unfair competition in this country?

Comparative advertising is not prohibited as per the terms of the Paraguayan legislation, so long as the same does not utilize false indications or claims that may denigrate or discredit third parties' products and/or services.

Moreover, the Law on Consumer Protection establishes that comparative advertising is permitted, unless, by means of malicious actions or general and indiscriminate declarations, the consumers are induced to the establishment of superiority of one product or service over others belonging to a third party.

c. Is trade dress infringement considered unfair competition in this country?

Yes, as per the terms of the Paraguayan Trademark Law, the improper use of a trademark in general is considered unfair competition.

d. Is confusion created by passing off considered unfair competition in this country?

Yes. As per the terms of the Paraguayan Trademark Law, acts liable to cause confusion or a risk of association with other products, services, firms or enterprises are considered unfair competition.

In addition, the Paraguayan Merchant Law foresees that the use of names or distinctive signs that may cause confusion with those legitimately utilized by third parties and/or the imitation of the products belonging to a competitor or the performance by any other means of acts capable of generating confusion with the products or activities of a competitor are considered acts of Unfair Competition.

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes. As per the terms of the Paraguayan Trademark Law, false descriptions of products or services through the use of words, symbols or other devices that might mislead the public as to the nature, quality or usefulness thereof are considered acts of unfair competition.

f. Are misleading acts considered unfair competition in this country?

Yes, as per the terms of the above-mentioned norm foreseen in the Paraguayan Trademark Law.

IV. What are the remedies available?

The Paraguayan Trademark Law establishes that producers, manufacturers or businesspersons who might suffer prejudice as a result of unfair competition shall have the right to bring legal proceedings before the civil and commercial courts to ensure cessation or prevent repetition of the acts and to obtain compensation for the damage

and prejudice caused.

Such norm is further replicated by what is established in the Paraguayan Merchant Law, which sets forth that, the Resolution that determines that a certain act is an act of unfair competition shall prohibit its reiteration and establish the adequate measures for elimination its effects; acts performed in a malicious manner or with a willful intent compel its author/infringer to the compensation for damages and eventually, the publication of the Resolution.

V. Are unfair competition claims brought before a court or other authority?

Yes, claims for unfair competition are brought before the Civil Courts of First Instance.

Peru

Authors: Gonzalo Barreda
Reviewers: Luis Diez Canseco Núñez

I. Does this country have one or more national statutes/acts that address unfair competition?

Yes. Legislative Decree No. 1044

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

N.A.

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes. Legislative Decree No. 1044, Article 8 states that any act that could deceive the consumer into believing any false information related to a specific characteristic of the product constitutes unfair competition. If the act misleads the consumer as of the commercial origin of the product (the company) it is sanctioned as an act of confusion (article 9).

False advertising is also sanctioned by article 13 of the Code for the Protection and Defense of the Consumer.

b. Is comparative advertising considered unfair competition in this country?

No, unless the information provided in the comparative advertising is false or improperly given (E.g. the use of sarcasm, exaggeration, mockery, while doing the comparison).

In principle “comparative advertising” is lawful as long as the advertising meets the following conditions:

- It transmits truthful, objective and verifiable information;
- It transmits accurate, clear and current information;
- It avoids the sarcasm, mockery and exaggeration; and,
- It avoids information about the nationality, beliefs and any other circumstances which strictly belong to the personal life of others.

c. Is trade dress infringement considered unfair competition in this country?

Yes, if it could lead to confusion. Legislative Decree No. 1044, article 9.

d. Is confusion created by passing off considered unfair competition in this country?

Yes. Legislative Decree No. 1044, article 9.

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes.

False allegations are sanctioned as unfair competition acts in article 11 of Legislative Decree 1044.

f. Are misleading acts considered unfair competition in this country?

Yes. Legislative Decree No. 1044, article 8.

IV. What are the remedies available?

- a. Injunctive relief (including preliminary injunctions, ex parte injunctions, etc.).
- b. Recovery of legal fees.
- c. Recovery of administrative fees.
- d. Administrative fines/Sanctions.
- e. Civil Damages are not granted in an administrative procedure and, even though they can be required in a Civil Procedure, they are very hard to obtain because actual damages have to be objectively demonstrated and there is no real way to objectively demonstrate how much one has lost in sales or reputation.

V. Are unfair competition claims brought before a court or other authority?

Claims are brought before the Administrative Office (INDECOPI). Damages, if required, have to be requested after the administrative procedure before a Civil Court.

The Administrative Office of INDECOPI before which the unfair competitions claims can be brought is the Commission of Supervision of the Unfair Competition.

Poland

Authors: Monika Wieczorkowska (Wardynski & Partners)
Reviewers: Beata Wojtkowska (Kulikowska & Kulikowski sp. k.)

I. Does this country have one or more national statutes/acts that address unfair competition?

The main national act that addresses unfair competition between business is the Act of 16 April 1993 on Combating Unfair Competition (hereinafter “CUCA”).

Additionally, consumer protection from unfair markets practices of businesses is addressed in the Act of 23 August 2007 on counteracting unfair market practices, the Act of 16 February 2007 Competition and Consumer Protection Act, and (together with personal rights) the Act of 23 April 1964 Civil Code (hereinafter “CC”).

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

N/A

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes, it is; advertising that misleads customers by affecting decisions whether to buy goods or services is considered false advertising. All components of an advertisement are assessed, specifically the quantity, quality, ingredients, method of production, usefulness, possibility of use, repair or maintenance of the advertised goods or services, as well as customer’s behavior: article 16.1.2. of CUCA.

b. Is comparative advertising considered unfair competition in this country?

Yes, it is; advertising that enables direct or indirect identification of a competitor or of products or services offered by a competitor is considered unfair comparative advertising, if it is contrary to morality: article 16.3. of CUCA.

Comparative advertising is not contrary to morality if it meets all of the following prerequisites:

- 1) it is not misleading advertising;
- 2) it objectively and fairly compares goods or services that satisfy the same needs or serve the same purpose;

- 3) it objectively compares one or more features which include the price;
- 4) it does not cause mistakes in distinguishing between the advertiser and a competitor, or between their products or services, trademarks, company's designations or other distinguishing features;
- 5) it does not discredit goods, services, activities, trademarks, company designations, or other distinguishing designations;
- 6) for geographical indications or protected designations of origin, it always refers to products having the same designation;
- 7) it does not unfairly take advantage of the reputation of a trademark, company designation or other distinguishing designation of a competitor, or a protected geographical indication or protected designation of origin;
- 8) it does not present a product or service as an imitation of a product or service bearing a protected trademark, protected geographical indication or protected designation of origin, or another distinguishing designation.

Comparative advertising associated with a special offer must, depending on the terms of the offer, specify in a clear and explicit way the expiry date of the offer or, alternatively, information that the offer is valid until stock lasts or by the time the service is discontinued. If the special offer is not valid yet, it shall state the starting date of the special price or other specific terms of the offer.

c. Is trade dress infringement considered unfair competition in this country?

Yes; CUCA provides that acts are unfair competition when they are contrary to law or morality by threatening or prejudicing the interests of another business or customer: article 3.1 of CUCA.

Marking or omitting to mark, goods or services which could thereby mislead as to the origin, quantity, quality, components, workmanship, usefulness, possibility of use, repair, maintenance or other essential features of the goods or services, or concealing risks from use are considered trade dress infringement: article 10.1. of CUCA.

Also releasing for free circulation products in packaging which may cause effects referred to article 10.1 is the act of unfair competition, unless the use of such packaging is justified by technical reasons.

If trade dress is also meant to mean imitating an external appearance, see the answer to (d), below.

d. Is confusion created by passing off considered unfair competition in this country?

Yes, although CUCA does not directly provide for passing off. Case by case analysis is needed in such instances.

Imitating - but not functional features - by copying an external appearance of a finished product to mislead as to the identity of a producer or a product is considered unfair competition: article 13.1. of CUCA.

Regarding infringement of a business's goodwill protection can be sought under the general clause: article 3.1 of CUCA (acts are unfair competition when they are contrary to law or morality by threatening or prejudicing the interests of another business or customer).

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes; false allegations are considered unfair competition if they were untrue or misleading information about the own or another one's business to gain benefit or cause disadvantage: article 14.1. of CUCA.

A company could also sue for an infringement of personal rights, specifically, a good name: articles 23-24 of CC.

f. Are misleading acts considered unfair competition in this country?

Under article 5 of CUCA it is prohibited to use misleading description of a business entity (e.g. by way of using misleading name, logo or symbol). Article 10 of CUCA prohibits misleading description of goods and services. Article 16.1.2. prohibits misleading advertising which may influence a customer to purchase goods or services.

IV. What are the remedies available?

The civil remedies under CUCA and The Act on Counteracting Unfair Commercial Practices are, in essence:

- a. Cessation (injunctive relief);
- b. removing the effects;
- c. making one or repeated statements of appropriate content and form;
- d. remedying damage;
- e. surrender of unjustified benefits;
- f. a donation to a social cause to do with Polish culture or the national heritage (in the case of culpable behavior, i.e. where the acts were intentional or reckless);
- g. destroying or forfeiting towards a plaintiff of infringing products and materials.

CUCA also permits fines and imprisonment.

The civil remedies under CC are, in essence:

- a. cessation (injunctive relief);
- b. removing the effects;
- c. making a statement of appropriate content and form;
- d. remedying harm;
- e. paying compensation (for moral infringement);
- f. a donation to a social goal.

The further remedies that are available are:

- a. a preliminary injunction;
- b. recovering costs which include lawyer fees under a tariff .

V. Are unfair competition claims brought before a court or other authority?

In courts. Collective consumer protection matters are dealt with by The Office of Competition and Consumer Protection (UOKiK).

Spain

Authors: Juan Luis Gracia Albero
Reviewers: Ignacio Marqués Jarque

I. Does this country have one or more national statutes/acts that address unfair competition?

YES – list the name of the statutes/acts and citation

In Spain, the ordering of competition or concurrence in the market is done through three fundamental rules:

- **Defense of Competition Act (Antitrust), No. 15/2007, of 3 July.**
- **General Advertising Act, No. 34/1988, of 11 November.**
- **Unfair Competition Act, No. 3/1991, of 10 January.**

In Spain, unfair competition and commercial conducts that can be categorized as such are specifically regulated in the above cited Unfair Competition Act No. 3/1991.

NO

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

YES

i. Common Law/Case Law

Is the case law binding on future cases/courts, or non-precedential?

- a. Binding
- b. Non-Precedential
- c. Other

ii. Regulatory regime

iii. State/provincial laws, including statutes not directly dealing with unfair competition
Private/industry self-regulatory body

iv. Other?

NO

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes [Include statute/cite]

Article 3 e) of the General Advertising Act states that false advertising shall be considered illegal and puts forward that this type of advertising can equally be an unfair competition act of those regulated in the Unfair Competition Act.

Attending to the specific circumstances, false advertising can be considered:

- a) A misleading act (art. 5)**
- b) An act of confusion (art. 6)**
- c) A misleading omission (art. 7)**
- d) An aggressive practice (art. 8)**
- e) A forbidden act of comparison (art. 10)**
- f) Misleading practices in relation to consumers (art. 20 and following)**
- g) An act contrary to the good faith in the relations between professionals and between these and consumers (general clause of art. 4)**

No/Unresolved

b. Is comparative advertising considered unfair competition in this country?

Yes [Include cite/statute]

Article 10.1 of the Spanish Unfair Competition Act states that under certain circumstances it is allowed to publicly compare the own goods and services with the goods and services provided by a competitor. However, the comparison should meet the following requirements:

- The goods or services under comparison must have the same purpose or be aimed to satisfy the same needs.**
- The comparison must be objective and refer to one or more essential, pertinent, representative and verifiable characteristics of the products or services, including the price.**
- In the case of products covered by a designation of origin or geographical indication, specific designation or traditional specialty guaranteed, the comparison may only be made with other products of the same designation.**

- Goods or services may not be presented as imitations or replicas of other goods or services to which a protected trademark or trade name is applied to.
- The comparison cannot mislead consumers, denigrate a competitor or take advantage from the reputation in the market of a third party.

As it is inferred from the content of the said provision, it only applies when the comparison makes an explicit or implicit allusion to a competitor.

Notwithstanding the foregoing, in any case, the information that could be provided in relation to a competitor's products or services cannot be provided to consumers in such a way that it could (even being truthful) mislead them and, thus, alter their economic behavior

No/Unresolved

c. Is trade dress infringement considered unfair competition in this country?

Yes [Include statute/cite]

Art. 6 of the Spanish Unfair Competition Act states that any behaviour that is likely to create confusion with another's activity, services or establishment is considered unfair.

The risk of association on the part of consumers with regard to the origin of the service is sufficient to justify the disloyalty of a practice.

No/Unresolved

d. Is confusion created by passing off considered unfair competition in this country?

Yes [Include statute/cite]

Same article 6 would apply to this case. One of the most common unfair practices consists on the imitation of third parties 'distinctive signs (and trade dress may qualify as such) , since it is an act objectively suitable to confuse consumers about the origin of the products and services in question.

No/Unresolved

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes [Include statute/cite]

This kind of behaviours can be subsumed in article 9 as acts of denigration:

The making or dissemination of statements concerning the activity, services, establishment or business relations of a third party which are likely to impair the credit of that third party on the market, unless they are accurate, true and relevant, is considered unfair.

In particular, manifestations concerning the nationality, beliefs or ideology, private life or any other strictly personal circumstances of the person concerned are not considered relevant.

No/Unresolved

f. Are misleading acts considered unfair competition in this country?

Yes [Include statute/cite]

As it has been indicated, misleading acts are considered unfair competition acts under the Spanish regulation. In particular, misleading acts are regulated in the following articles:

Article 5 (misleading acts)

Article 7 (misleading omissions)

Article 20 and following (misleading practices in relation to consumers)

No/Unresolved

Other

IV. What are the remedies available?

a. Injunctive relief (including preliminary injunctions, ex parte injunctions, etc.)

The Spanish Unfair Competition Act does not regulate any specific injunctive relief. However, the Civil Procedure Act, in particular their articles 721 to 747, which contain general rules in relation to injunctive relief, would apply.

b. Civil Damages (including general and punitive damages), an award of profits, or other monetary relief

Article 32 of the Unfair Competition Act establishes the legal remedies that can be requested in the course of an unfair competition Court action. In the list provided the actions for the compensation of damages deriving from the unfair competition act (reckless or willful) and unjust enrichment are expressly included (this last one only available if the commercial action at stake defendant harms a legal position covered by

an exclusive right or analogous economic position).

c. Corrective advertising/public apology/public retraction

Article 32.2 expressly provides two possible measures: i), the total or partial publication of the awarding judgement when the action is one of those stated in numbers 1 to 4 of articles 32.1, or ii) a cease declaration and prohibition not to resume any illicit conduct for those cases on which the effect of the infringement could be maintained over time (injunction).

Alternatively, the Right of Rectification Organic Act 2/1984 of March 26 also foresees the right to request public retraction for any information publicly divulged by any means that is (i) inaccurate and (ii) harmful to the aggrieved person or legal entity (more related however to constitutional right of self-image than to trade practices).

d. Recovery of legal fees

e. Recovery of court costs

It is possible in civil procedures, in accordance with the Spanish Civil Procedure Act, to request the counterpart to bear the costs of the proceedings, which include not only the legal fees but also the courts costs. General principle is loser pays, save exception based on the complexity of the litigated facts or the arguable/unclear nature of the legal discussion (i.e. dissenting case law).

f. Criminal penalties, criminal fines or imprisonment

Unfair competition acts are civil torts. However, the Spanish Criminal Code regulates in its articles 278 to 286 some offences that specifically relate to the market and consumers.

V. Are unfair competition claims brought before a court or other authority?

Unfair competition claims must be brought only before the Spanish Courts (specifically, before the IP-competition specialized Commercial Courts).

In accordance with article 86 ter 2. a) of the Spanish Organic Act on the Judiciary, Commercial Courts are competent to know about any claim concerning unfair competition.

In the case of unfair commercial practices with consumers regulated in Articles 20 to 31 of the Unfair Competition Act, consumers may also file complaints before the administrative authorities in the field of consumer protection.

Sweden

Author: Sophia Spala (Setterwalls Advokatbyrå)
Reviewer: Elisabeth Vestin (Hannes Snellman Attorneys Ltd.)

I. Does this country have one or more national statutes/acts that address unfair competition?

Yes. The Competition Act (Sw. Konkurrenslagen (2008:579)), the Marketing Act (Sw. Marknadsföringslagen (2008:486)) and the Trademark Act (Sw. Varumärkeslagen (2010:1877)).

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

In addition to the above mentioned statutes/acts, Swedish case law is generally binding on future cases. There are also sectoral agreements, which have a guiding function, however these are not binding. Further Sweden incorporates many EU guidelines regarding competition law to prevent unfair competition and to harmonize Member States' legislation.

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes, please see Section 5-6, 8, 10, 12-17 and 18 p. 1 of the Marketing Act.

b. Is comparative advertising considered unfair competition in this country?

Not per se, but according to Section 5-6 and 18 of the Marketing Act, comparative advertising is considered unfair competition under certain circumstances (e.g. if misleading or passing off).

c. Is trade dress infringement considered unfair competition in this country?

Yes, under certain circumstances (e.g. if misleading or passing off), please see Section 5-6, 13-14 and 18 of the Marketing Act as well as item 13, Annex 1, directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (incorporated into Swedish law through the Marketing Act).

d. Is confusion created by passing off considered unfair competition in this country?

Yes, under certain circumstances, please see Section 5-6, 14, 18 of the Marketing Act as well as case law on the subject matter.

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes, please see Section 5-6, 10 and 18 p. 1 and 5 of the Marketing Act.

f. Are misleading acts considered unfair competition in this country?

Yes, please see Section 5-6, 8, 10 and 12-17 of the Marketing Act and Chapter 1 Section 10 of the Trademark Act.

IV. What are the remedies available?

The Competition Act

- a. Administrative fines
- b. Orders imposing obligations (including preliminary orders), can be joint with a conditional fine)
- c. Nullity
- d. Damages
- e. A trading prohibition imposed on a person

The Marketing Act

- a. Injunction against certain marketing practices (including preliminary injunctions, ex parte injunctions, etc.), normally joint with a conditional fine and normally addressing also similar marketing practices
- b. Order to provide information and technical aids (including preliminary orders, ex parte orders, etc.)
- c. Orders concerning a-b above issued by the Swedish authority the Consumer Ombudsman (in cases of minor importance)
- d. Fine for disruptive marketing practices (Sw. marknadsstörningsavgift)
- e. Removal etc. of misleading presentations
- f. Damages

The Trademark Act

- a. Injunction against certain use (including preliminary injunctions, ex parte injunctions, etc.), often joint with a conditional fine and sometimes addressing also similar use
- b. Order to provide information
- c. Infringement investigation

- d. Damages
- e. Forfeiture of property and implements used in connection with a violation
- f. Order to distribute information about the outcome of a judgment
- g. Criminal fines or imprisonment

V. Are unfair competition claims brought before a court or other authority?

The Competition Act

Claims are brought before the Swedish Competition Authority and/or the Patent and Market Court.

The Marketing Act

Claims are brought before the Patent and Market Court. The Swedish authority the Consumer Ombudsman may also initiate administrative matters/issue orders.

The Trademark Act

Claims are brought before the Patent and Market Court.

United Arab Emirates

Author: Vanessa Delnaud (Gowling WLG)
Reviewer: James Dunne (Hedef & Partners)

I. Does this country have one or more national statutes/acts that address unfair competition?

Yes. The UAE is a civil law jurisdiction. Statutes are therefore the primary source of law.

1. There are several Federal Laws containing provisions addressing unfair competition in the UAE. The main pieces of legislation are the following:

- **Federal Law No. 18 of 1993** concerning commercial transactions (the "Commercial Code"). For instance, under Articles 65 and 66 of the Commercial Code, it is unlawful for a business to use deceptive methods in the distribution of goods and services;
- **Federal Law No. 19 of 2016** on Anti Commercial Fraud (the "Commercial Fraud Law") also protects businesses from unlawful commercial behaviors from other businesses. Under the Commercial Fraud Law, a commercial fraud is defined as "deceiving any customer in any way";
- **Federal Law No. 24 of 2006** concerning consumer protection (the "Consumer Protection Law"), and its executive regulations, contain provisions specifying the obligations imposed on suppliers of goods and services;
- **Federal Law No. 5 of 1985** concerning civil transactions (the "Civil Code"). Under Article 282 of the Civil Code, any unlawful behavior gives rise to its author's liability to pay compensation for the damage resulting from such behavior. As a result, Article 282 may be used against unlawful commercial behaviors.

2. Also, **Federal Law No 4 of 2012** regulating competition (the "Competition Law") and Cabinet Resolutions No 13 and 22 of 2016, specifically deal with anti-competitive practices, and are aimed at regulating economic concentration, restrictive agreements and abuse of dominant position.

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

Not Applicable. See answer I. above.

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes:

- Article 82 of Federal Law No. 15 of 1980 concerning press and publications (the "Media Law");
- Article 6 of the Consumer Protection Law;
- Article 65 and 66 of the Commercial Code;
- Article 2 of the Commercial Fraud Law;
- Article 282 of the Civil Code.

b. Is comparative advertising considered unfair competition in this country?

No.

c. Is trade dress infringement considered unfair competition in this country?

Yes.

Trade dress infringement may constitute IP infringement on the basis of:

- Articles 37 and 38 of the Federal Trademark Law No. 37 of 1992 concerning Trade Marks (the "Trade Marks Law");
-
- Article 37 of the Federal Copyright Law No. 7 of 2002 concerning Copyrights and Neighbouring Rights (the "Copyright Law").

If claimant owns a registered trademark in the trade dress, it may also constitute commercial fraud on the basis of:

- Article 2 of the Commercial Fraud Law

Absent any registered rights in claimant's trade dress, it may constitute an act of unfair competition on the basis of:

- Article 282 of the Civil Code

d. Is confusion created by passing off considered unfair competition in this country?

- The UAE is a civil law jurisdiction. As a result, the common law tort of passing off as such is not available.
- However, the UAE recognizes the protection of unregistered rights, including marks with an international reputation, but the burden of proof is significantly higher to prove that complainant has protectable unregistered rights.
- For the sake of completeness, it is worth mentioning that the Dubai International Financial Center (DIFC), a free zone in Dubai, has its own judicial system (the DIFC Courts are an independent English language common law judiciary) and its own laws. In this respect, Article 38 (1) of the DIFC Law No. 5 of 2005 Law of Obligations deals with passing off.

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes:

- Article 82 of the Media Law;
- Article 6 of the Consumer Protection Law;
- Article 66 of the Commercial Code;
- Article 2 of the Commercial Fraud Law;
- Chapter 6 of the Federal Law No. 3 of 1987 (the "Penal Code"), in particular, Article 373 ;
- Article 282 of the Civil Code.

f. Are misleading acts considered unfair competition in this country?

Yes:

- Article 82 of the Media Law;
- Article 6 of the Consumer Protection Law;
- Articles 65 and 66 of the Commercial Code;
- Article 2 of the Commercial Fraud Law;
- Article 282 of the Civil Code.

IV. What are the remedies available?

a. Injunctions;

Civil Damages: in practice, UAE civil courts are reluctant to award high amounts of damages, even in unfair competition or infringement cases. In this respect, UAE courts will require that evidence of the damage suffered, it being specified that UAE courts tend to be conservative when assessing the damage and require a close causal link between the breach and any subsequent loss for that loss to be recoverable.

Recovery of legal fees and legal costs: UAE courts ordinarily award to the winning party a nominal amount as partial reimbursement of its legal fees. The awards generally cover (where applicable) the court fees, any expert fees and a nominal amount of the

professional fees.

Criminal fines or imprisonment;

Publication of the decision: the publication of decisions is generally reserved for particularly serious matters.

V. Are unfair competition claims brought before a court or other authority?

Unfair competition claims may, depending on the matter, give rise to:

- An **administrative complaint with the UAE National Media Council ("NMC")**, in charge of implementing national media policy and supervising all media affairs.;
- An **administrative complaint with the Consumer Protection Department ("CPD") of the UAE Ministry of Economy**, in charge of the implementation of general policy for consumer protection. However, the CPD considers such complaints not from the complainant's perspective as an aggrieved competitor in the market but from the perspective of potential harm being caused to consumers through false allegations, misleading acts or unfair commercial practices;
- An **administrative complaint with the IP Departments of the Abu Dhabi Department of Economic Development (ADDED) or of the Dubai Department of Economic Development (DDED)**, provided that the claimant has registered IP rights in the UAE;
- **Civil proceedings** before the UAE courts, and/or
- **Criminal proceedings** before the UAE criminal courts.

United Kingdom

Author: Arty Rajendra (Osborne Clarke)
Reviewer: Tom Scourfield (CMS) Cameron McKenna Nabarro (Olswang LLP)

I. Does this country have one or more national statutes/acts that address unfair competition?

Some UK legislation covers aspects which might otherwise be covered by unfair competition legislation, including in particular:

1. The Business Protection from Misleading Marketing Regulations 2008/1276 which deals largely with misleading (to traders) and comparative advertising; and
2. The Consumer Protection from Unfair Trading Regulations 2008 which deals with false or misleading advertising to consumers.

Notably, the above legislation is enforceable by UK regulators such as Trading Standards or the Advertising Standards Authority, but provides no private law cause of action for competitors to enforce against each other.

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

There is no general law of Unfair Competition in the UK. Instead we have the common law of passing off which has a number of similarities. But the UK courts have expressly ruled out extending passing off to a more general unfair competition law.

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this country?

In a sense. False advertising would be in breach of Consumer Protection from Unfair Trading Regulations 2008.

b. Is comparative advertising considered unfair competition in this country?

Not in the strict sense. The consequences of publishing an unfair comparative advert are that (i) the advert may amount to trade mark infringement; (ii) the Advertising Standards Authority can uphold a complaint against the advertiser; (iii) a government enforcement agency can bring proceedings for an injunction or other enforcement action.

c. Is trade dress infringement considered unfair competition in this country?

No, but this can amount to passing off.

d. Is confusion created by passing off considered unfair competition in this country?

Passing off is the closest we have to Unfair Competition. Passing off uses the concept of 'deception' rather than 'confusion', but they are broadly similar.

e. Are false allegations, including disparagement, considered unfair competition in this country?

They would be in breach of the Regulations described above, but this would not be described as Unfair Competition in the UK. They may also arise to the tort of malicious falsehood.

f. Are misleading acts considered unfair competition in this country?

Misleading acts could be in breach of the Consumer Protection from Unfair Trading Regulations 2008 if they caused an effect on transactional behaviour.

IV. What are the remedies available?

The remedies for passing off are:

- a. Injunctive relief (including interim injunctions, ex parte interim injunctions, etc.);
- b. Damages or an account of profits;
- c. Recovery of legal fees and court costs;
- d. Public dissemination of the judgment;
- e. Delivery up and destruction of the offending goods.

V. Are unfair competition claims brought before a court or other authority?

Passing off claims are brought before the court.

Uruguay

Author: Alejandro Alterwain (Ferrere)
Reviewer: Fabiana Penadés (Clarke Modet & Co)

I. Does this country have one or more national statutes/acts that address unfair competition?

No, there is no specific Uruguayan act or statute regulating unfair competition. However, the Paris Convention for the Protection of Industrial Property (Article 10 bis: Unfair competition) was ratified by the Law 14.910 and is frequently applied and is considered as self-executing treaty by local courts.

II. If there is no national statute/act that addresses unfair competition, is there another way in which unfair competition is prohibited in this country?

Apart from Article 10 bis of the Paris Convention, Uruguayan courts also rely on general civil law principles, such as the prohibition of causing damage and of rights abuse (sections 1319 and 1321 of the Uruguayan Civil Code).

The prohibition to engage in unfair competition also derives from the good faith principle (section 72 of the Uruguayan Constitution).

III. Identify examples of IP-related unfair competition conduct that is prohibited in this country?

a. Is false advertising considered unfair competition in this in country?

Yes, false advertising is considered unfair competition under the referred regulations. In addition, the Consumer Protection Law prohibits false advertising as well (Law 17,250, Section 24).

b. Is comparative advertising considered unfair competition in this country?

No, the Consumer Protection Law allows comparative advertising as long as it is based on objective comparisons and not on subjective elements, such as emotional or psychological ones. The comparison must be verifiable (Law 17,250, Section 25).

c. Is trade dress infringement considered unfair competition in this country?

There is no specific regulation for trade dress protection. In practice, it is possible to

protect trade dress through trademark registration and under unfair competition.

d. Is confusion created by passing off considered unfair competition in this country?

Yes, confusion created by passing off is considered unfair competition under the referred regulations (Paris Convention, Article 10 bis, Section 3, Subsection I).

e. Are false allegations, including disparagement, considered unfair competition in this country?

Yes, false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities of a competitor are considered unfair competition (Paris Convention, Article 10 bis, Section 3, Subsection II).

f. Are misleading acts considered unfair competition in this country?

Yes, misleading acts are considered unfair competition under the Paris Convention (Article 10 bis, Section 3, subsection III).

IV. What are the remedies available?

- a. Injunctive relief (including preliminary injunctions, ex parte injunctions, etc.) and cease orders.
- b. Civil Damages (including consequential damages and loss of profits).

V. Are unfair competition claims brought before a court or other authority?

Unfair competition claims are brought before the Judiciary.

Trademark applications that can be considered acts of unfair competition can be challenged at the Patent and Trademark Office (DNPI – Dirección Nacional de Propiedad Industrial).