



Unfair Competition Quick Guide

Prepared by the Advocacy Subcommittee of the Unfair Competition Committee

October 2023

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Intro/Summary

During INTA's 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 which can be accessed via the links above in the Contents. In the 2021–2022 and 2022–2023 terms, the UCC expanded its inquiries to cover additional jurisdictions and subject matter.

The surveys 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; (4) the proper venue for the assertion of unfair competition claims; (5) which venue hears unfair competition claims; (6) who is entitled to assert unfair competition claims; (7) whether unfair competition claims could be made in parallel to intellectual property rights; (8) whether the expiry of intellectual property rights prevents assertion of unfair competition claims; and (9) limitation periods.

The result is this practical, high-level Quick Guide for brand-owners and practitioners seeking a basic overview of a given country's unfair competition laws. In general, the responses revealed that all surveyed countries – from each continent other than Antarctica – 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. This variation begins at the point of even defining what "unfair competition" is.

In some jurisdictions, unfair competition is its own cause of action, while others treat such conduct as a conglomeration of tort law, competition law, misleading advertising, consumer protection and other laws. In this way, the very definition of "unfair competition" involves an existential and reflective question at the outset that is answered in different ways around the world. The varied construction of "unfair competition" as a concept shows the value in having concise and available information about details from as many jurisdictions as possible.

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 INTA practitioners who contributed to this version of the Quick Guide for their efforts and support.

Argentina

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

Presidential Decree DNU 274/2019 addresses unfair competition in Argentina and revokes Law N° 22802 dated 1983 (<http://servicios.infoleg.gob.ar/infolegInternet/anexos/320000-324999/322236/norma.htm>).

It was regulated by Resolution 241/2020 (<https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-241-2020-341395/texto>). This Resolution provides clarification regarding overlapping rules and regulations, i.e. between Unfair competition DNU 274/19 and Competition Act N° 27442. In this regard, when conducts falling within the scope of sections 9 or 10 of DNU 274/19 are covered by the Competition Act, the latter will prevail.

The regulation of unfair competition addressed by DNU 274/19 must be construed as supplementary to that addressed by the Competition Act N° 27442.

Other complementary statutes that apply are as follows:

Argentina is part of the Paris Convention and GATT/ADPIC. Therefore, section 10 bis of Paris Convention and 39 of the ADPIC apply. Section 159 of Criminal Code also applies to some conducts.

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?

General provision states that all kind of conduct or omission that is objectively valid to

affect the competitive position of a person or may affect the competitive process is considered an unfair competition conduct.¹

One typical case of unfair competition is that comprised by confusion acts, that involve not only trademark confusion but also confusion through designations, commercial styles, advertisement, etc.

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

Yes. Section 10, subsections “b”, “g” and “h”, define forbidden confusion conducts, unfair use of third parties’ reputation and acts of unfair imitation.

Section 4 of Resolution 241/2020 sets forth that the advertising in which the information given is incomprehensible, especially due to disclaimers/information read out too fast, font size, or any other feature that may distort it, will be considered misleading advertising.

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

Comparative advertising is regulated under section 15 of Decree 274/2019 and in section 1101 of the Civil and Commercial Code. Comparative advertising will be allowed as far as it complies with all the following statutory standards, for example:

- Not to lead to confusion or deception;
- The comparison be objective;
- The purpose be to inform as regards the advantages of the good promoted;
- Not to be denigrative;
- Not to intend an unlawful advantage of third parties’ reputation
- Not to feature a good or service as an imitation or reproduction of a good or service with a protected trademark or trade name

In case it does not comply with the above-mentioned statutory standards, it will be considered an unfair competition act.

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

¹ *Original Text: “ARTÍCULO 9°. - Cláusula general. Constituye un acto de competencia desleal toda acción u omisión que, por medios indebidos, resulte objetivamente apta para afectar la posición competitiva de una persona o el adecuado funcionamiento del proceso competitivo.”*

Unfair competition statute sets forth that the imitation of goods and services or company initiatives will be considered unfair when those actions may cause confusion as regards the origin of such goods or services or involves an unfair exploitation of third parties' reputation or efforts (section 10, subsection "h" of DNU 274/19).²

Section 10 subsection "g" sets forth that those acts that improperly take advantage of the image of another party leading to confuse their own goods, services, activities, distinctive signs or establishments with those of others, will constitute an unlawful exploitation of third-party renown.

Therefore, trade dress infringement may be considered an unfair competition conduct.

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

Yes. Articles 10 (g), 11 and related provisions under DNU 274/2019 provide that any conduct that improperly takes advantage of the image, reputation goodwill among others - commercial or professional - leading to confuse their goods, services, activities, distinctive signs or establishments with those of a third party.

e. ³Are false allegations, including disparagement, considered unfair competition in this country?

Yes. Articles 11 and 15 of DNU 274/2019 regulate direct or indirect comparative advertising and consider the use of any expression aimed at discrediting or ridiculing goods, services, or undermining competitors' reputation as an act of unfair competition.

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

Yes. Misleading acts are considered unfair competition acts according to Art 10, 11 and complementary articles. It is also supplemented by other Laws such Consumer Protection Law N° 24.240 and the Civil and Commercial Code (article 279).

² Original text: "*h) Actos de imitación desleal: La imitación de bienes y servicios o iniciativas empresariales será considerada desleal cuando resulte idónea para generar confusión respecto de la procedencia de los bienes o servicios o comporte un aprovechamiento indebido de la reputación o el esfuerzo ajeno.*"

³ Original Text: *g) Explotación indebida de la reputación ajena: Realizar actos que aprovechen indebidamente la imagen, el crédito, la fama, el prestigio o la reputación empresarial o profesional que corresponde a otro, induciendo a confundir los propios bienes, servicios, actividades, signos distintivos o establecimientos con los de otro.*

g. Other

Not applicable.

IV. What are the remedies available?

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

Preliminary injunctions are accepted where the affected party or the Administrative Authority had justified reasons to fear that the production of evidence might result impossible or very difficult during the evidentiary period. So, upon request or on the court's own motion, certain means of evidence can be requested to be produced in advance. (*section 44 DNU 274/2019*)

According to section 9 of Resolution 241/2020, the initiation of penalty proceedings under DNU 274/19 may be carried out by means of a report issued by the National Board for the Domestic Market Development including the analysis of the alleged misconduct and its corresponding investigation.

Precautionary measures must be reasonable and proportionate to the damage intended to be avoided. To request precautionary measures, the following facts must be asserted: i) legal plausibility (ii) danger in delay and; iii) injunction bond (*section 47 DNU 274/2019*).

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

Civil damages are available. Argentina general basis and the general standard rule is that damages must be proven, and in general, punitive damages are not accepted. However, there are specific cases when collective interest is involved (class actions) where punitive damages could be awarded (according to section 1737 of Civil and Commercial Code and section 52 bis of Consumer Protection Law N° 24240).

c. Corrective advertising/public apology/public retraction

Unfair competition Statute allows the damaged party to request the publication of the decision or the rectification of the advertisement to the infringer that has incurred in misleading or deceptive practices (*section 57 DNU 274/19*).

d. Recovery of legal fees

Legal fees can be recovered from time to time according to standard ruling.

e. Recovery of court costs

Court fees can be recovered and must be paid by the losing party.

f. Criminal penalties, criminal fines or imprisonment

Criminal fines and penalties may be applicable if a case is brought to a Criminal Court. Administrative fines are also applicable.

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

Unfair competition claims may be brought to the Administrative Authority or the Federal Courts. Administrative proceedings are held before the Ministry of Productive Development, Unfair Competition division. If the damaged party opted for pursuing administrative proceedings, once initiated, the judicial action will lapse, except the action for damage recovery.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

The affected party is entitled to promote the action. Every individual that participates in the market, whose economic interests result affected directly or threatened by the act of unfair competition or forbidden advertisement, is entitled to take the legal actions stipulated by DNU 274/19.

The Administrative authority can act ex-officio or upon request of any interested party.

According to section 10 ter of the Paris Convention, associations, professional corporations or those that represent economic interests, as far as the interests of their members are affected, are allowed to initiate actions against an unfair competition act (*section 62 DNU 27472019*).

Also, those associations that according to their statutes have the purpose of protecting consumers.

Legal standing will be contingent on whether the unfair competition act adversely and directly affects consumers' interests.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes. There are no provisions that ban asserting an UC claim parallel to the claim of an IP right, i.e. a trademark cease of use action

If this is the case:

a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

Yes, it can. The Federal Court having jurisdiction to hear these cases (Trademark, Design and UC) is the same. So, it is always advisable to include all the subject matters in the same claim. Otherwise, they should be consolidated upon request or on the court's own motion.

b. Can damages be claimed twice?

No, they cannot. Only different damages from different legal source may be claimed separately. In practice, only one damage reimbursement is generally claimed.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes, in case the conduct is considered a conduct within the scope of the UC statutes.

IX. After which period do UC claims become subject to the statute of limitations?

Statute of limitations applies as follows (*section 55 DNU 274/19*):

The actions arising from the afore-mentioned violations have a prescriptive period of 3 years from the date on which the infringement took place. In cases of continuous conducts, the term will start as from the moment in which the conduct in analysis ceased.

For the purposes of claiming damages, the prescriptive period is as follows:

I.) Two (2) years counting as from: (a) the moment the infringement was committed or ceased; or (b) the moment the wronged party takes notice or could have reasonably taken notice of the UC act that caused him a damage; or

II). One (1) year counting as from the date that the administrative decision sanctioning an UC act becomes final.

Australia

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

Australia has laws relating to unfair competition and the relevant national statute is the Competition and Consumer Act, 2010 (Cth) (CCA). It contains provisions in Schedule 2, The Australian Consumer Law (ACL), which prohibit, among other things, misleading or deceptive conduct (under Part 2-1) and unfair practices (under Part 3-1), including false or misleading representations, in trade or commerce.

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 CCA, Australia has the common law tort of passing off. Broadly, this tort prevents one party from trading on the reputation and goodwill of another by using their name, trade mark, trade indicia, get-up or otherwise.

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, in trade or commerce, is prohibited under s18 of the ACL (Part 2-1) if it constitutes misleading or deceptive conduct. It is also likely to breach s29 of the ACL (Part 3-1) which prohibits false or misleading representations, in trade or commerce, about goods or services. It may also breach other provisions of Part 3-1 relating to other unfair practices, in trade or commerce.

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

It depends on the circumstances. If it is factually correct and does not convey any misrepresentation, it is unlikely to be actionable under the ACL. The comparison should be accurate, the goods and services under comparison should be reasonably similar and the comparison should remain accurate for the life of the promotion, in order to avoid a breach of the ACL. If the comparative advertising is misleading or deceptive or likely to mislead or deceive, it is likely to breach s18 of the ACL (Part 2-1).

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

If the owner of rights in the trade dress has a substantial reputation in it, and the use of it, or similar trade dress, by another party conveys a misrepresentation which is likely to damage the owner's reputation and cause deception of consumers, this is likely to constitute the common law tort of passing and/or breach provisions of the ACL which prohibit misleading or deceptive conduct and/or false representations (being sections 18 and 29 respectively).

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

While evidence of confusion may be relevant to an action for passing off and/or misleading or deceptive conduct under the ACL, conduct that merely confuses may not, on its own, be actionable under these laws relating to unfair competition in Australia.

For the common law tort of passing off, the party seeking to protect its name, trade indicia, get-up or otherwise must have a substantial reputation and the other party's conduct must convey a misrepresentation which is likely to damage that reputation and cause deception of consumers. For misleading or deceptive conduct to be established under the ACL, there must be a real, or not remote, chance of misleading or deceiving. Conduct that is merely confusing may not meet this requirement.

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

False allegations, in trade or commerce, including disparagement, are actionable under s18 of the ACL (Part 2-1) if they constitute misleading or deceptive conduct. They are also likely to be actionable under s29 (Part 3-1), relating to false or misleading representations, in trade or commerce.

Such false allegations may also amount to the tort of injurious falsehood.

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

If misleading acts are conducted in trade or commerce, they may constitute misleading or deceptive conduct, in breach of s18 of the ACL (Part 2-1) and, depending on the nature of the act, s29 of the ACL (Part 3-1).

Section 18 of the ACL is broadly worded to prohibit a person from engaging "in conduct that is misleading or deceptive or is likely to mislead or deceive" and s4(2)(a) of the CCA states that "a reference to engaging in conduct shall be read as a reference to doing or refusing to do any act [...]".

IV. What are the remedies available?

The remedies available for misleading or deceptive conduct under s18 of the ACL (Part

2-1) include injunctive relief, damages and various Court orders. These may include an order for corrective advertising on the application of the competition regulator, the Australian Competition and Consumer Commission (ACCC).

The remedies available for false or misleading representations under s29, and other unfair practices under Part 3-1, of the ACL include injunctive relief, damages and various Court orders. These may include an order for corrective advertising on the application of the ACCC. In addition, the Court may order the payment of pecuniary penalties. For most provisions of Part 3-1, an amount not exceeding \$AUD500,000 may be ordered to be paid in the case of a breach by an individual. In the case of a breach by a body corporate the amount may not exceed the greater of:

- \$AUD10,000,000;
- If the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the act or omission – 3 times the value of that benefit;
- If the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the act or omission occurred or started to occur.

The remedies available for common law passing off include injunctive relief and damages, including exemplary damages in some circumstances, or an account of profits.

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

Actions for misleading or deceptive conduct, false representations and other unfair practices, under the ACL, may be brought in the Federal Court of Australia and the Federal Circuit and Family Court of Australia. If there is an associated claim of common law passing off, this may also be heard by the same Courts. Otherwise, common law passing off claims may be brought in the Supreme Court of an Australian State or Territory.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

An action for common law passing off and/or for misleading or deceptive and/or false representations and/or other unfair practices, under the ACL, may be brought by a competitor, a consumer or any person, including a corporation whose rights are alleged to have been breached. In the case of misleading or deceptive and/or false representations and/or other unfair practices, action may also be taken against the party alleged to have breached the ACL by the competition regulator, the ACCC.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

It is possible to bring proceedings alleging breach of an IP right, for example, trade mark

infringement, which proceedings also include claims of common law passing off and/or misleading or deceptive conduct and/or false representations relating to the same IP right. Trade mark infringement proceedings routinely include claims of common law passing off and/or misleading or deceptive conduct and/or false representations.

If this is the case:

- a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?**

The claims of common law passing off and/or misleading or deceptive conduct and/or false representations may be asserted in the same proceedings relating to the IP right.

- b. Can damages be claimed twice?**

A plaintiff cannot recover the same loss twice over, however, additional damages may be claimed for trade mark infringement or exemplary damages for common law passing off, in addition to compensatory damages, in certain circumstances, such as, in a case of flagrant infringement

- VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?**

If an unregistered design, or expired design, has acquired a substantial reputation in the marketplace, such that the use by a third party of the same, or similar, design is likely to damage that reputation and cause deception of consumers, a common law claim of passing off could be asserted. Similarly, in broad terms, if there is a real risk of consumers being misled or deceived, a claim of misleading or deceptive conduct could be asserted under s18 the ACL (Part 2-1).

- IX. After which period do UC claims become subject to the statute of limitations?**

In the case of the tort of common law passing off, in all States of Australia, 6 years from the date when the cause of action accrues.

An action for damages in respect of claims of misleading or deceptive conduct, false representations and/or other unfair practices, under the ACL, may be commenced at any time within 6 years after the day on which the cause of action accrued.

Austria

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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 country?

Yes, this is a misleading commercial practice according to §§ 1 and 2 UWG.

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

Yes, according to § 2a UWG, comparative advertising is considered unfair, if it

- is misleading;
- does not compare goods or services for the same need or purpose;
- does not compare certain objective product features or the price of the products;
- disparages or degrades the goods or services of a competitor;
- imitates the goods or services of a competitor;
- leads to a likelihood of confusion between the advertiser and a competitor or

between the advertiser's trademarks, trade names, other distinctive signs, goods or services and those of a competitor.

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

Trade dress infringement is regulated in § 9 UWG (this provision protects signs of a company that are not registered as a trademark) but is rather judged according to standards developed under trademark law. Imitation marketing can also be a misleading commercial practice according to §§ 1 and 2 UWG.

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

Yes, such situation would be considered a misleading commercial practice according to §§ 1 and 2 UWG.

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

Yes, such actions would be considered unfair competition under the general clause of § 1 UWG and also under § 2a UWG in connection with comparative advertisement or under § 7 UWG which specifically prohibits the disparagement of a competitor by false allegations.

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

Yes, a misleading commercial practice can be pursued according to §§ 1 and 2 UWG if it contains incorrect information or is otherwise likely to mislead a market participant in such a way that the market participant is induced to take a commercial decision that he would not otherwise have taken.

IV. What are the remedies available?

In case of a breach of UWG provisions, the following remedies are available:

- Injunctive relief, including preliminary injunctions (PI)
- Removal of unlawful actions and recall of infringing goods from the market
- Right to information and rendering of accounts (in case of infringements of trade dress or other signs of a competitor)
- Civil damages, including compensation for lost profits or release of profits achieved by the infringer or hypothetical royalty (in certain cases of infringements of rights of a competitor such as trade dress, or in cases of unfair exploitation of a competitor's achievements etc.) and compensation for immaterial damage in exceptional cases

- Recovery of legal and court fees
- Publication of the judgment and/or revocation of disparaging statements

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

The claims are brought before the commercial departments of the local state courts (Landesgerichte), at the seat of the defendant.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

According to § 14 UWG the following parties can assert claims in Austria:

- Competitors;
- Associations for the promotion of economic interests of entrepreneurs;
- Federal Chamber of Labor, federal Chamber of Commerce, Chamber of Agriculture, Labor Union, Federal Competition Authority;
- Associations for Consumer Protection

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

As long as registered IP rights exist, the law governing the IP rights always takes precedence over UWG. Infringement of a registered trademark, for example, will only be judged under trademark law and will not be considered an infringement of the UWG. If there are additional UWG elements in the facts of the case (particular aggressive or misleading practices, unregistered signs etc.), the plaintiff might rely also on UWG in the same claim.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

If parallel claims exist based on the facts of the case, they generally can be asserted in the same proceedings.

b. Can damages be claimed twice?

No, damages cannot be claimed twice. There must be no enrichment of the plaintiff through the compensation for damages.

VIII. In the event an IP right which could or does concern a subject matter of

the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

A UWG claim cannot be used to extend expired IP rights. If an IP right never existed or no longer exists, an infringement cannot be asserted via a UWG claim.

IX. After which period do UC claims become subject to the statute of limitations?

Claims for injunctive relief become time-barred 6 months after the plaintiff has become aware of the infringement and the infringer. The claim is preserved for the time the unlawful condition persists. Payment claims fall under the statute of limitations after three years.

Belgium

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

Yes. Book VI. of the Belgian Code of Economic Law (hereinafter the “CEL”) addresses unfair trade practices, which include both market practices (in the context of B2B relations) and commercial practices (in the context of B2C relations).

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. False advertising is considered a misleading commercial practice under Belgian law. It is called “misleading advertising” according to the terminology of article 5.4.(a) of the European Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market. Article VI.94, 1° CEL provides that commercial practices of undertakings towards consumers are unfair if they are misleading within the meaning of Article VI.97 to Article VI. 100 CEL. With regard specifically to false advertising, Article VI.97 CEL provides that a commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful, and causes or is likely to cause the consumer to take a transactional decision that he would not otherwise have taken. In addition, Article VI.100 provides a “black list” of misleading commercial practices, which also expressively address false advertising. Contrarily to Article VI.97 CEL, it will not have to be specifically demonstrated that the advertisement in question can cause the average consumer to take a transactional decision that he would not otherwise have taken. Indeed, all practices included in the list of Article VI.100 CEL will be considered unfair under any circumstances.

The same prohibition applies in the context of B2B relations. Here, Article VI.105 CEL provides that a market practice shall be regarded as misleading if it contains false information and is therefore untruthful, and causes or is likely to cause an undertaking to take a transactional decision that it would not otherwise have taken.

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

Comparative advertising is permitted if the conditions exhaustively listed in Article VI.17 CEL are met. The same conditions will apply irrespective of whether comparative advertising occurs in B2C or B2B relations. In summary, the comparison will be allowed if:

- 1) it is not misleading;
- 2) it concerns goods and services meeting the same needs or intended for the same purpose;
- 3) it objectively compares one or more significant, relevant, verifiable and representative features of the goods and services, which may also include price;
- 4) it does not lead to confusion among traders, between the advertiser and a competitor or between the advertiser's trademarks, trade names, other distinguishing marks, goods or services and those of a competitor;
- 5) it does not discredit or denigrate the trademarks, trade names, other distinguishing marks, goods, services, activities, or circumstances of a competitor;
- 6) for products with designation of origin, it relates in each case to products with the same designation;
- 7) it does not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- 8) it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name.

According to the case-law of the Court of Justice of the EU, these conditions must be interpreted in the sense most favourable to the comparative advertisement (judgment of 25 October 2001, C-112/99, Toshiba, §37). This opinion has also been confirmed in the Belgian case law (Court of Appeal, Brussels, 11 May 2004, Eurogenerics v Beecham).

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

As such the concept of "trade dress" is unknown in Belgian law.

However, comparable approaches exist in case law. Marketing a product in such a way that it can mislead consumers by creating confusion with products, trademarks, trade names or other distinctive signs of a competitor, inter alia through comparative advertisement, constitutes a characterized act of unfair competition. Article VI.98, 1° CEL prohibits such marketing. A similar prohibition is provided for B2B relations in Article VI.105, 8° CEL.

In a well-known case, the Antwerp Court of Appeal granted protection to the trade dress of a Mexican restaurant in Belgium against a competitor who copied several aspects of a Mexican restaurant, such as the shape, the size and the partition of the building, the interior design, the table barbecue, the materials of the chairs and tables, of the grill and of the cash register, the all-in-menu at the same price, the formula of all you can eat for one price, the dress of the waiters, etc. (Antwerp, 6 April 1993, *Jaarboek Handelspraktijken* 1993, 305).

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

As such the concept of “passing off” is unknown in Belgian law.

However, comparable approaches exist in case law. According to Article VI.100, 13° CEL, promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not, will be considered unfair under any circumstances.

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

Yes. Article VI.105, 10° CEL specifically prohibits communicating derogatory information about another undertaking, its goods, services or activity.

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

Yes, both in the context of B2C and B2B relations.

As already mentioned in point III. a., Article VI.94, 1° states that commercial practices of undertakings towards consumers are unfair if they are misleading within the meaning of Article VI.97 to Art. VI. 100 CEL. Article VI.97 to 99 CEL define the conditions under which a commercial practice is deemed to be misleading (including by omission), whereas Article 100 CEL lists 23 misleading practices that are per se prohibited. For these practices, the court does not have to examine the impact of the practice on the consumer’s choice.

Concerning B2B relations, Article VI.105 CEL defines the conditions under which a market practice is deemed to be misleading. In addition, Article 105/1 CEL defines the conditions under which a market practice will be considered as a misleading omission.

IV. What are the remedies available?

In case of unfair competition, different types of remedies are available:

a. Procedure for a Cease and Desist order:

- Competence: A Cease and Desist order is issued by the President of the competent Court of enterprises. See question V.

- **Proceedings:** To commence proceedings for a Cease and Desist order, no prior notice of default requires to be issued against the infringing party. The case is handled in the same way as summary proceedings (Article XVII.6 CEL), which basically means it will follow a fast track. However, the decision of the court is not a provisional decision, but a decision on the merits. The judgement is enforceable notwithstanding appeal.
- **Content of the Cease and Desist Order:** A request to the President of the Court is a request to establish the existence of an infringement of the Code of Economic Law and to issue a Cease and Desist order. The President of the Court of enterprises cannot award damages in these proceedings.
- **Conditions:** It suffices that there be an infringement of Book VI of the CEL; good faith is no defence against a request for a Cease and Desist order. If the infringement has ceased before the President of the Commercial Court has established the existence of the infringement, the President can still issue a Cease and Desist order as long as the risk of repetition of the infringement cannot be objectively excluded (Court of Cassation, 29 May 2009, Jb.Hand. 2009, 650).
- **Private penalties:** At the request of the plaintiff, the President of the Commercial Court may order the infringing party to pay private penalties to the successful plaintiff, if the person found guilty of an infringement fails to respect the Cease and Desist order. The amount is not meant to compensate the plaintiff for any damage suffered, but merely to ensure that the infringing party will comply with the order. The President of the Commercial Court may set a cap on such penalties.
- **Publication:** At the request of the plaintiff, the President of the Commercial Court may order the publication of his decision or a summary thereof (Article XVII.4 CEL). However, such a measure may only be ordered if it contributes to the cessation of the infringement or of its effect.

b. Ordinary proceedings on the merits

- These proceedings, following the track of regular proceedings, can be brought before a regular chamber of the Court of Enterprises. They can include a claim for a Cease and Desists order, but also a claim for damages. It will take about one year to obtain a court decision, while for the Cease and Desist order, it will approximately 6 months to obtain a decision.

c. Preliminary injunction (provisional measures)

- These proceedings are aimed at obtaining urgent measures to safeguard provisionally the parties' interests. A preliminary injunction is relatively rare for unfair commercial practices disputes because the Cease and Desist order can be obtained in the same period as summary proceedings.

d. Complaint with the economic inspection

- The Belgian administration, i.e. the Economic Inspection within the department of the Federal Public Service Economy, can inspect and handles complaints on possible infringements of the rules on consumer protection or fair trade practices. If an infringement is found, this can lead to a statement where the infringement is specified. In many cases, if the infringement is admitted, a settlement will be made possible through payment of a fine. The Economic Inspection can, however, opt for criminal prosecution in case a matter is disputed or if there is no room for settlement. In such cases, the matter is handed over to the public prosecutor.

e. Criminal sanctions:

- The criminal sanctions for the infringements of Book VI are provided in Articles XV.83 to XV.86 CEL. They include significant fines.
- Criminal sanctions only apply to the infringements directly cited in these provisions or in case of bad faith. If the facts of proceedings introduced before the criminal court are simultaneously the subject of Cease and Desist proceedings, then the proceedings before the criminal judge are suspended until a judgment is issued in the Cease and Desist proceedings (Article VI.71 CEL). The criminal court is bound by the judgment in the Cease and Desist proceedings.
- The initiative to initiate criminal proceedings is in the hands of the Public Prosecutor. A fine may be proposed by way of settlement if the infringement is acknowledged.

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

Claims for unfair competition are brought before the Court of enterprises. A claim for a Cease and Desist order is brought before the President of the Court of enterprises. He has jurisdiction over infringements of Book VI and XIV. He also has jurisdiction over infringements of Book XI – intellectual property rights.

Any infringement of the unfair competition rules can be brought to the attention of administrative authorities (Economic Inspection) or to the Public Prosecutor. However, there is no obligation for them to act.

Stakeholders have set up an independent body “Jury d’éthique publicitaire” to rule on an advertising code of conduct (see www.JEP.be). If the Jury rules that a particular advertisement does not comply with the code of conduct or with the law, most media will no longer publish the advertisement.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Generally, any person having an interest may bring a UC claim, including competitors

and associations for consumer protection or professional bodies.

Pursuant to Art. XVII.7 CEL, the following persons may bring proceedings for a Cease and Desist order:

- any person having a legal interest;
- the Minister competent for the matter in dispute (usually the Minister responsible for the Economy) or the Director-General of the General Department for Control and Mediation of the Federal Public Service Economy, SMEs and Energy. Note, however, that neither the competent Minister nor the Director-General can bring proceedings for a Cease and Desist Order for acts contrary to fair market practices that may prejudice an undertaking's professional interest;
- a professional authority and professional or inter-professional organizations, provided they are legal entities, which defend the interests of their members having a legal interest;
- consumer organizations, provided they are legal entities, represented within the Council for Consumption or recognized by the Minister responsible for the Economy in B2C practices.

VII. Is it possible to assert a UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

The debate on the possible “reflex” effects of specific legislation (for example IP protection) that would prevent parallel claims on the same subject matter is ongoing in Belgian case law. A judgement of the Court of Cassation of 29 May 2009 (Noël Marquet) considers that taking advantage of someone else's creative efforts, notably by copying, is authorized and does not per se constitute an unfair practice. The unfair character cannot follow from the copying itself, but must be established from circumstances such as the infringement of intellectual property rights, the creation of confusion or other unfair behavior.

On this basis parallel claims are sometimes refused if they concern the same subject matter. However, in case of specific circumstances where the legal conditions for each claim are fulfilled, concurrence of claims remain possible.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

As already mentioned in question V, both claims can be asserted in the same proceedings before the President of the Court of enterprises or before the regular chamber of the Court of Enterprises.

b. Can damages be claimed twice?

No.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

As a consequence of the judgement by the Court of Cassation of 29 May 2009 (Noël Marquet), the “freedom of copying” is rather broadly recognized in the absence of IP rights or characterized unfair behavior. Specific circumstances showing UC will have to be established.

For trademarks, Article 2.19 (1) of the Benelux Convention on Intellectual Property Law states that no one may claim protection (irrespective of the type of claim) for a sign deemed to be a trademark within the meaning of this Convention, unless that claimant can provide evidence of registration of the trademark which it has filed.

IX. After which period do UC claims become subject to the statute of limitations?

The general limitation on acts of unfair competition is five years. This rule is particularly relevant for damages.

As provided by Article XVII.5 CEL, a claim for a Cease and Desist order must be brought within one year of the date upon which the unlawful practice was ceased.

Brazil

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

There is no unfair competition act. However, there are provisions dealing with unfair competition in several different acts, as mentioned in item II that follows.

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. The following laws address unfair competition:

Brazilian Industrial Property Law

It provides that the protection of rights relating to Industrial Property is effected by means of repression of unfair competition (Article 2, item V, of the IP Law). Furthermore, Article 195 of the IP Law addresses crimes of unfair competition.

Brazilian Consumer Protection Code

Article 4, item VI, of this Law states that one of the principles governing consumers' relations is the repression and suppression of all abuses committed in the consumer market, including unfair competition and misuse of industrial inventions and creations of trademarks and trade names and distinctive signs which could cause harm to consumers.

Law No. 12.529/11, which structures the Brazilian System for the Defense of Competition (SBDC)

It provides for the prevention and repression of infringements against the economic order, states the following:

Article 36 - The acts in any form expressed, which have as object or which may produce the following effects, constitute an infringement of the economic order, regardless of blame, even if they are not achieved:

I - limit, distort or in any way prejudice free competition or free initiative;

The abovementioned legal provisions are supplemented by the Paris Convention, of which Brazil is a member.

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, if the false advertising constitutes one of the acts described below. According to Article 195 of the Brazilian IP Law, the following acts are considered crimes of unfair competition:

- publishing, by any means, a false affirmation, in detriment to a competitor, with a view to obtaining advantage (item I);
- providing or divulging, with respect to a competitor, false information, with a view to obtaining advantage (item II);
- claiming, as a means of advertising, to have received a prize or distinction that the legal entity/individual did not obtain.

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

Comparative advertising is not specifically prohibited by law. However, depending on the circumstances of the case, it may be decided that a comparative advertisement does constitute unfair competition. For example, if a legal entity or individual provides or divulges, with respect to a competitor, false information with the purpose of obtaining advantage (Article 195, item II, of the IP Law).

According to an important decision rendered by the Brazilian Superior Court of Justice in 2014 (Special Appeal No.1.377.911 – SP), although there is no law expressly prohibiting or authorizing comparative advertising, this topic is influenced by the consumer protection law and by the industrial property law, both in the trademark field and in the competition field. Comparative advertising is not prohibited by the Consumer Protection Code, as long as it complies with the principle of veracity of information, is objective and not abusive.

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

There is no specific provision in Brazilian legislation stating that trade dress infringement is considered unfair competition. However, the acts indicated below are considered unfair competition and whenever a judge recognizes that there is trade dress infringement, the judge may decide that there is unfair competition crime in the following cases:

- if a legal entity/individual uses fraudulent means to divert, for his own or a third party's benefit, another's clientele (Article 195, item III, of the IP Law);

- if a legal entity/individual uses another's advertising expression or sign, or imitates it, in a manner to cause confusion between the products or establishments.

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

If confusion results from the acts described below, it is considered unfair competition, according to Article 195 of the IP Law:

- Item III: using fraudulent means to divert, for his own or a third party's benefit, another's clientele;
- item IV: using another's advertising expression or sign, or imitates it, in a manner to cause confusion between the products or establishments;
- item V: unduly using another's commercial name, title of establishment or insignia or selling, exhibiting or offering for sale or maintains in stock a product with such references;
- item VI: substituting, with his own name or company name, on a product of another party, the name or company name of such other party, without his consent.

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

Yes, assuming one of the acts indicated in letter a) above takes place.

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

Yes, assuming the misleading acts fall into one of the crimes of unfair competition provided by Article 195 of the IP Law.

IV. What are the remedies available?

Both civil and criminal remedies are available.

Civil court action

It is possible to file a civil court action, with or without a request for anticipated judgement, requesting the immediate cessation of the illegal act and also requesting damages. If the plaintiff is successful, he can recover attorneys' fees and court fees as well.

It should be noted that Article 209 of the IP Law provides that "*The aggrieved party is reserved the right to receive losses and damages in compensation for losses caused by*

acts of violation of industrial property rights and acts of unfair competition that are not provided for in this law but which tend to prejudice another's reputation or business or to cause confusion between commercial or industrial establishments or providers of services, or between products and services placed on the market."

As for criteria followed by judges in order to establish losses resulting from a condemnation in a civil court action, the Brazilian IP Law states that:

Article 210 - *Loss of profits will be determined by the most favourable to the injured party of the following criteria.*

I - The benefits that would have been gained by the injured party if the violation had not occurred;

II - The benefits gained by the author of the violation of the rights; or

III - The remuneration that the author of the violation would have paid to the proprietor of the violated rights for a granted license which would have legally permitted him to exploit the subject of the rights.

Criminal court action

Crimes of unfair competition are foreseen by Article 195 of the Industrial Property Law. Therefore, it is possible to file a criminal court action requesting the conviction of the defendant. The penalty provided by the IP Law for this type of crime is detention of 3 (three) months to 1 (one) year, or a fine.

In case of a fine, it can be reduced or increased depending on the personal conditions of the agent and of the magnitude of the advantage obtained.

Cease and desist letters

Sending a cease and desist letter to the legal entity/person who is practicing unfair competition is also an option. In the cease and desist letter, the owner of the IP rights usually requests that the illegal act be immediately discontinued. No damages can be claimed in cease and desist letters.

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

Unfair competition claims may be brought before the courts and before the Brazilian PTO.

Before the Brazilian PTO, claims of unfair competition can be brought by means of oppositions and administrative nullity proceedings, by the person affected. However, the Brazilian PTO refuses to decide over unfair competition claims under the justification that they should be decided by the courts.

Back in 2008, the PTO issued Technical Opinion No. 20, stating that "the simple filing of a trademark application does not characterize crime of unfair competition. Therefore,

trademark applications shall not be rejected on the basis of Article 2, item V, of the Industrial Property Law". (this legal provision is referred to in item II above). This position was maintained in the 3rd Edition of the Trademark Manual that was recently issued in September 2019 by the PTO.

In spite of the above, it is important to bring unfair competition claims at the PTO because if the person affected decides later to file a court action, he can allege before the courts that unfair competition claims have been brought before, at the administrative level. Besides, the Brazilian PTO may change its position in the future and may start rejecting trademark applications on the basis of unfair competition and thus, it is advisable to bring unfair competition claims before that Agency (the PTO).

As for courts, it is possible to file both civil and criminal court actions, as stated in item IV above.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Any legal entity or individual can claim unfair competition, as long as there is a competition relationship between the parties.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes.

If this is the case:

a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

The UC claim can be asserted in the same proceedings.

b. Can damages be claimed twice?

No. Since UC claims are asserted in the same proceeding, damages can be claimed a single time.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

If the IP right is the basis for the unfair competition claim, it is necessary that the owner of the IP right has at least a pending trademark or design/patent application (in this case, the owner has an expectation or rights instead of acquired rights, but it is possible to claim unfair competition).

In case the IP right which is the basis for the unfair competition claim has expired, it is important to provide the courts with other arguments that base the unfair competition claim. If the IP right refers to a trademark, it is advisable to refile the mark to cite the trademark application in the unfair competition claim.

We would like to point out, however, that an unfair competition claim does not require the existence of an IP right. For example, providing or divulging, with respect to a competitor, false information, with a view to obtaining advantage, is considered a crime of unfair competition (and can base a civil UC claim), which, in many instances, does not necessarily involve an IP right.

IX. After which period do UC claims become subject to the statute of limitations?

UC lawsuits involving compensation for damages expire after 5 years from the date on which the plaintiff became aware of the UC practice under provisions of Article 225 of the Brazilian Industrial Property Law (Law No. 9,279 of 1996) and Precedent 143, current, from the Superior Court of Justice.

UC claims which do not involve damage claims become statute barred after 10 years counted from the date on which the plaintiff became aware of the UC practice (Article 205 of the Brazilian Civil Code).

Bulgaria

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

The unfair completion (UC) is subject of regulation by the Law of Protection of the Competition (LPC). In division 2 of the law, a special chapter 7 (art.29 - art.37) named PROHIBITION OF UNFAIR COMPETITION is dedicated to these matters. The chapter consist of one general rule prohibiting the unfair competition and several special rules addressing specific hypothesis of UC. The proceeding for investigation and establishing unfair competition is described in chapter 12 of division 3 of the 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?

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?

The false (misleading) advertising is considered an act of unfair competition by LPC. Art. 33, par. 1 of the law prohibits advertisement, which in any manner, including in the manner of its presentation, misleads, or could mislead persons, to whom it is addressed or whom it reaches, and because of this, it may influence their economical behaviour or because of these reasons harms or may harm a competitor. Par. 2 of the same article provides for some factors that should be taken into account in considering one advertisement as false (misleading).

The definition for “advertisement” is given in § 1, item 11 of the Additional provisions of the LPC. Advertisement is “any message in connection with trade, craft or a profession, which aims to encourage the realization of goods and services, including real estates, rights and obligations”. This means that not every information that is false or misleading is considered as false (misleading) advertisement, but only that aimed to encourage the realization of goods and services. This is the border between the false (misleading) advertisement and the misleading information in general.

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

The comparative advertising is explicitly allowed under LPC if, however, it meets the requirements of the law. Otherwise it is considered UC. The rules are pointed in art. 34, par. 2 of LPC and those related to IP requires that the advertisement:

- should not lead to confusing trademarks, trade names, other distinctive features, goods or services of the advertiser to those of his competitors;
- should not lead to discrediting or denigrating the trademarks, trade names or other distinctive attributes, the goods, services, activities or position of the competitors;
- should compare goods of one and the same appellation of origin and should not take unfair advantage from the reputation of a trade mark, trade name or other distinctive attributes of the competitors or from the reputation of and appellation of origin of competitive goods;
- should not promote the goods or the services as imitation or replica of goods or services with registered trade mark or trade name.

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

Trade dress infringement is considered unfair competition, but only if it may mislead the consumer. Art. 35, par. 1 of LPC prohibits offering or advertising of goods or services with appearance, packaging or marking which mislead or could mislead regarding their origin, producer or seller, the way and the place of production. Taking unfair advantage of or causing detriment to the reputation of the trade dress, however, is not considered to be unfair competition but only a trademark or design infringement under the Trademark Law or the Design Law.

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

The concept of passing off is accepted in LPC under the term "Imitation". In its art. 35, LPC considers unfair competition three forms of imitation:

- offering or advertising goods/services with appearance, packaging, marking, name or other attributes which mislead or could mislead the consumers regarding their origin, producer, seller, the way and the place of manufacturing, the source and the place of acquisition or using, the consumer qualities and other substantial characteristics of the goods/services;
- using of company name, trademark or geographical indication, identical or similar to those of other persons or entities, in a way which could lead to injuring the interests of the competitors.

- using of a domain name or design of a website, identical or similar to these of other persons or entities, in a manner, which may lead to misleading of the consumers and/or injury the interests of the competitors.

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

The false allegation and especially the disparagement are explicitly pointed in Art. 30 of LPC as acts of unfair competition. It is prohibited under Art. 30 to harm the good name and the trust in the competitors, as well as the trust in the goods and services offered by them, by stating or spreading false information or by presenting facts in distorted manner.

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

Art. 31 called “Misleading”, considers unfair competition every act that may lead to misleading of the consumers regarding substantial features of the goods or services or regarding the manner of usage of the goods or providing the services through stating false information or through distortion of facts.

IV. What are the remedies available?

The proceeding for establishing unfair competition has administrative character and results in imposing a monetary penalty in favour of the State that may vary depending on the seriousness and duration of infringement, but could not exceed 10% of the turnover of the merchant for the previous fiscal year.

Any person who is affected by the infringement may claim full remedies in the civil procedure before the court. In this respect the decision of the Commission for Protection of the Competition establishing the infringement that is entered into force or decision of the Supreme Court that confirm such a decision is binding for the civil courts regarding the fact of the infringement and the infringer which should not be subject of further proving.

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

The authority that is competent to establish unfair competition conduct is the Commission for Protection of the Competition (CPC). It is a centralized, independent regulator whose members are elected by the Parliament and is authorized to investigate alleged unfair competition acts and to impose penalties if it finds the investigated merchant guilty.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

According Art. 38, par. 1 LPC the UC proceeding before CPC may be initiated upon request of the persons, whose interests are impacted or endangered by infringement of LPC or ex officio by the Commission. CPC is entitled to initiate procedure for investigating UC ex officio - when it has certain information for such conduct, including information from the media.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g.

design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

UC claims can be asserted parallel to the claim of an IP infringement as these proceedings are independent from each other. Furthermore, there are different preconditions for establishing UC and IP infringement. For example, the main precondition for establishing imitation of a trademark or design is the product that originally bear them to be well established on the market. There is no such precondition in order to be able to enforce the IP rights under the Trademark Law or Design Law. It is not necessary for establishing imitation of a trademark or design to have a registration. On the contrary, Trademark Law and Design Law both require exclusive rights through registration as precondition for enforcement.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

Due to the above described preconditions and also due to the different authorities that are competent to establish UC and/or IP infringement both types of claims cannot be asserted in one and the same proceeding. Competent for establishing IP infringement is the court – the civil or the criminal one, but competent to establish UC is only CPC.

b. Can damages be claimed twice?

There is no clear vision or court practice on this question. We share the opinion that claiming damages “twice” is possible as the ground of the infringement is different so the genesis of the damages should be different, but in both cases the damages should be a direct result from the infringement and this result should be undoubtedly proven. The awarded damages should not exceed the actual prejudice suffered by the injured party from both the UC and IP right infringement.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

According to the case law of the Supreme Administrative Court, the existence of an IP right is not required in order to assert an UC claim. Therefore, an UC claim may be asserted even if an IP right never existed or has expired.

IX. After which period do UC claims become subject to the statute of limitations?

The administrative liability for UC is subject to statute of limitations of 5 years. In cases of continuous conduct, the period runs from the date of discontinuance of such conduct. Therefore, CPC cannot impose penalties for UC acts which took place more than 5 years

before the initiation of the proceeding.

The civil liability for damages resulting from acts of UC is also subject to statute of limitations of 5 years. The period runs from the date of discontinuance of such conduct or from the date on which the claimant became aware of the UC conduct, whichever is the later date. Therefore, a court cannot award damages resulting from UC acts which took place more than 5 years before the initiation of the proceeding.

Canada

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

Yes. There is no single federal statute that addresses all aspects of unfair competition in Canada. Provisions of the Trademarks Act, RSC 1985, c T-13 and the Competition Act, RSC 1985, c C-34 relate to unfair competition issues.

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?

Section 52 of the Competition Act prohibits a person from knowingly or recklessly making a representation to the public that is materially false or misleading, for the purpose of promoting, directly or indirectly, the supply or use of a product or any business interest, by any means whatsoever. This is a general prohibition on misrepresentations, and is not commonly referred to as “unfair competition” domestically.

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

Section 52 of the Competition Act has been invoked regarding comparative advertising. Section 7(a) of the Trademarks Act prohibits a person from making a false or misleading statement tending to discredit the business, goods, or services of a competitor and is sometimes invoked regarding comparative advertising. Domestically, such claims are generally referred to as comparative advertising or marketing claims.

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

Trade dress infringement is more generally considered under common law passing off as

opposed to being viewed as “unfair competition”. Passing off is actionable both at common law and under section 7(b) of the Trademarks Act.

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

Confusion related to passing off is generally referred to as “passing off” rather than “unfair competition” among most practitioners and adjudicators.

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

Section 7(a) of the Trademarks Act prevents making a false or misleading statement tending to discredit the business, goods or services of a competitor.

Additional claims may be available in relation to the common law torts of injurious falsehood/slander of goods. The common law tort requires the plaintiff to prove malice and damages.

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

Misleading acts are more typically considered trademark-related offences rather than “unfair competition”, per se.

Section 7(c) of the Trademarks Act prohibits passing off other goods or services as and for those ordered or requested.

Section 7(d) of the Trademarks Act prohibits a person from making use, in association with goods or services, of any description that is materially false and likely to mislead the public as to the: (i) character, quality, quantity, or composition; (ii) geographical origin; or (iii) mode of the manufacture, production, or performance, of the goods or services.

As noted above, section 52 of the Competition Act prohibits certain misleading marketing practices.

Article 1457 of the Civil Code of Quebec has also been relied upon with respect to passing off and misleading conduct, which section imposes a general duty on every person to abide by the rules of conduct incumbent on them, according to the circumstances, usage or law, so as not to cause injury to another.

IV. What are the remedies available?

- Injunctions – aggrieved parties can seek injunctive relief on an interim, interlocutory and/or permanent basis.
- Damages – aggrieved parties may seek damages or an accounting of profits, depending on the nature of the claims.

- Delivery up – in some instances, recovery or destruction of infringing materials may be available.
- Regulatory penalties – Section 52 of the Competition Act may be enforced by Canada's Commissioner of Competition who can, among other things, issue administrative monetary penalties.

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

Depending on the claim, unfair competition claims may be brought in Canada's Federal Court or in the relevant provincial or territorial superior court. Regulatory claims initiated by the Commissioner of Competition may be brought before The Competition Tribunal.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Depending on the nature of the claim, competitors (whose intellectual property is invoked by the conduct), competitors (whose intellectual property is not invoked by the conduct), IP rights holders whose rights are infringed, consumers who have suffered damages from misrepresentations, or the Commissioner of Competition can assert unfair competition claims.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes.

If this is the case:

- a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?**

The jurisdictional requirement for the commencement of an unfair competition claim concerns the propriety of the venue for the specific claim as opposed to any restriction on overlap between the claims.

- b. Can damages be claimed twice?**

No, in most imaginable instances of overlap between IP rights and UC claims, the damages would not be doubly recoverable.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes, so long as the applicable statutory limitation period for the UC claim has not itself expired.

IX. After which period do UC claims become subject to the statute of limitations?

The statute of limitation varies between Canadian jurisdictions from one to ten years. The limitation period in the two most populous common law provinces, Ontario and British Columbia, is two years past the date of discovery.

Chile

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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 country?

Yes. The law provides 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, 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 provides 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): 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 provides 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 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) 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 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”.

g. Other

N/A

IV. What are the remedies available?

- Injunctive relief (including preliminary injunctions, ex parte injunctions, etc.)
- Civil Damages (including general and punitive damages), an award of profits, or other monetary relief
- 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.
- Recovery of legal fees
- Recovery of court costs

- 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.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Any competitor or any person (physical or company) or entity is entitled to assert UC claims if they can demonstrate a legal interest in filing that action. A legal interest can be understood as any prejudice (monetary damage) or affectation to any legal right derived from the conduct considered as unfair competition acts.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes, both actions are plenty compatible. This is expressly accepted in the UC Chilean law.

If this is the case:

a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

The civil proceedings and courts entitled to resolve these conflicts (IP conflicts and UC conflicts) are the same.

b. Can damages be claimed twice?

It might be theoretically possible to claim different damages if it is possible to separate the different actions or sources of each kind of damage. However, normally at the praxis stage only one damage reimbursement is generally claimed.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes, since the UC claims are open to any “use of distinctive signs” amongst other causes, it is plenty possible to assert UC legal actions. In other words, UC law does not require a valid trademark, design, drawing etc. registration for asserting the UC legal action.

IX. After which period do UC claims become subject to the statute of limitations?

The UC claims prescribes after one year from the cease of the acts considered as within the conceptual framework of the unfair competition acts provided by the law.

The action for repairing the damages produced by those unfair competition acts prescribes in four years.

China

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

Yes. The Anti-Unfair Competition system in this country consists of two core parts: The Monopoly Law of the People's Republic of China and the Anti-Unfair Competition Law of the People's Republic of China.

The two laws place different emphasis in balancing unfair competitive relationship. The Anti-Unfair Competition Law of the PRC mainly leverages the balance of the interests of specific parties in specific trading occasions, focuses on maintaining the microscopic competition order, and pursues justice of the particular cases. The Act regulates the remedies when the event occurs, with civil sanctions as the main remedy, supplemented by administrative sanctions and criminal sanctions. Whereas the Anti-Monopoly Law of the PRC mainly maintains the macro competition orders, focusing on the overall and macro efficiency, regulating the rules both before and after the event occurs.

There are also judicial interpretations specialized on or concerning unfair competition matters, including:

- Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Anti-Unfair Competition Law of the PRC
- Interpretation of the Supreme People's Court on Application of Laws in the Trial of Civil Disputes Over Domain Names of Computer Network
- Provisions of the Supreme People's Court on Issues Concerned in the Trial of Cases of Civil Disputes over the Conflict between Registered Trademark or Enterprise Name with Prior Right

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. According to Article 8 of the Anti-Unfair Competition Law of the PRC, the business operators shall not make false or misleading commercial promotions on the performance, function, quality, sales status, user reviews, honors awarded, etc. of its products, to deceive and mislead consumers. Business operators shall not help other operators conduct false or misleading commercial promotions, for example, organizing false transactions.

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

Comparative advertising is not listed as an unfair competition conduct in the Anti-Unfair Competition Law of the PRC or the interpretation of the said law. In the Advertising Law of the PRC, it is regulated that “Advertisers, advertising agents, and advertisement publishers shall not conduct any form of unfair competition in their advertising activities”, but there is no regulation to restrict or allow comparative advertising.

In practices, comparative advertising may be regarded as unfair competition under certain conditions.

1) As regulated in Article 17 of the interpretation of the Anti-Unfair Competition Law of the PRC, “one-sided publicity or comparison of goods” that “defrauds or misleads the relevant public” may be determined as “misleading commercial promotions”, which is false advertising as prohibited in Article 8 of the Anti-Unfair Competition Law of the PRC. Besides, if a business operator intentionally disseminates false or misleading information fabricated by another party to damage the goodwill and products reputation of a competitor in comparative advertising, it may be determined as “commercial defamation” as prohibited in Article 11 of the Anti-Unfair Competition Law of the PRC.

2) As regulated in Article 13 of the Advertising Law of the PRC, advertisements shall not disparage the goods or services of other producers and operators. It is prohibited under Article 13 of the Advertising Law of the PRC when the business operators publish the accurate and truthful advertisements that their goods are better than others. If their comparative advertising is misleading and deceptive to the customers, it would consider unfair competition and may also be determined as “commercial defamation” as prohibited in Article 11 of the Anti-Unfair Competition Law of the PRC.

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

The phrase “trade dress” does not appear in the relevant laws and regulations, and in practice it is interpreted as “packaging or decoration” which is under the protection of the Anti-Unfair Competition Law of the PRC.

According to Article 6 of the Anti-Unfair Competition Law of the PRC, “unauthorized use of a label that is identical with or similar to the name, packaging or decoration, among others, of another person's commodity with certain influence” which “mislead customers

into believing the source of commodities are from others or the commodities have a particular connection with those of others” shall be regarded as unfair competition.

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

Yes, confusion created by passing off is considered as unfair competition and is prohibited in Article 6 of the Anti-Unfair Competition Law of the PRC. It is regulated that confusion acts to mislead customers into believing the source of commodities are from others or the commodities have a particular connection with those of others would be regarded as unfair competition. Confusion created by passing off is to mislead customers into believing their counterfeit goods are from origins or has a certain connection with the origins. The confusion acts mislead the customers to purchase their goods or products. As a result, the kind of confusion act shall be considered unfair competition and is prohibited under Article 11 of the Anti-Unfair Competition Law of the PRC and cause damage to the competitors’ business reputation and business integrity.

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

Yes. Commercial defamation is prohibited in Article 11 of the Anti-Unfair Competition Law of PRC. It is regulated that the business operator’s act of fabricating or disseminating false or misleading information to damage the goodwill or business reputation of competitors shall be regarded as unfair competition.

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

Yes. In Article 6 of the Anti-Unfair Competition Law of the PRC, it is regulated that “other confusion acts that are sufficient to mislead customers into believing that commodities are from others or have a particular connection with those of others” is considered as unfair competition. Besides, it is regulated in Article 8 (“false advertising”) and Article 11 (“commercial defamation”) that misleading commercial publicity or misleading information is an element for constituting act of unfair competition.

IV. What are the remedies available?

Administrative action:

- Order to prevent the illegal act
- Confiscate illegal commodities
- Confiscate any illegal income
- Impose fine
- Eliminate negative influence

- Revoke the business license if the infringement is serious
- Register for change of business name (when the registered enterprise name of the operator violates Article 6 of the Anti-Unfair Competition Law of the PRC)
- Revoke the approval document of advertisement examination (when publishes false advertisements and violates Article 55 of the Advertising Law of the PRC).
- No application for advertisement examination will be accepted within a year (when publishes false advertisements and violates Article 55 of the Advertising Law of the PRC)
- Revoke the advertisement release registration certificate (when publishes false advertisements and violates Article 55 of the Advertising Law of the PRC).

Civil litigation:

- Injunctive relief (including preliminary injunctions)
- Order to prevent the illegal act
- Eliminate negative influence
- Pay compensation to the plaintiff (based on the plaintiff's actual loss due to the infringement, or the benefits acquired by defendant from the infringement (accounts of profit))
- Pay reasonable expenses rendered by the defendant to prevent the infringement
- Pay the legal fees and other associated litigation costs.

Criminal litigation:

- Fixed-term imprisonment
- Criminal detention
- Fines
- Fines imposed to the corporation and punishment to the responsible person in charge and other responsible personnel

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

The unfair competition claims could be brought before a competent court or supervisory inspection department (Administration of Market Supervision).

a. According to Article 17 of the Anti-Unfair Competition Law of the PRC, a business operator whose lawful rights and interests are infringed by any of the acts of unfair competition may initiate a civil litigation in a People's Court. As regulated in the interpretation of the Anti-Unfair Competition Law of the PRC, the civil action against an unfair competition act shall be under the jurisdiction of the People's Court at the place of infringement or the place of the defendant's domicile.

b. According to Article 16 of the Anti-Unfair Competition Law of the PRC, any entity or individual shall have the right to report a suspicious act of unfair competition to the supervisory inspection department, which shall process the report in a timely manner as legally required after the date of receiving it. The supervisory inspection department could impose administrative punishment on the business operator by conducting the unfair competition acts in accordance with Article 18 to Article 26 of the Anti-Unfair Competition Law of the PRC.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

UC claims could be asserted by "business operator" which includes natural persons, legal persons, or non-legal person organizations that engage in the production or distribution of commodities or the provision of services.

According to Article 2 of the interpretation of the Anti-Unfair Competition Law of the PRC, the party who asserts UC claims shall also be "market participants in a relationship of potentially competing for trading opportunities or diminishing competitive advantages with business operators in production or business activities".

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

It is possible to assert an UC claim parallel to the claim of an IP right. If the matter has both a claim of an IP right and a UC claim, then both of the claims can be brought up to the court, however, it would not be allowed for double punishment.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

The UC claim can be asserted in the same proceedings. For example, the claim of the case could be "trademark infringement and unfair competition" or "copyright infringement and unfair competition", etc.

b. Can damages be claimed twice?

No. According to Article 24 of the interpretation of Anti-Unfair Competition Law of the PRC, for an infringement committed by one infringer against the same party at the time within the same region, if the People's Court has determined that there is an infringement

of a copyright, patent or trademark right and ordered the infringer to undertake civil liabilities, the People's Court shall not uphold that the party raises claims against the infringer for civil liabilities on the grounds of unfair competition. .

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

It depends. There are cross relations between the IP Law and the Anti-Unfair Competition Law. When the IP rights never existed or have expired or for which are beyond the limitation period for protection under IP Law, it is still possible to be protected by the Anti-Unfair Competition Law if the elements are satisfied under the Anti-Unfair Competition Law.

In a judgement issued by the Supreme People's Court in 2010, the SPC emphasizes that as the termination of a design means that the design enters into the public domain, when the right owner claims for protection based on unique packaging and decoration, the right owner must submit more sufficient evidence to prove that the design shall be protected under the Anti-Unfair Competition Law of the PRC. The SPC clarifies the standards for protection of an expired design patent under the Anti-Unfair Competition Law of the PRC. The requirements are that a) the products using this design must meet the standard of highly reputable products; b) the design shall have the function of distinguishing the origin of products, so it can be used as a unique decoration for the famous products; c) the design is not determined by the nature of the product itself, nor a design necessary for achieving a certain technical effect or a design that makes the product have substantial value; and d) third party's use of the design will cause consumers' confusion or mislead the consumers about the origin of the goods.

However, whether the "expired" IP rights can actually be protected under the Anti-Unfair Competition Law of the PRC, must be judged according to the fundamental value and the purpose of the Anti-Unfair Competition Law to maintain the market competition order.

IX. After which period do UC claims become subject to the statute of limitations?

The statute of limitation for an act of unfair competition is three years, starting from the day when the right owner knows or should have known that his or her right has been infringed upon and who the infringer is.

Colombia

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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 country?

Yes, based on misleading acts. Per article 11 of Law 256 of 1996, 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?

- Injunctive relief (including preliminary ex parte injunctions)
- Civil damages, limited to actual damages and lost profit.
- Legal fees, as determined by the fees established by the Colombian Bar (Consejo Superior de la Judicatura)
- 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.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Any person participating in the market can assert UC claims against another market participant, without requiring them to be competitors, if the acts of UC take place in the market - at least the effects of the UC acts must take place or potentially take place in the Colombian market - so long as there is the intention to concur in the market. (articles 2, 3 and 4 of Law 256 of 1996).

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes.

If this is the case:

- a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?**

UC claim may be asserted in the same proceedings.

b. Can damages be claimed twice?

Damages cannot be claimed twice. A plaintiff may obtain damages, both direct and indirect, based on the evidence he puts forth to demonstrate each specific claim brought in the suit. The plaintiff must indicate the specific monetary damage suffered for each claimed cause of action. However, if the factual basis of the claims is the same, the plaintiff will only receive damages for the single factual basis leading to the actionable claims. For example, a trademark infringement claim brought together with an unfair competition claim for acts of confusion, have the same factual basis, i.e. the unauthorized use of a registered trademark which generates likelihood of confusion in the consumer. Hence, even if both - trademark infringement and acts of confusion under unfair competition claims - may be granted to the plaintiff, damages awarded will be those arising from the unauthorized use of the trademark per se, which generated both legal causes of action.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

If the unfair competition claim is solely grounded on the basis of an IP right, the fact that such IP right never existed, would eliminate the grounds for the unfair competition claim. On the other hand, if the IP right existed but expired, the claim may be brought for the unfair competition acts that took place up until the expiration of the IP right.

In Colombia, no unfair competition acts require per se the existence of an IP right. However, the unfair competition act of “exploitation of another’s reputation” (article 15 of Law 256 of 1996) indicates in part, that the unauthorized use of distinctive signs - such as trademarks, or false or misleading denominations of origin, even when accompanied by terms such as “type”, “similar”, “genre”, “system”, among others - is considered unfair.

IX. After which period do UC claims become subject to the statute of limitations?

UC claims reach the statute of limitations either, (i) after 2 years counted as of the moment in which the plaintiff had knowledge of the person who performed the unfair competition act or, (ii) after 3 years counted as of the moment the unfair competition acts took place, whichever comes first (article 23 of Law 256 of 1996).

Costa Rica

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

Yes, the primary legal basis that addresses unfair competitions is the “Law for the Promotion of Competition and Effective Defense of the Consumer and its regulations”; this statute recognized and defines the concept of unfair competition. Law N° 7472, and the “Law on Procedures for the Enforcement of Intellectual Property Rights”, Law N°. 8039 regulates acts of unfair competition that relate to intellectual property.

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?

It is not specifically established as an act of unfair competition. Nonetheless, considering that 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, state that acts which intend to mislead consumers are considered unfair competition, thus false advertising may be considered as an act of unfair competition if it ends up misleading consumers. Moreover, article 32 of the above-mentioned law establishes 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.

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

It is not specifically established as an act of unfair competition. Nonetheless, Article 37 of the “Law for the Promotion of Competition and Effective Defense of the Consumer”, Law N° 7472, states that the use comparative terms is forbidden if it consists in a broad claim on the superiority of the goods but it is not expressly included as an act that may constitute unfair competition. Nonetheless, if the comparative advertising uses false data and ends

up misleading consumers it would be considered as an act of unfair competition. Moreover, according to article 17 of the “Law for the Promotion of Competition and Effective Defense of the Consumer”, Law N ° 7472, if the comparative advertising generates confusion, with respect to the commercial establishments, products, or economic activity of competitors it would be considered unfair competition.

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

Yes, article 17, subsection d, of the “Law for the Promotion of Competition and Effective Defense of the Consumer”, Law N ° 7472 states that the use, imitation, reproduction, or substitution undue alienation of trademarks, tradenames, denominations of origin, slogans, inscriptions, packaging, labels, containers, or any other means of identification that correspond to products or services of third parties, constitute an act of unfair competition. Moreover, article 28 of the “Law on Procedures for the Enforcement of Intellectual Property Rights”, Law N°. 8039, stipulates that any conduct aiming to copy 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, article 28 subsection a of the “Law on Procedures for the Enforcement of Intellectual Property Rights”, Law N°. 8039, provides that any conduct tending to mislead consumers regarding the origin or nature, mode of manufacture, aptitude for use or consumption, quantity or any other characteristics of the products or services, to take advantage of a third-party’s intellectual property rights, shall be deemed as unfair competition.

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

Yes, article 17, subsection b, of the “Law for the Promotion of Competition and Effective Defense of the Consumer”, Law N ° 7472 states that false allegations made to discredit the commercial establishment, products, activity, or identity of a competitor constitute unfair competition.

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

Yes, article 17 subsection 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, include as unfair competition several acts that are made with the intention to mislead consumers.

IV. What are the remedies available?

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

- Civil Damages (including general and punitive damages), an award of lost profits and offender additional profits, or other monetary relief.
- Corrective advertising/public apology/public retraction
- Reimbursement of legal costs and other court related costs
- Penalty Payments
- Fines and other criminal sanctions such as prison (for cases in which the act of unfair competitions constituted a criminal offense, ie. infringement of distinctive signs)

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

The claims may be brought by any economic agent and consumers before civil courts. Moreover, claims by consumer or that cause damages to consumers claims may be filed before the National Consumer Commission. In the case acts of unfair competition that have negative consequences for consumers, the National Consumer Commission has the power to ex officio investigate and sanction acts of unfair competition. Those sanctions range from withdrawal, suspension, or correction of the practice to the imposition of a fine. Additionally, when the unfair competition act that affect consumers correspond to one of the following: use, imitation, reproduction, or substitution undue alienation of trademarks, tradenames, denominations of origin, slogans, inscriptions, packaging, labels, containers, or any other means of identification that correspond to products or services of third parties, the authority has legal capacity to transfer the case to the States Prosecutors for them to criminally prosecute the action.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Economic agents, consumers, the National Consumer Commission Authority, and the Antitrust Authority (COPROCOM) are entitled to file claims. According to Article 2 of Law 7472, economic agents are all physical entities of fact or law, public or private, who participate in any form of economic activity, as buyers, sellers, suppliers or claimants of goods or services on their own or on behalf of others.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes, it is possible.

If this is the case:

a. Can the UC claim can be asserted in the same proceedings or must

separate proceedings be initiated (possibly in different courts/authorities)?

Cumulation of both process is possible.

b. Can damages be claimed twice?

To obtain damages based on unfair competition in addition to IP infringement, additional damage must be proved.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes, but it must be proven that the design identifies a particular economic agent, its products or services, and it must be claimed.

IX. After which period do UC claims become subject to the statute of limitations?

Costa Rican law does not contain a specific statute of limitation for UC claims; therefore the general statute of limitation for civil claims, which is of 10 years, applies.

Croatia

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

Trade law and Penal 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?**

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.

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?

- Fiscal compensation for damages; claim for damages needs to be submitted with relevant Court
- Prison – up to 1 year
- Temporary closure of business
- Seizure of goods that are considered to violate unfair competition rules

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

Court.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Competitors, chamber or association of merchants, representative of legal entity or person whose rights are infringed.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes.

If this is the case:

- a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?**

The same Court, different proceedings (Trade Court)

- b. Can damages be claimed twice?**

Yes.

VIII. In the event an IP right which could or does concern a subject matter of

the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes.

IX. After which period do UC claims become subject to the statute of limitations?

One year calculated from the date the person whose rights are infringed learned about the infringement or three years calculated from the date the action considered a UC has taken place – absolute statute of limitations five years.

Czech Republic

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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:

- An injunction ordering the infringer to cease the act of unfair competition;
- An injunction ordering the infringer to remedy the defective state of affairs;
- An appropriate satisfaction of immaterial harm, including a monetary satisfaction;
- Recovery of damages caused by the act of unfair competition;
- Surrender or unjustified enrichment gained by the infringer;
- 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.).

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

An unfair competition claim can be brought by any person endangered or harmed by the act of unfair competition (competitor, consumer etc.).

A claim for injunction prohibiting the conduct or ordering the infringer to remedy defective state of affairs can also be brought by a consumer or competitor association, with the exceptions of parasitism, corruptive practices, disparagement and violation of trade secret. These associations are however not authorized to claim monetary satisfaction or damages.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes. Unfair competition claims are frequently asserted in a combination with claims based on IP infringement.

If this is the case:

a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

The claim can be raised separately or in the same proceedings (in the latter case, different jurisdiction and venue may apply). Usually, the claims are brought in the same proceedings.

b. Can damages be claimed twice?

In principle, damages can only be claimed once, although they may be claimed based on more types of legal grounds.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

There is no specific rule covering this issue. The unfair competition claim after expiry of the IP right would be subject to the same conditions as during its term. However, after expiry of the IP right, the court may in some cases be hesitant to conclude that the conduct continues to be contrary to good morals of competition, as required by the general clause.

IX. After which period do UC claims become subject to the statute of limitations?

The right to claim damages or monetary satisfaction of other harm becomes subject to the statute of limitations after three years from the day when the claim could have been brought before the court for the first time, and, at the latest, after ten years in cases of negligent behaviour and fifteen years in the case of intent.

The claim can for the first time be brought once the injured party is or could have become aware of the decisive circumstances, which include awareness of the damage and of the liable party.

A similar rule applies for unjustified enrichment.

Statute of limitation does not apply to claims seeking injunction ordering the infringer to cease and desist or remedy the defective state of affairs. However, there have been cases where courts refused to grant injunction against conduct lasting for a long period, finding that the conduct no longer is contrary to good morals of competition.

Denmark

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

YES – the principal ones are:

- The Marketing Act
- Trademark Act
- Danish Civil Code
- 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?

- Injunctive relief (including preliminary injunctions, criminal complaints, civil litigation)
- Civil damages including some general / punitive damages / monetary relief
- Corrective advertising/public apology/public retraction can in some instances also apply
- Recovery of legal fees to some extent (typically not more than 25-50% of the actual costs)
- Recovery of court costs – typically all of the court fees and/or costs (for instance for expert testimony etc.) are covered
- Criminal penalties, criminal fines or imprisonment
- 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).

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Case of prohibition and injunction pursuant to paragraph 24 (1), which covers the remedies according to the Danish Marketing Act, may be initiated by anyone with a legal interest therein.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes – in fact this is commonly done to make sure that if the IP claim is not strong enough, then the UC claim will hopefully cover the merits of the case.

If this is the case:

a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

Answer: it can be asserted during the same proceedings.

b. Can damages be claimed twice?

Damages can be claimed according to the relevant “IP Act” and the Danish Marketing Act but typically one will overlap the other and the right holder will typically not be awarded 2 x damages.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

If the right never existed, then UC rights are unlikely to be present as well. If the right expired (e.g. a registered design right), then the design right is “free for all”. However, as the scope of the UC rights goes beyond the scope of certain IP rights (e.g. trademark rights), in some cases the UC claim could still be asserted regardless of the existence or expiration of the IP rights.

IX. After which period do UC claims become subject to the statute of limitations?

The statute of limitation is typically 3 years with respect to the civil liability and the relationship between the involved parties. Paragraph 37 of the Danish Marketing Act identifies the violation that are subject to criminal claims and the statute of limitations for these are between 2-5 years depending on the specific violation.

Estonia

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

The main provisions of unfair competition are enacted in the Restriction of Unfair Competition and Protection of Business Secrets Act and in Competition Act, in Estonia. Some provisions are also enacted in the Employment Contracts Act and in Advertising Act.

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?

Kindly see the response above to the first question.

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, unfair competition is taken to mean any dishonest trading practices and acts which are contrary to good morals and practices, including disclosure of misleading information, presentation and ordering of misleading information for disclosure and disparagement of a competitor or the product or service of the competitor. According to the Art 4 Sec 1 of the Advertising Act, advertising which in any way misleads or is likely to mislead the persons to whom it is directed or whom it reaches and which, by reason of its misleading nature, is likely to affect their economic behavior or which, for those reasons, injures or is likely to injure a competitor of the person placing advertising, is prohibited.

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

Comparative advertising may be considered to be unfair if the rules on legitimate comparative advertising, which are stipulated in Art 5 of Advertising Act, are not complied with.

c. Is trade dress infringement considered unfair competition in this

country?

Yes, only in case certain criteria are met: if the trade dress is protected by figurative/3D trademark or with a design right, the infringement should be primarily assessed pursuant to the Estonian Trade Marks Act or Registered Designs Act. However, trade dress infringements also fall under the provisions of Restriction of Unfair Competition and Protection of Business Secrets Act. According of which (Art 3) unfair competition is taken to mean dishonest trading practices and acts which are contrary to good morals and practices, including:

disclosure of misleading information, presentation and ordering of misleading information for disclosure and disparagement of a competitor or the product or service of the competitor; unlawful acquisition, use and disclosure of a business secret.

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 rules, according to which good business practice may not be violated nor may practices that are otherwise unfair to other entrepreneurs be used in business. Also, this is not explicitly provided for by law, but if it can be interpreted as disclosure of misleading information, presentation and ordering of misleading information for disclosure or disparagement of a competitor or the product or service (hereinafter goods) of the competitor, then it is considered as unfair competition.

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

Yes, please see the answer a) above. Further according to the Art 4 Sec 1 (Restriction of Unfair Competition and Protection of Business Secrets Act) disclosure, presentation or ordering for disclosure, of misleading information concerning either oneself or another undertaking participating in a goods market or concerning the goods or work equipment of such undertaking is prohibited, except in cases where disclosure of such information has been ordered from the discloser of the information or where the discloser is not responsible for the correctness of the information presented thereto.

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

Yes, please see the answers c) above.

IV. What are the remedies available?

- termination of the infringement
- compensation for damage

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

Claims regarding unfair competition may be brought before County Court.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Any person, who's rights or freedoms are affected by the matter, can file an UC claim.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes. It is possible to assert UC claim separately or together with the claim of an IP right. It all depends of the specifics of the certain case.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

The UC claim can be asserted in the same proceeding.

b. Can damages be claimed twice?

Damages can be claimed in connection with IP rights infringement and in case of UC claim. Whether the violation of IP rights overlaps the UC claim or vice versa, it all depends on the certain particulars of the case. The same damage cannot be claimed twice.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

The UC claim can be filed without a claim on violation of IP right. Thus, the UC claim can be asserted even when the IP right has expired or never existed.

IX. After which period do UC claims become subject to the statute of limitations?

The limitation period is ten years as of violation of the obligation to refrain. The limitation period for a claim arising from unlawfully caused damage is three years as of the moment when the entitled person became or should have become aware of the damage and of the person obligated to compensate for the damage.

Finland

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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 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.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Competitors may assert claims under the UBPA. However, the company asserting the claim does not necessarily have to be an explicit competitor of the company committing unfair business practices, i.e. they do not have to operate in the same sector. However, the UBPA does not limit the right to bring an action to any specific party.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

Both claims are processed at the Market Court. According to the chapter 6, section 1 of the Market Court Proceedings Act (100/2013 as amended), these claims may be considered in the same legal proceedings at the Market Court if the claims relate to each other and can be handled together without difficulties, which is typically the case.

b. Can damages be claimed twice?

The damages may of course be claimed in the proceedings for both the UC claim (under the general Tort Liability Act (412/1974, as amended)) and claim of an IP right (under the

relevant IP law, e.g. the Trademarks Act (544/2019, as amended)), but the Market Court would not order the defendant pay damages twice for the same damage. The general rule is that the injured party may not reach a better (financial) position, due to the damage, than the one prior to the damage (so called 'prohibition of unjust enrichment').

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes, if the claim is founded under the UBPA.

IX. After which period do UC claims become subject to the statute of limitations?

The claim for a prohibition order by the Market Court does not have any statutory time limits. The claim for damages becomes subject to the statute of limitations in 3 years from the moment the injured party became aware or it ought to have known of the damage.

Germany

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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 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.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

- Competitors, who sell or request goods or services to a not insignificant extent and not only occasionally;

- Selected legally capable associations for the promotion of commercial or self-employed professional interests (see list in § 8b Unfair Competition Act), provided that they comprise a substantial number of traders selling goods or services of the same or a related kind on the same market and the infringement affects the interests of their members;
- Certain qualified institutions registered in the list of qualified entities pursuant to § 4 Unterlassungsklagengesetz or qualified institutions from other Member States of the European Union listed by the European Commission;
- Chambers of Industry and Commerce (Industrie- und Handelskammern), the organisations established under the German Crafts Code (Handwerkerordnung) and other public-law professional corporations.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

The claims can generally be asserted in the same proceedings.

b. Can damages be claimed twice?

The same damage can only be claimed once. In doing so, however, the plaintiff may rely on infringement of IP rights as well as UCA based claims.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

In the event an IP right never existed the UC claim can be asserted.

In the event that the IP right has expired, the corresponding subject matter cannot be protected by unfair competition law unlimited in time, to the extent as this would undermine the special protection provisions of the respective IP right. This means that UC claims based upon factors outside the scope of the respective IP right can still be asserted.

For example, the owner of a patent can assert UC claims because of using features that were subject matter to the patent even after its expiry if these features were the reason why the market considers the origin of the products from a certain company to be important or associates certain quality expectations with them – since these aspects are not

subject to patent law. However, this only applies if these features could also be designed in a different and interchangeable way compared to the expired IP right without a loss of quality, since UC claims would otherwise lead to a prolongation of protection of solely technically determined features and thus undermine patent law provisions.

IX. After which period do UC claims become subject to the statute of limitations?

After six months.

Greece

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

Yes, the main legislative piece with regards to unfair competition in Greece is the Unfair Competition Law No. 146/1914.

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. Misleading or false advertising is prohibited when it takes the form of a public disclosure of content that is likely to give the impression of a particularly favorable offer (article 3 of Law No. 146/1914).

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

Such advertising is allowed and does not breach the provisions of the UC law, provided that it is not misleading, it compares in an objective manner the essential, relevant, ascertainable and representative characteristics of the goods and services in question, (e.g., price), it does not create confusion between the advertiser and its competitor, or the latter's trade marks, trade names, other distinctive signs, etc., or defame/disparage, take unfair advantage of the reputation of such signs of the competitor. Comparative advertising is further regulated under Greek Consumer Protection law (article 9 par. 2 of Law No. 2251/1994).

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

Yes. According to the relevant provisions of the UC law, the distinctive signs of a business or its products are protected against any third-party use that may cause confusion to

consumers. This protection is conferred to business names, trade names, or any other distinctive sign (ex. particular design or decoration of the goods, packaging or wrapping, etc.).

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

Yes, see above under III-c.

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

Yes, see above under III-b.

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

Yes, see above under III-a.

IV. What are the remedies available?

- a. Request the cessation of the unfair competitive act.
- b. Request the infringer to refrain from any future unfair competitive act in the future.
- c. Request for removal of the infringing material, such as removal of the infringing sign or destruction of the infringing goods
- d. Payment of damages to the inflicted party
- e. Criminal sanctions

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

Claims are brought before the civil courts and in particular the multi-member Court of First Instance.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

The claim to cease the unfair competitive act (e.g. inaccurate announcements concerning the quality, origin, mode of manufacturing or any other actions that contravenes the prevailing moral standards) may be brought not only by the affected competitor but also by any professional who produces or markets identical or similar products, as well as by commercial and industrial chambers and by trade, industrial or professional associations in general [article 10 of Law No. 146/1914]. However, claims for damages can be brought only by the directly inflicted party.

Claims for the infringement of unregistered rights/passing-off may only be brought by the affected competitor.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes, it is possible to bring UC claims in parallel to claims for the infringement of an IP right, to the extent that they do not overlap.

If this is the case:

a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

The UC claim may be asserted in the same proceedings.

b. Can damages be claimed twice?

In principle damages can be claimed twice, under the UC claim and the IPR infringement claim. However, in practice the Court would award damages for the combined infringement.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

As previously explained (see III-c), protection under the provisions of UC law does not prerequisite any type of registration. The only condition for this kind of protection is the distinctive function of a sign (conferring to it a specific commercial origin). Therefore, even an expired or an unregistered design can still be protected under UC law.

IX. After which period do UC claims become subject to the statute of limitations?

UC claims become time-barred 18 months from the time when the person raising the claim became aware of the act and of the person responsible for the infringement or at the latest within 5 years of the infringing act (article 19 par. 1 of Law No. 146/1914).

Hong Kong

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

Unfair competition is addressed in both the Trade Marks Ordinance (Cap. 559) and the Trade Descriptions Ordinance (Cap. 362). The Registered Designs Ordinance (Cap. 522) and the Defamation Ordinance (Cap. 21) may also be relevant.

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 abovementioned ordinances, under common law, aggrieved parties may also bring an action in passing off (i.e., an action against the misrepresentation of the origin of goods and/or services).

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?

False advertising may be considered unfair competition in Hong Kong.

Under section 21 of the Trade Marks Ordinance, any use of a registered trademark in advertising which (i) takes unfair advantage of the trademark, (ii) is detrimental to the distinctive character or repute of the trademark, or (iii) deceives the public, shall be treated as infringing the trademark.

Under sections 7, 7A, and 8 of the Trade Descriptions Ordinance, the use of false trade descriptions in advertisement is an offence.

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

Comparative advertising is generally not considered to be unfair competition in Hong Kong.

In the 2018 Court of First Instance decision of PCCW-HKT Datacom Services Limited & Ors v Hong Kong Broadband Network Limited [2018] HKCFI 2037, the court confirmed

that the primary objective of section 21 of the Trade Marks Ordinance (see Question III(a) above) is to permit comparative advertising, and noted that if comparative advertising is to be allowed, it is to be expected that the defendant advertiser will not paint the claimant's goods in a particularly favorable light, and even an objective, fair, and honest comparison is bound to undermine its competitor.

As such, the court held that the concept of "unfair advantage" does not fit easily into comparative advertising and has to be applied in the proper context taking all relevant factors and circumstances of the case into account and applying the objective test of a reasonable reader.

Accordingly, so long as the statements made in the advertisement are true, honest, and not misleading, comparative advertising is allowed in Hong Kong. Hyperbole, puffery, colored, and/or sensational languages may be used, but the choice of words should not be derogatory or inconsistent with the reputation of the competitor.

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

Trade dress infringement may be considered unfair competition.

When trade dress infringement involves the unauthorized use of registered trademarks and/or registered designs, then the rights owner will have actions against the infringer under the Trade Marks Ordinance and/or the Registered Designs Ordinance.

When trade dress infringement does not include the unauthorized use of registered trademarks and/or registered designs, then the rights owner may still bring a common law action of passing off, alleging that the infringer had misrepresented the infringing goods and/or services as originating from the rights owner.

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

Confusion created by passing off may be considered unfair competition in Hong Kong.

Under section 18 of the Trade Marks Ordinance, a person infringes a registered trademark if he uses in the course of trade a sign which is identical or similar to the trademark in relation to identical or similar goods or services, and such use is likely to cause confusion on the part of the public.

Additionally, the rights owner may bring a common law action of passing off, alleging that the infringer had misrepresented the infringing goods and/or services as originating from the rights owner, thus causing confusion amongst consumers.

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

Defamation actions under common law may be brought against third-parties making false

allegations against the relevant brand owner. However, brand owners should be aware that third parties will not be held liable if:

- the words were not referring to the brand owner;
- the words were true in substance and in fact (justification);
- the words were fair comment; or
- the publication was privileged.
- Are misleading acts considered unfair competition in this country?

Misleading acts may be considered unfair competition in Hong Kong.

The brand owner may bring a common law action of passing off alleging that the infringer had misrepresented the infringing goods and/or services as originating from the brand owner and causing confusion amongst consumers.

IV. What are the remedies available?

In relation to the Trade Descriptions Ordinance, the principal enforcement agency is the Hong Kong Customs and Excise Department. Under the Enforcement Guidelines, the Hong Kong Customs and Excise Department may (without limitation):

- require the infringing trader to undertake to not continue/repeat/engage in the infringing conduct;
- apply to the Hong Kong courts for an injunction to order a trader not to continue/repeat/engage in the infringing conduct; or
- in serious cases, commence criminal proceedings against the infringer.

In relation to the Trade Marks Ordinance, the Registered Designs Ordinance, the Defamation Ordinance, and the common law action of passing off, the brand owner may commence civil proceedings against the infringer and seek various remedies from the court, including without limitation:

- injunctions ordering an infringer not to continue/repeat/engage in the infringing conduct;
- damages for loss suffered by the brand owner as the result of the infringer's actions; and
- an order requiring the infringer to account for all of the profits that he has earned as a result of the infringing conduct.

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

Please see Question IV above.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

In Hong Kong, it is for the relevant rights holder (i.e., the relevant brand owner) to assert unfair competition claims.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

In Hong Kong, it is possible to assert unfair competition claims in parallel to claims of IP rights (see Question III above).

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

Unless the brand owner wishes to file a separate complaint with the Customs and Excise Department pursuant to the Trade Descriptions Ordinance, an unfair competition claim can generally be asserted in the same legal proceedings as the claims of IP rights (subject to the court's discretion to decide otherwise).

b. Can damages be claimed twice?

The general position under Hong Kong law is that damages may not be claimed twice.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

In relation to claims based on the Trade Marks Ordinance and the Registered Designs Ordinance, in the event that the underlying IP right has never existed or has expired, then the claim would not be successful.

However, the brand owner may still be able to rely on the Trade Descriptions Ordinance, the Defamation Ordinance, and the common law action of passing off despite the underlying IP right having never existed or expired.

IX. After which period do UC claims become subject to the statute of limitations?

For civil proceedings, the statute of limitations in Hong Kong is six years from the date of breach.

Hungary

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

Yes, Hungary has more statutes addressing unfair competition. The Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (the 'Competition Act') sets out the substantive provisions of the Hungarian competition law, covering issues related to unfair competition and unfair antitrust and consumer protection. Further to the above, the Competition Act lays down rules in connection with the legal status and operation of the Hungarian Competition Authority (the 'HCA') and certain procedural rules applicable by HCA and the Hungarian courts.

Besides the Competition Act, other legal acts also cover rules related to issues of unfair competition in certain sectors, e.g.

- Act CLXIV of 2005 on Trade (the 'Act on Trade') regulates the abusive behaviour of traders with significant market power;
- Act XLVII of 2008 on the on the Prohibition of Unfair Business-to-Consumer Commercial Practices (the 'UCP Act');
- Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities (the 'Act on Business Advertising Activity');
- Act XCV of 2009 on the Prohibition of Unfair Trading Practices Applied Against Suppliers Relative to the Marketing of Agricultural and Food Products sets forth the relevant rules related to the prohibition of unfair distributors' practices against suppliers in the agricultural and food sector.

The procedural rules related to unfair competition are regulated by the Act CL of 2016 on General Public Administration Procedures (the 'Administrative Procedure Act').

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 issue of unfair competition is regulated by acts adopted by the Hungarian Parliament. However, it is worth mentioning that HCA uses soft law instruments (e.g. notices, position

statements) as well in order to describe the principles of its law enforcement practice. These latter instruments are formally non-binding, but in practice they are guiding instruments.

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. The UCP Act prohibits unfair commercial practices against consumers. The term of 'practice' shall be understood broadly including any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a person for a business entity or in the name and on behalf of a business entity, directly connected with the promotion, sale or supply of a product to consumers.

According to the UCP Act unfair commercial practices shall be prohibited. A commercial practice shall be unfair if:

a) it is contrary to the requirements of professional diligence, i.e. the trader acting in commercial practices fails to use the standard of special skill and care which a trader may reasonably be expected to exercise, commensurate with honest market practice and/or the general principle of good faith (hereinafter referred to as "requirements of professional diligence"); and

b) it materially distorts or is likely to materially distort the economic behavior with regard to the product of the average consumer whom it reaches or to whom it is addressed, using this practice to impair the consumer's ability to make an informed decision and thereby causing the consumer to take a transactional decision that he would not have taken otherwise; (hereinafter referred to as "materially distort the economic behavior of consumers").

Within the meaning of the above, in particular, commercial practices shall be unfair which are misleading, or are aggressive.

The UCP Act provides that a commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:

a) the existence or nature of the goods, taking into account the statutory provisions relating to the names of products;

b) the main characteristics of the goods, in particular:

ba) their execution, composition, technical features, accessories;

- bb) their quantity;
- bc) their geographical or commercial origin;
- bd) their method and date of manufacture or provision;
- be) their availability, delivery;
- bf) their usage, facts regarding use and maintenance;
- bg) their fitness for purpose, results to be expected from its use, benefits;
- bh) their dangers, risks;
- bi) their environmental impact;
- bj) their impact on health; or
- bk) the way they are controlled or tested and the results;
- c) the price of the goods or the manner in which the price is calculated, or the existence of a specific price advantage or discount;
- d) tax exemption, tax allowance or the use of other tax advantage provided in connection with the goods;
- e) the need for a service, part, replacement or repair in connection with the goods;
- f) after-sale customer assistance and complaint handling provided in connection with the goods;
- g) the nature, attributes and rights of the business entity or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or his awards and distinctions;
- h) the extent of the business entity's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to sponsorship or approval of the business entity or the product; or
- i) the consumer's rights or the risks of unfavorable legal outcomes he may face in connection with the transaction.

A commercial practice shall also be regarded as misleading if it involves:

- a) a commercial practice which creates confusion with any business entity or its corporate name, or with any products, trademarks, trade names or other distinguishing marks of such business entity;

b) non-compliance by the business entity with commitments contained in codes of conduct by which the business entity has undertaken to be bound, where:

ba) the commitment is not merely aspirational but is firm and is capable of being verified; and

bb) the business entity indicates in a commercial practice that he is bound by the code,

c) any marketing of specific goods, in one Member State, as being identical to specific goods marketed in other Member States, while the goods in question have significantly different composition or characteristics, unless justified by legitimate and objective factors,

if taking account of the factual context it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

The background to the above provisions concerning misleading (false) practices is the general requirement that the information provided to consumers by market operators on the essential characteristics of the products should be true and accurate.

It is worth to mention that in 2021 HCA concluded 23 competition supervision proceedings related to unfair commercial practices. In 2021, HCA imposed fines in the amount of HUF 1.84 billion (approx. EUR 4.7 million) in 11 proceedings against businesses that engaged in unfair commercial practices.

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

Not necessarily. Comparative advertising is allowed if certain legal conditions are met, but it is prohibited if the manner or result of the comparison is contrary to the law. Given the increased risk of unfair market conduct due to the nature of comparative advertising, the positive and negative requirements set out in the Competition Act must be taken into particularly account when assessing the comparison.

Comparative advertising is only permissible if it meets the following conditions:

- comparative advertisement may only compare goods for the same purpose or satisfying the same needs. According to the requirement of substitutability, comparative advertising must compare pairs of products that demonstrate to the consumer a sufficiently high degree of substitutability;
- the comparison shall be objective and shall relate to the essential, defining, characteristic and verifiable quality of the goods and, if the price is also the subject of the comparison, it must be objective in this respect as well;
- comparison of goods with a designation of origin may only refer to goods with the same designation of origin.

According to the relevant provisions of the Competition Act, comparative advertisement shall not

- result any unfair advantage derived from the reputation of a competitor or of the name, merchandise, brand name or other designation of a competitor,
- harm the reputation of a competitor or the name, merchandise, brand name and other designation of a competitor;
- present goods as imitations or replicas of goods bearing a trademark or trade name,
- create confusion among market participants, between the business entity and a competitor or between the business entity's trade name, goods, trademarks or other distinguishing marks and those of a competitor;
- be misleading.

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

The legal concept of 'trade dress' is not recognized by the Hungarian legal system, however, certain legal instruments may be able to provide altogether the protection that the concept of 'trade dress' seeks to promote in other jurisdictions. From the point of intellectual property law, copyright protection, design and three-dimensional trademark protection shall be mentioned, while in respect of competition law, the legal concept of passing off is particularly closely related to the legal concept of trade dress infringement.

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

Yes. Under the Competition Act, without the express prior consent of the competitor, goods or services may not be produced, placed on the market or advertised with such distinctive appearance, packaging or marking - including the indication of origin -, furthermore, any such name, marking or indication of goods may not be used by which the competitor or its goods and/or services are normally recognized.

The prohibition of passing off is a legal protection for businesses, where other forms of protection are not available. Nevertheless, it shall also be noted that the cumulative protection based on IP infringement and passing off is possible under Hungarian law and legal practice. The relevant provision regulating the passing off protects the entrepreneur's invested work from being able to market a product similar to his product by deceiving the customer, so that the imitator cannot gain an economic advantage by doing so, and so that the deception does not cause damage to a known competitor.

To establish the infringement of passing off, the following conditions shall be proven:

- the infringed product was actually present on the domestic market before the

appearance of the competitor's product and was already known by consumers;

- the appearance of the infringing product has distinctive characteristics which are unique to the manufacturer or distributor of the product in question;
- consumers associate those distinctive, characteristic external features with the manufacturer or distributor of the infringing product (requirement of association); and
- in view of those distinctive and characteristic external features, the infringing product is confusingly similar to the competitor's infringing product.

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

Yes. Under the Competition Act, it is prohibited to infringe upon or jeopardize the good reputation or credibility of any competitor by communicating or disseminating untrue facts, or by misrepresenting true facts with any false implication, as well as by any other practices.

Commercial defamation means making untrue allegations about a competitor that is likely to damage his goodwill. Commercial defamation is generally intended to influence the other party by misleading customers or business partners. Unlike misrepresentation, it is not a false or misleading statement made by a market participant about its own goods, but an untrue statement, false allegation about a competitor or a competitor's goods/services.

As provided by the Competition Act, any form of commercial defamatory remarks likely to tarnish the reputation of the entrepreneur is prohibited.

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

Yes. Under the UCP Act, commercial practices shall be unfair which are misleading.

According to the applicable provision, a commercial practice is misleading not only if it induces the consumer to take a transactional decision that he would not have taken otherwise, but also if the commercial practice is capable of doing so. The UCP Act therefore distinguishes between two types of commercial practices: on the one hand, commercial practices that have actually misled consumers and, on the other hand, commercial practices where it has not been proven that they have actually misled consumers, but it has been proven that they are (were) capable of deceiving consumers.

IV. What are the remedies available?

According to the Competition Act, the plaintiff

- a) may demand a court ruling establishing that there has been an infringement;

b) may demand to have the infringement discontinued and the perpetrator restrained from further infringement (injunction);

c) may demand that the infringer make amends for his action by way of a statement or in another appropriate manner, and if necessary, that such amends should be given due publicity by or at the expense of the infringer;

d) may demand the termination of the injurious situation, to have the former status quo reinstated, and the deprivation of the goods manufactured or supplied illegally, or, if this is not possible, the destruction thereof, and the destruction of any special devices and facilities used for the manufacture or production thereof;

e) may demand compensation for damages, and restitution for any violation of his/her rights relating to personality, in accordance with the rules of civil law; and/or

f) may demand that the infringer disclose information on the parties participating in the manufacturing and marketing of the products involved in the case as well as on the business relations it has established to distribute such products. In case of actions brought in connection with any infringement of the provisions of passing off, the following may be demanded in addition to the above listed:

- restitution of the economic gains achieved through infringement;
- the seizure of the means and materials used solely or primarily for the infringement, as well as the products affected by the infringement, or having them handed over to specific persons, or recalled or withdrawn from commercial circulation, or the destruction of such goods; and

having the resolution disclosed at the expense of the infringer.

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

According to the Competition Act, the court proceeds in unfair competition cases.

The following authorities enforce the prohibition of unfair commercial practices against consumers in Hungary:

a) The consumer protection authority shall have jurisdiction in connection with any infringement of the provisions relating to the prohibition of unfair commercial practices.

b) HCA shall have jurisdiction in connection with any infringement of the provisions relating to the prohibition of unfair commercial practices if the commercial practices in question exert material influence upon competition.

c) National Bank of Hungary acting within its function as supervisory authority of the financial intermediary system, shall have jurisdiction in connection with any violation of the provisions relating to the prohibition of unfair commercial practices if the commercial practices in question relate to such activities of the business entity that is conferred under

the competence of the National Bank of Hungary.

d) In relation to food chain products the food supply chain supervisory authority shall have jurisdiction on the grounds of violation of the provisions on the prohibition of unfair commercial practices.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Proceedings for infringements of the prohibition of unfair competition:

a) private enforcement of infringements: actions may be brought by the interested party in the civil courts. According to the Hungarian case law the interest determines the capacity to bring legal proceedings. Defamation of reputation and passing off can be committed only to the detriment of a competitor, in which case assessing the capacity to maintain lawsuit is generally clear. According to the rules of the Act CXXX of 2016 on the Hungarian Code of Civil Procedure (the 'Code of Civil Procedure'), a party interested in a dispute is the person who is the subject of the legal relationship, whose rights guaranteed by law are threatened or have been infringed.

b) action in the public interest: HCA may bring civil action in the public interest on behalf of consumers against a business entity engaged in any infringement falling within its competence where such illegal action results in a grievance that affects a wide range of consumers that can be established relying on the circumstances of the infringement. HCA shall be entitled to bring such action only after the opening of competition supervision proceedings in connection with the conduct in question. No action may be brought after three years following the time of commission of the infringement. This time limit shall apply with prejudice. If the infringement is constant, the time limit shall commence at the time the infringement is terminated

Proceedings for infringements of the prohibition of unfair business to consumer commercial practices: The Explanatory Memorandum of the UCP Act underlines that the competent public authorities will apply 'public-law' type of legal sanctions (such as injunctive relief, fines) against the infringer. However, unfair commercial practices may also have civil law implications. Such a civil claim can be brought before a court by a civil law claimant, regardless of whether or not action has been taken by the public authorities.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes. Under Hungarian case law, carrying out parallel enforcement is possible. According to the Code of Civil Procedure two or more actions (actual material joinder of actions) may be lodged if they arise from the same legal relationship or from legal relationships related to factual and legal basis and neither one of those claims fall within the exclusive jurisdiction of another court.

In practice, trademark infringement and passing off occur usually at the same time. There-

fore, there is no obstacle for the plaintiff to bring proceedings on two claims simultaneously. In the context of claims based on trademark infringement and unfair market practices, competition law protection is only a secondary consideration, the application of the rules of industrial property law and its sanctions shall be the primary concern.

According to the consistent Hungarian case law, as regards the possibility of parallel actions based on patent and competition law, the Hungarian Supreme Court (now Kúria) has explained that patent infringement and unfair competition may occur in parallel and the sanctions provided for by the legislation may be enforced in parallel, since the interests protected are not identical (see BH1995. 20.). The court may decide to hear the parallel claims in parallel proceedings.

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

Yes, if the claim of an IP right is primary in relation to an UC claim then the Metropolitan Court of Budapest may decide on claims in the same proceedings. Metropolitan Court of Budapest has exclusive jurisdiction in first instance in IP infringement actions, while in the case of passing off, the Competition Act generally confers that county courts (one of them being the Metropolitan Court of Budapest) shall have jurisdiction in respect of legal proceedings.

b. Can damages be claimed twice?

Not if the same interests are affected. It depends on the facts of the case whether either kind of infringement or only one kind of infringement is established. Sanctions - inter alia damages - provided for in the legislation can be enforced in parallel, if the interests protected by competition law and intellectual property law are not identical.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

The exclusive rights granted by industrial property laws last only for a limited period of time (except for trademark protection). It would be contrary to the essence of exclusive rights limited for such period of time if, after the expiry of that period, the holder of such rights could continue to prohibit others from using or exploiting the right. Once the monopoly granted by the industrial property protection has expired, no rights can be established.

However, specific situations may justify that a product previously protected by an industrial property right may, after the expiry of the term of protection, continue to be protected in certain respects apart from the protection which has lapsed. In such cases, however, a very strict assessment must be made to ensure that this does not constitute a restriction of competition. As an example, if a product is manufactured under a patent and has a special appearance, the technical solution can be freely used after the expiry of the patent protection, but if the product has a special appearance which does not necessarily follow

from the technical solution, the special appearance may still not be used by third parties on the basis of the prohibition of unfair imitation, passing off.

Note that respective case law is very scarce.

IX. After which period do UC claims become subject to the statute of limitations?

Proceedings for infringements of the prohibition of unfair competition:

Proceedings may be brought on the grounds of infringements of the prohibition of unfair competition within six months from the infringement. No action may be brought after three years from the time of commission of the infringement.

If the infringement is constant, the time limit referred to above shall be calculated from the time the infringement is terminated. Where an illegal conduct is realized through failure to terminate a particular situation or predicament, the above-specified time limit shall not commence as long as such situation or predicament continues to prevail.

Proceedings for infringements of the prohibition of unfair business to consumer commercial practices:

For action against unfair commercial practices for which the consumer protection authority has jurisdiction, the limitation period is 3 years, which is set by the Act CLV of 1997 on Consumer Protection laying down that the proceedings of the consumer protection authority may not be opened after a period of three years following the time of the infringement. If the infringement is constant, the time limit shall commence at the time the infringement is terminated. Where an illegal conduct is realized through failure to terminate a particular situation or predicament, the above-specified period shall not commence as long as such situation or predicament continues to prevail.

If the competent authority is HCA in case of proceedings for infringements of the prohibition of unfair commercial practices, then the provisions set out in the Competition Act for the proceedings for infringements of the prohibition of unfair competition shall apply.

As stated in the Act CXXXIX of 2013 on the National Bank of Hungary proceedings for the protection of consumers' interests may not be opened after a period of five years following the time of the infringement. If the infringement is constant, the time limit shall commence at the time the infringement is terminated. Where the unlawful conduct is realized through failure to terminate a particular situation or circumstance, the above-specified period shall not commence as long as such situation or circumstance continues to prevail.

India

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

The following Acts provide for unfair competition in India:

- a. The Competition Act, 2002 prohibits unfair competition that causes an appreciable adverse effect on competition in India;
- b. The Trade Marks Act, 1999 (Section 27) expressly reserves the common law remedy of passing-off;
- c. The Geographical Indications of Goods (Registration and Protection) Act, 1999 {Section 22(1)(b)} defines the term "unfair competition";
- d. The Consumer Protection Act, 2019 defines unfair trade practices; and
- e. The Customs Tariff Act 1975 (Section 9A) prevents dumping while allowing healthy 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

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.

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

Comparative advertising is permissible and it is open to an advertiser to compare the goods or services advertised with those of others and portray the goods or services advertised as better than those of others. But this can only be done without denigrating or disparaging the goods or services of others.

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, confusion created by passing off is considered unfair competition in India under Section 27(2) of the Trade Marks Act, 1999 which preserves the rights of a prior user of a trademark to file for a passing off action.

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

The law does make it illegal to disparage the product of a competitor who does so in order to gain monetary benefits in a dishonest manner.

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(47) of the Consumer Protection Act, 2019, 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.);
- 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 costs;
- e. Criminal penalties, criminal fines or imprisonment.

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

Claims related to infringement and passing off, can be filed before district courts or high courts having original jurisdiction. And under sections 34, 35, and 36 of the Consumer Protection Act, one can apply to the redressal agencies to provide relief for unfair trade practices and unfair competition claims.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Further, the Competition Act, 2002 allows “any person” to provide information to the CCI, which may then act upon it in accordance with the provisions of the Act. The definition of

“person” in section 2(l) of the Act is an inclusive one and is extremely wide, including individuals of all kinds and every artificial juridical person.

As per Section 2(5) of the Consumer Protection Act, 2019, a legal action against unfair competition practices can be taken by:

- (i) a consumer; or
- (ii) any voluntary consumer association registered under any law for the time being in force; or
- (iii) the Central Government or any State Government; or
- (iv) the Central Authority; or
- (v) one or more consumers, where there are numerous consumers having the same interest; or
- (vi) in case of death of a consumer, his legal heir or legal representative; or
- (vii) in case of a consumer being a minor, his parent or legal guardian;

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes, it is possible to assert an UC claim parallel to the claim of an IP right if the UC claim concerns the subject matter of the IP right in question.

If this is the case:

- a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?**

The exclusive jurisdiction pertaining to IP rights and related subject matter is vested with the respective statutory bodies established under the statutes, such as the Designs Office and the Trade Marks Registry. With respect to competition law, the CCI and the NCLAT have exclusive jurisdiction over competition law cases. The Consumer Protection Act, 2019 provides for a three tier Consumer Disputes Redressal Agencies. These are: District Consumer Disputes Redressal Forum in the District, State Consumer Disputes Redressal Commission at the state level and the National Consumer Disputes Redressal Commission at the national level.

Commercial courts at district level, commercial divisions of high courts and commercial appellate divisions of high courts were constituted to deal with IP infringement matters, appeals arising therefrom, depending on the pecuniary and territorial jurisdiction. IP rights

can be enforced by bringing actions to the civil courts or through criminal prosecution (specifically in trademark matters), and both the IP statutes and the Competition Act set out the necessary procedures for this.

b. Can damages be claimed twice?

No, the damages cannot be claimed twice for the same subject matter involving the same parties. As per Section 11 of the Code of Civil Procedure, 1908 recovery of damages from the defendant cannot be claimed twice for the same injury.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

No, an unfair competition claim cannot be asserted after the expiry of an IP right which could or does concern a subject matter of the unfair competition claim.

IX. After which period do UC claims become subject to the statute of limitations?

Under Section 53B(2) of the Competition Act, 2002, the appeal is restricted to be filed within a period of sixty days of the last event. But the Appellate Tribunal or Forum has the power to entertain an appeal even after the expiry of sixty days only if the reason is sufficient enough to convince the court or tribunal for not filing the appeal within the time limit.

Further, as per Section 69 of the Consumer protection Act, 2019, a complaint shall be filed before District Commission/State Commission/National Commission within two years from the date on which the cause of action has arisen. However, the Act permits the aggrieved to file a complaint even after the statutory period of two years if the District Forum is satisfied that the complainant has genuine and valid reasons for not filing the complaint within the specified time period.

Further, in case of trademark infringement and the act of passing off of trademark, the period of limitation extends to three years from the date on which the cause of action arises. Nonetheless, every time an infringing mark is used, a fresh cause of action arises, and therefore, the period of limitation begins again.

Section 22 of the Limitation Act, 1963 lays down that in cases of continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach of tort continues.

Ireland

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

Yes. For example: S.I. No. 774/2007, the European Communities (Misleading and Comparative Marketing Communications) Regulations 2007 (the “2007 Regulations”) and the Consumer Protection Act 2007 (the “2007 Act”).

The Consumer Rights Act 2022 also recently came into force in an attempt to strengthen consumer rights (“the 2022 Act”). The 2022 Act does not replace the 2007 Act, however it does make certain amendments in relation to the provisions related to misleading commercial practices and 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?

See I above; the 2007 Regulations implement the provisions of Directive 2006/114/EC concerning Misleading and Comparative Advertising (the “2006 Directive”). There is also the law of passing off which is governed by common law in Ireland. Passing off actions govern certain aspects of unfair competition such as misrepresentations that deceive.

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, Regulation 43 of the 2007 Regulations prohibits misleading advertising (misleading marketing communications) such as to the existence, extent or nature of intellectual property rights the trader may have.

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

No, when comparative advertising is not misleading i.e when it compares material, relevant, verifiable and representative features, it may be a legitimate means of informing consumers of competitive advantage.

Section 4 of the Advertising Standards Authority of Ireland Code relates to misleading

advertising. This expressly states that comparisons are permitted in the interests of public information and vigorous competition. However, these comparisons should be fair and should not give rise to a likelihood of a consumer being misled.

An example of prohibited comparative advertising is when the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor are discredited or denigrated.

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

As noted above, the law of passing off is governed by common law in Ireland. Consequently, an unfair competition claim under the 2007 Act would need to be issued in conjunction with a passing off claim.

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

As above, unregistered rights are protected by common law in Ireland. The 2007 Act provides, inter alia, that a commercial practice involving marketing or advertising is misleading if it would be likely to cause the average consumer to confuse a competitor's trade name, trade mark or some other distinguishing feature or mark with that of the trader.

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

The provision of false information is classified as a misleading commercial practice under the 2007 Act. The 2007 Act provides a list of prohibited practices in Section 55. One example of a prohibited practice is the provision of false information as to the nature, attributes or rights of the trader, including, the trader's identity, qualifications, assets or status

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

Misleading acts or practices (unfair, misleading or aggressive commercial practice) are prohibited by the 2007 Act. A commercial practice is misleading if it would be likely to cause the average consumer to be deceived or misled in relation to certain matters listed in the 2007 Act (for example the existence or nature of the product) and to make a transactional decision that the average consumer would not otherwise make.

IV. What are the remedies available?

a. An order may be granted prohibiting that trader from engaging in or continuing to engage in a misleading marketing communication or prohibited comparative marketing communication.

b. Additionally, a person or body corporate can be subject to criminal proceedings for committing an offence related to unfair competition under the provisions of the 2007 Act

and 2022 Act.

c. Under a passing off claim the following orders may be granted:

- an injunction restraining the Defendant from carrying out the infringing activity;
- orders for delivery or destruction and/or forfeiture of the infringing goods;
- damages or an account of profits;
- an order for accounts or enquiries;
- an order for any appropriate relief pursuant to the European Communities (Enforcement of Intellectual Property) Regulations 2006;
- interest;
- costs.

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

An application under the 2007 Regulations may be made to the Circuit Court (intermediate court of limited jurisdiction) or High Court. The Competition and Consumer Protection Commission (CCPC) is the main body responsible for enforcement of the 2007 Act. A claim for passing off may be made to the District, Circuit or High Court or the Intellectual Property division of the Commercial Court.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Consumers, competitors, the CCPC.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes. Section 13 of the Trade Mark Act 1996 (as amended) provides that without prejudice to the rights of proprietors acquired before the filing date or the priority date of the registered trade mark, the proprietor of that registered trade mark shall have exclusive rights in the trade mark and such rights shall be infringed by the use of that trade mark in the State without the proprietor's consent; and the acts referred to in section 14 (infringement of a registered trade mark), if done without that consent, shall constitute infringement of the proprietor's rights.

If this is the case:

- a. **Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?**

Yes, UC and IP claim can be asserted in the same proceedings.

b. Can damages be claimed twice?

Yes, a claim can consist of various headings of loss. For example; a claim for special damages and damages, or, at the election of a plaintiff, an account of profits. However, it is not possible to recover twice in respect of the same matter. Damages will be based on the harm caused to the plaintiff.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

The UC claim under the 2007 Act or a passing off claim under the common law may still proceed but the Plaintiff will not be able to rely on its intellectual property rights if the claim was issued after the rights expired and no residual rights exist.

IX. After which period do UC claims become subject to the statute of limitations?

Six years.

Israel

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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 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 Aloniel 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. 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.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

There is no limitation in the Israeli Law and/or in the Common Law/Case Law as to who is entitled to assert UC claims. In this regard, however, UC claims linked to or claimed in the same proceedings as a trademark infringement claim may be brought only by the owner of a registered mark, or the owner of the relevant goodwill or a well-known unregistered mark. The owner may be a person or any other entity. A licensee cannot bring an action for infringement and accordingly a UC claim linked to a trademark infringement claim brought by a licensee is also likely to be rejected.

A civil action under the Consumer Protection Law, 5741-1981, due to consumer deception, is available not only to aggrieved consumers but also to an aggrieved trader by such deception.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes, see our response to question VI.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

The UC claim may be asserted in the same proceedings.

b. Can damages be claimed twice?

Pecuniary damages may be awarded to compensate for injury/damage suffered by the plaintiff, for loss of profits, restitution of the defendant's profits, all as long as the cumulative damages do not result in double compensation.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

An available cause of action in the absence of an IP registered or unregistered right, or after their expiration is Passing-off. This cause of action is defined in Section 1 (a) of the Commercial Torts Law, 5759–1999, as follows:

" (a) A business shall not cause the goods it sells or the services it offers to be mistaken for the goods or services of another business or related to another business..."

To establish passing off, a plaintiff must prove two elements: (1) that he has acquired goodwill/reputation in his goods; and (2) likelihood of confusion.

IX. After which period do UC claims become subject to the statute of limitations?

Generally, the Statute of Limitations in Israel is 7 years. However, each case needs to be analyzed on its own merits especially when the UC claim is linked to the assertion of the infringement of an IP right.

Italy

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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 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").

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Any entrepreneur or company who deems to have been damaged by the activity of a competitor.

Article 2601 of the Civil Code grants the right to initiate the action also to professional associations.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes.

If this is the case:

- a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

They can be asserted in the same proceedings.

- b. Can damages be claimed twice?

Yes.

VIII. In the event an IP right which could or does concern a subject matter of

the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes.

IX. After which period do UC claims become subject to the statute of limitations?

5 years from the date on which the right may be exercised, which is the general statute of limitations in case of indemnification for torts.

Japan

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

YES.

In Japan, the Unfair Competition Prevention Act (UCPA) provides measures to prevent unfair competition and recover loss or damages caused by unfair competition.

The Trademark Act also prevents the registration of unfairly competitive trademarks. For example, a trademark that is identical or similar to a well-known and/or famous trademark, even if unregistered, will not be registered under Articles 4-1-10 and 4-1-15 of the Trademark Act. Even if registered, the registration of those marks will be cancelled or invalidated through opposition and/or invalidation trial.

In the past, the Intellectual Property High Court has invalidated a trademark registration under Article 4-1-15 for trademarks that were considered to be parodies. Furthermore, Article 4-1-19 prohibits the trademark registration for fraudulent purposes of another's trademark that is well known domestically and/or internationally, and Article 4-1-7 prohibits the registration of trademarks that offend public order and morals.

In addition, civil law torts may also be a means of prohibiting certain forms of unfair competition. For example, the Supreme Court held that infringement of the right of publicity is recognized as a tort.

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] Japan is a civil law jurisdiction.

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.

Under Article 2-1-20 of the UCPA, the use of indications misleading regarding the quality or contents of goods or services in advertisement constitute unfair competition.

Act against Unjustifiable Premiums and Misleading Representations also prohibits certain false advertisements.

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

YES.

Comparative advertising constitutes unfair competition as defined in Article 2-1-20 of the UCPA if it is false or deceptive in contents and misleads as to quality and content.

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

YES.

Under Article 2-1-3 of the UCPA, the act of transferring or otherwise dealing in goods that imitate the configuration of another's goods constitutes unfair competition, except for forms that are essential to ensure the function of the goods. However, if three years have elapsed from the date the goods were first sold in Japan, they are not protected under this provision.

Furthermore, in case that a particular product configuration or package etc. has unique characteristics that distinguish it from similar products and has become well known among consumers, the act of using or selling etc. a product configuration or package etc. identical or similar to such product configuration or package etc. and thereby causing a likelihood of confusion shall constitute unfair competition under Article 2-1-1 of the UCPA.

In addition, if such product configuration or package etc. is famous or highly well-known, the act of using or selling etc. such product configuration or package etc. constitutes unfair competition under Article 2-1-2 of the UCPA.

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

YES.

The UCPA provides that the act of creating a likelihood of confusion by using a source identifier of goods or services that is identical or similar to another person's well-known source identifier of goods or services, constitutes unfair competition under Article 2-1-1.

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

YES.

The UCPA provides that notifying or disseminating false facts that are detrimental to the

business reputation of another person with whom there is a competitive relationship constitutes unfair competition under Article 2-1-21.

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

YES.

The UCPA provides that creating a likelihood of confusion by using a source identifier of goods or services that is identical or similar to another person's well-known source identifier of goods or services constitutes unfair competition under Article 2-1-1. The UCPA also provides that using indications misleading as to the quality or contents of goods or services on goods or services, in an advertisement, transaction documents or communication thereof, constitutes unfair competition under Article 2-1-20.

g. Other

Cybersquatting and the unauthorized acquisition of trade secret also constitute unfair competition under the UCPA.

IV. What are the remedies available?

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

YES.

The UCPA provides injunctive relief as follows in Article 3-1.

“A person whose business interests have been infringed on or are likely to be infringed on through unfair competition may make a claim to suspend or prevent that infringement against the person that infringed or is likely to infringe on those business interests.”

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

YES.

The UCPA provides compensation for loss or damage as follows in Article 4, although punitive damages are not available in Japan.

“A person that intentionally or negligently infringes on the business interests of another person through unfair competition is liable to compensate loss or damage resulting therefrom.”

c. Corrective advertising/public apology/public retraction

YES.

The UCPA provides measures for restoring business reputation such as apology advertisement as follows in Article 14.

“Upon the request of a person whose business reputation has been harmed, the court may order the person that has intentionally or negligently engaged in unfair competition and thereby injured the business reputation of that other person to take the necessary measures for restoring the business reputation of that other person, in lieu of or in addition to compensation for loss or damage.”

d. Recovery of legal fees

YES.

It is possible to request compensation for legal fees in the claim for damages; however, the Japanese court usually awards the amount of about 10 % of damages as the legal fee, not all amount of attorney's fees.

e. Recovery of court costs

YES.

It is possible to request compensation for court costs in the claim for damages.

f. Criminal penalties, criminal fines, or imprisonment

YES.

The UCPA provides criminal penalties for unfair competition in Article 21.

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

Unfair competition claims are filed with courts.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

An interested party is entitled to assert Unfair competition claims. There is standing requirement for constituting the UC claims before the courts.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g., design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

YES.

If this is the case:

- a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?**

The unfair competition claims can be asserted in the same lawsuit before the same court.

- b. Can damages be claimed twice?**

Although it is possible to claim damages based on both of unfair competition under the UCPA and IP right infringement(s) under other IP law(s) in the same lawsuit, the Japanese court awards damages once.

- VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g., after a registered design right expired)?**

Yes, since the UC claim is a separate cause of action.

- IX. After which period do UC claims become subject to the statute of limitations?**

An injunction is available as long as the infringement or likelihood of infringement of business interests due to unfair competition continues.

Damages cannot be claimed if a plaintiff has not exercised his/her rights for three years from the time he/she learned of the damages and the tortfeasor, or if he/she has not exercised his/her rights for 20 years from the time of the tortious act.

Jordan

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

Yes. The Law No. 15 OF 2000 On Unfair Competition and Trade Secrets ("The 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?

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. (Article 2 of The Law).

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

Yes. (Article 2 of The Law).

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

Yes. (Article 2 of The Law).

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

Yes. (Article 2 of The Law).

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

Yes. (Article 2 of The Law confirms that any conduct against the honest practices in the commercial and industrial activities shall be deemed one of the unfair competition.).

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

Yes. (Article 2 of The Law).

IV. What are the remedies available?

- a. interim injunction for:
 - stopping the competition act
 - precautionary seizure of the material used in the competition act
 - preserving evidence used in the competition act.
- b. stopping the competition
- c. award of damages sustained as a result of the unfair competition act.

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

Before the Civil Court of First Instance.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

According to Article 3 of The Law, any “interested party” has the right to file for an unfair competition claim. Accordingly, competitors, licensees, associations etc. can all initiate unfair competition claims as long as they can prove they are an aggrieved party or one with a legitimate interest.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

In theory it is as these laws are not mutually exclusive and both are considered as separate cause of actions for civil and/or criminal actions. Hence, the legal basis for an unfair case is different from that of an infringement of IP cases. In practice, however, courts may dismiss one of the two cases on the basis of there being a case in process concerning the same IP right especially if initiated by the same party(ies) against the same defendant(s).

If this is the case:

- a. **Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?**

IP infringement actions that are based on the respective IP law often make reference to the rules of unfair competition. The competent court, however, will rule the case based on the IP law rather than the unfair competition law.

In principle, IP infringement cases based on IP laws are initiated before the Criminal Reconciliation Courts, whereas cases based on the UC law are initiated before the Civil First Instance Courts.

b. Can damages be claimed twice?

In theory, damages can be claimed twice, but obtaining dual damages for the same conduct may not be possible if claimed by the same party for the same tortious act. In Jordan, the actual damages and direct tort should be proven in most of IP infringement cases and moral damages and/or loss in profit are not easy to be held. Therefore, dual damages for two different actions may not be possible to pursue.

VIII. In the event an IP right that could or does concerns a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

The Law explicitly covers unregistered trademarks that are used in Jordan within the scope of UC. In theory, the law could cover other types of IP rights which are not registered in Jordan or for which the protection has expired, but it will be very difficult to prove that right, and the legal protection it enjoys under Jordanian laws, especially against a counterclaim that the IP right has expired and fallen into the public domain.

IX. After which period do UC claims become subject to the statute of limitations?

Different statute of limitation rules applies. Generally speaking, the time bar to file a claim for tort liability is after three years calculated as of the date the plaintiff came to know of the tort, i.e. unfair competition conduct, as per article 272 of the Jordanian Civil Code. In all cases, the time bar that applies to all types of civil claims under Jordanian laws is 15 years calculated as of the date of the infringement or misconduct act.

Korea

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

Yes. The Republic of Korea has the so-called “Unfair Competition Prevention and Trade Secret Protection Act” (“the UCPA”).

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 statutory provision named as above is the governing regime to address unfair competition.

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 considered as constituting a violation of the UCPA. The act described below is regulated under the UCPA.

- An act of falsely assuming another person's goods or an act of advertising any goods or making a mark in any manner of leading the public to misunderstand their quality, content, manufacturing process, usage, or quantity, in the goods or advertisement thereof, or selling, distributing, importing, or exporting goods using such method or mark

Also the Supreme Court of Korea held that a person's act of advertising campaign can constitute unfair competition as long as it causes confusion. (Supreme Court of Korea 2009DO12238 verdict entered on September 30, 2010).

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

Yes. Comparative advertising is considered unfair competition in Korea, if it results in confusion or misunderstanding as to the quality of goods. In other words, such conduct would not necessarily be regulated under the UCPA of the Rep. of Korea unless it causes

confusion or misunderstanding as to the quality of goods.

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

Yes. Trade dress infringement constitutes unfair competition in Korea. The UCPA was revised on July 18, 2018. Under the Revised Act, the followings are regulated:

- An act of causing confusion with another person's commercial facilities or activities by using marks identical or similar to, another person's name, trade name, or emblem, or any other mark indicating another person's business (including methods of selling products and offering services or overall appearance of a business place such as signs, exterior, and interior decorations), which is widely known in the Republic of Korea
- An act of doing damage to distinctiveness or reputation attached to another person's mark by using the mark identical or similar to, another person's name, trade name, trademark, or container or package of goods, or any other mark indicating another person's goods or business (with respect to marks indicating another person's business, including methods of selling products and offering services or overall appearance of a business place such as signs, exterior, and interior decorations), which is widely known in the Republic of Korea; or by selling, distributing, importing, or exporting goods bearing such marks; without good cause prescribed by Presidential Decree, such as the purpose of non-commercial use

It is important, however, to note that the claimant bears the burden of proof to show that the dress at issue is widely known in the Republic of Korea.

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

Yes. Confusion arising out of passing off constitutes unfair competition in the Rep. of Korea, and it would run afoul of Article 2(1)(a) or (b) of the UCPA. An act of causing confusion with another person's goods by using marks identical or similar to, another person's name, trade name, trademark, or container or package of goods, or any other mark indicating another person's goods, which is widely known in the Republic of Korea; or by selling, distributing, importing, or exporting goods bearing such marks and an act of causing confusion with another person's commercial facilities or activities by using marks identical or similar to, another person's name, trade name, or emblem, or any other mark indicating another person's business (including methods of selling products and offering services or overall appearance of a business place such as signs, exterior, and interior decorations), which is widely known in the Republic of Korea are regulated respectively.

e. Are false allegations, including disparagement, considered unfair

competition in this country?

Yes. False allegations, including disparagement, are considered constituting acts of unfair competition. Specifically, the statute regulates the followings: an act of causing confusion about the place of origin by making false marks of the place of origin on goods, or on trade documents or in communications by means of advertisements of the goods or in a manner that makes the public aware of the marks; or by selling, distributing, importing, or exporting goods bearing such marks; an act of making a mark that would mislead the public into believing that goods are produced, manufactured, or processed at places, other than the actual places of production, manufacture, or processing, on goods, or on trade documents or in communications by means of advertisements of the goods or in a manner that makes the public aware of the mark; or selling, distributing, importing, or exporting goods bearing such mark; and an act of making a mark that would mislead the public into believing that goods are produced, manufactured, or processed at places, other than the actual places of production, manufacture, or processing, on goods, or on trade documents or in communications by means of advertisements of the goods or in a manner that makes the public aware of the mark; or selling, distributing, importing, or exporting goods bearing such mark.

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

Yes. Misleading acts are considered as constituting unfair competition, and they are regulated in much the same manner in which false allegations are regulated under the same Act. Specifically, a misleading act in this context would refer to one's conduct involved in misleading the public into believing that goods are produced, manufactured, or processed at places, other than the actual places of production, manufacture, or processing, on goods, or on trade documents or in communications by means of advertisements of the goods or in a manner that makes the public aware of the mark; or selling, distributing, importing, or exporting goods bearing such mark.

IV. What are the remedies available?

- a. Monetary damages
- b. Punitive damages
- c. Injunctive relief

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

Unfair competition matters are reviewed by the court of law, and as such claims brought under the UCPA are brought before the court.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Any person whose business profit is said to have suffered by someone else can be a claimant, and it can include competitors, licensees, parties in contractual relationships,

etc.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes. It is possible to assert a UC claim parallel to the claim of an IP right, and it can be a design or trademark right if the UC claim is concerned with the subject matter involving the IP right in question.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

The UC claim can be asserted in the same proceedings. For example, the reviewing court can sit and hear an issue arising under the UCPA in conjunction with other matters involving design, patent, or trademark infringement issues.

b. Can damages be claimed twice?

Damages may not be claimed twice.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

A UC claim can be brought, as long as the claimant is able to show all the elements needed for unfair competition are satisfied, although the IP right does not exist presently or has ceased to exist.

IX. After which period do UC claims become subject to the statute of limitations

A civil action has to commence within a period of one year from the date on which the claimant knows or has a reason to know the damages suffered or such risks of damages in business operations arising out of the adverse party's act of infringement; alternatively, a civil action has to commence within three years from the date on which the actual act of infringement begins.

Latvia

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

Unfair competition is prohibited by the Competition Act (Konkurences likums). Article 18 of the Competition Act i.a. includes provisions, based on Article 10bis of the Paris Convention for the Protection of Industrial Property.

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?

In principle, the definition of unfair competition could cover false advertising. However, in all practical situations the prohibition of misleading advertising, contained in the Advertising Act (Reklāmas likums) would be invoked as *lex specialis*.

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

In principle, the definition of unfair competition could cover improper comparative advertising. However, in all practical situations the rules on comparative advertising, contained in the Advertising Act would be invoked as *lex specialis*.

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

Yes. Trade dress infringement is included in the non-exhaustive list of examples of unfair competition contained in Article 18(3)1) and 18(3)2) of the Competition Act.

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

this country?

Yes. Passing off is included in the non-exhaustive list of examples of unfair competition contained in Article 18(3) of the Competition Act.

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

Yes. The making of false allegations, including disparagement, is included in the non-exhaustive list of examples of unfair competition contained in Article 18(3) of the Competition Act.

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

In principle, the definition of unfair competition can cover misleading acts.

IV. What are the remedies available?

The prohibition of unfair competition can be enforced in civil procedure, i.e., the aggrieved party must bring a claim against the infringer.

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

Unfair competition claims are brought before a court.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Unfair competition claims can be asserted by any person that has suffered harm. There is no requirement that the claimant should always be a competitor. Persons involved in other capacities may also sue, although for them establishing harm and causality may be more difficult. Actio popularis is not permitted in unfair competition cases.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes. Claimants in unfair competition cases frequently invoke other grounds too, including the prohibitions of unauthorized use of IP.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

An unfair competition claim can be asserted in the same proceedings as claims brought on other grounds, provided the parties are the same and the subject-matter is related.

b. Can damages be claimed twice?

No. Damages are quantified on the basis of the harm suffered by the claimant, not the legal qualification of the unlawful conduct under one or several prohibitions. Overcompensation is impermissible, as it would constitute unjust enrichment.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

The existence of a valid IP right is not a pre-requisite for a successful claim under the prohibition of unfair competition.

IX. After which period do UC claims become subject to the statute of limitations?

Unfair competition is a 'delict' (tort), therefore, in principle, the general civil law limitation period of 10 years applies.

The courts have not had a chance to consider whether an unfair competition claim could in some circumstances be regarded as 'arising from a commercial transaction' and therefore be subject to the special limitation period of 3 years.

Lithuania

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

Unfair competition is covered by the Law on Competition of the Republic of Lithuania.

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.

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

No, unless the information provided in the comparative advertising is false.

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

Yes. There is laid down a prohibition on imitating of the product or product packaging, as well copying of the shape, colour or other distinguishing features of that product or product packaging, if this may be misleading in terms of the identity of the product, or if the acts are intended to take undue advantage by using the reputation of another undertaking.

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 person whose interests are violated by actions of unfair competition may request:

- to terminate the illegal actions,
- to recover the damages,
- to make one or several statements of specific content and form, refuting the previously submitted incorrect information or providing explanations,
- to destroy the goods, their packaging or other means directly related to unfair competition, unless the infringement can be eliminated otherwise.

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

Before a court. Some unfair competition claims (for instance, false advertising matters) by consumers may also be brought to the competent pre-trial authority – State Consumer Rights Protection Authority.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Legal/natural persons who consider that their rights have been violated. Also organizations representing the interests of undertakings or consumers.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e. g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes. However, the main legal instrument for protecting IP rights is the trademark and/or design law. The courts apply the UC rules in a subsidiary manner when the IP rights are not sufficient.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

In courts practice UC claim is asserted in the same proceedings.

b. Can damages be claimed twice?

No.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes.

Lithuanian Law on Competition provides that undertakings shall be prohibited from performing any actions contrary to fair business practices and good usages if such actions may be detrimental to the competitive potential of another undertaking, including unauthorised use of an unregistered well known trade mark or any other reference mark having a distinguishing feature of another undertaking, if this causes or is likely to cause confusion with that undertaking or its activity, or where it is sought to take undue advantage of the reputation of that undertaking (its mark or reference mark) or where this may be detrimental to the reputation (mark or reference mark) of that undertaking, or where it may reduce the distinguishing feature of the mark or reference mark used by that undertaking.

IX. After which period do UC claims become subject to the statute of limitations?

General prescription comprises a period of ten years. Abridged three-year prescription shall be applied with respect to claims for the compensation of damage.

Malaysia

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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.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Trademark proprietors, proprietors of confidential information, owners of trade secrets

and copyright owners.

- VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?**

Yes.

If this is the case:

- a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?**

The UC claim(s) may be asserted in the same proceedings.

- b. Can damages be claimed twice?**

Double recovery for the same loss is not permissible. However, part satisfaction of a judgment against one person does not operate as a bar to the plaintiff for bringing an action against another who is also liable, but it operates to reduce the amount recoverable in the second action as once a plaintiff has fully recouped his loss, any further proceedings would lack a subject matter. This principle of full satisfaction prevents double recovery in Malaysia.

- VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?**

Rights such as trademark registration, industrial design registration and patents are creatures of statute that will no longer have effect if expired or invalidated. However, the rights would still be live in respect of infringing acts occurring prior to the expiry (but not invalidation) of the particular registered right.

- IX. After which period do UC claims become subject to the statute of limitations?**

The right of action for trademark infringement and torts such as passing off, breach of confidential information and misuse of trade secrets and defamation subsists for a period of 6 years from the date of commission of the wrong doing and for patent infringement and industrial design infringement, it subsists for a period of 5 years from the date of infringement.

Malta

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- 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 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.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

An injured trader.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

Separate proceedings.

b. Can damages be claimed twice?

This is a moot point.

- VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?**

A UC claim exists irrespective of the registration or otherwise of a registered item of IP.

- IX. After which period do UC claims become subject to the statute of limitations?**

5 years from the date when the infringing activity commenced.

Mexico

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

Yes, the new Federal Law for the Protection of Industrial Property (Article 386, items 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?

It is also possible to use international treaties, such as the Paris Convention for the Protection of 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 country?

Yes, it is.

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

Only when the relevant advertisement is considered biased, false or exaggerated under the scope of the Federal Law on Consumer Protection

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

Yes, it is.

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

Yes, it is.

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

Yes, they are.

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

Yes, they are.

IV. What are the remedies available?

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

Yes, all kind of injunctive reliefs are accepted, including ex-parte, preliminary injunctions, and preliminary procedures.

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

Yes. Thanks to the new Federal Law for the Protection of Industrial Property, now IPR owners are entitled to bring either a Civil Action (before Civil Court) or an Infringement Action (before the Mexican Patent and Trademark Office) because of the infringement of their IPRs.

When it comes to infringement actions brought before the Mexican Trademark and Patent Office ("MPTO") and provided that IPR owners win the case, they are entitled to claim damages once the MPTO's decision becomes final and conclusive.

On the other hand, regarding civil actions brought before a Civil Court, IPR owners are entitled to claim damages at two specific moments, namely, since the beginning of the trial or once the relevant ruling becomes final and conclusive.

- c. Corrective advertising/public apology/public retraction**

Only when it comes to Civil Actions.

- d. Recovery of legal fees**

Only when it comes to Civil Actions.

- e. Recovery of court costs**

Only when it comes to Civil Actions.

- f. Criminal penalties, criminal fines or imprisonment**

Only when the relevant activity is considered a felony in terms of the Federal Law for the Protection of Industrial Property. A criminal action must be lodged by the IPR owner.

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

As explained above, it could be brought with either the MPTO or a Civil Court.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Any affected party who can evidence legal standing.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes, it is.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

It could be done in the same proceedings/trial.

b. Can damages be claimed twice?

No.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes, provided that the infringement occurred while the associated IPR was valid.

IX. After which period do UC claims become subject to the statute of limitations?

Two years, counted from the time in which the infringing activities takes place.

Netherlands

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

Yes, these are:

- (a) article 6:162 Dutch Civil Code (“DCC”);
- (b) articles 6:193a – 6:193j DCC (consumer versus trader).

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, under articles 6:193c DCC (B2C), 6:194 DCC (B2B) and 6:194a DCC (B2C). It is referred to as misleading advertising.

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

Yes, under articles 6:193c DCC (B2C), 6:194 DCC (B2B) and 6:194a DCC (B2C).

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

In theory trade dress infringement may constitute an act of unfair competition, this may arise in the event that one cannot invoke the protection of specific IP rights such as trade marks, designs and/or copyright. The granting of protection depends on factors such as the trade dress having acquired its own identity and the fact whether the use of the similar trade dress causes confusion.

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

this country?

To the extent that passing off is an act of tort which can be used to enforce use of unregistered distinctive signs, one may invoke article 6:162 DCC to take action against use that gives rise to confusion. That requires the presence of special c.q. additional circumstances though, particularly as article 2:19 BCIP says that, with the exception of the holder of a trademark which is well known within the meaning of Article 6bis of the Paris Convention, and regardless of the nature of the action brought, no one may claim in court protection for a sign deemed to be a trademark as defined in Article 2.1 BCIP, unless that claimant can provide evidence of registration of the trademark which it has filed.

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

Yes, they may constitute unfair competition under article 6:162 DCC. To the extent that they do not constitute false advertising one may seek rectification on the basis of article 6:167 DCC. To the extent that they do constitute false advertising one may seek rectification on the basis of article 6:196 DCC

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

They may constitute an act of tort under article 6:162 DCC, but are likely to be qualified as an unfair trade practice under article 6:193a – 6:193j DCC.

IV. What are the remedies available?

- (a) an order to cease use of the unfair competition;
- (b) an order to cease the false advertising or the comparative advertising;
- (c) an order to cease the making of false allegation;
- (d) rectification of the false advertising, comparative advertising and/or false allegations;
- (e) compensation of damages

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

Unfair competition claims are brought before one of the district courts in line with rules that determine their relative competence.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Any person affected by an act of unfair competition, which may in theory also include associations representing the interests of a collective of persons that have a similar interest.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g.

design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes, IP claims may be instituted parallel to the enforcement of an IP right. If the claim is awarded on the basis of an IP right, the court may however consider that one has no interest in the awarding of a UC claim to the extent that the same is covered by the IP right enforced in parallel. Normally UC claims are instituted to seek protection against confusion and the damage arising as a consequence thereof, to the extent that the claim is not awarded on the basis of an IP right.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

Yes, they can be asserted in the same proceedings.

b. Can damages be claimed twice?

No.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes, however the same requires the presence of special c.q additional circumstances.

IX. After which period do UC claims become subject to the statute of limitations?

After 20 years.

However, claims for compensation of damage suffered as a result of UC become subject to the statute of limitation after five years from the day following the one on which the injured person has become aware of both the inflicted damage and the identity of the person who is liable for this damage.

Nigeria

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

Yes, Federal Competition and Consumer Protection Act 2019 (the FCCPA). The FCCPA is an Act of the National Assembly. The FCCPA provides that subject to the 1999 Constitution, it applies to all matters relating to competition and consumer protection and its provisions override those of any other law in Nigeria.

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?

See 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 country?

Yes. The FCCPC Act expressly prohibits the following acts

(a) knowingly applying to any goods, a trade description that is likely to mislead consumers as to any matter implied or expressed in that trade description or alter, deface, cover, remove a trade description or trade mark applied to any goods in a manner calculated to mislead consumers;

(b) supplying, offering to supply or displaying any goods which the undertaking knows or could reasonably determine, or has reason to suspect that (i) the trade description applied to those goods is likely to deceive consumers as to any matter implied or expressed in that trade description; or (ii) a trade description or trademark applied to those goods has been altered.

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

Yes, Section 123(1) of the FCCPA provides that a producer, importer, distributor, retailer, trader or service provider, shall not in pursuance of trade, and for the purpose of promoting or marketing, directly or indirectly, make any representation to a consumer (a) in a

manner that is likely to imply any false or incorrect representation concerning those goods or services (b) that it is reasonably misleading or likely to be misleading in any material respect concerning those goods or services; (c) in any manner that is erroneous, fraudulent or deceptive in any way – including the price at which the goods or services may be supplied or the existence of or relation of the price to, any previous price, or competitor's price, for comparable or similar goods or services.

In addition, some legislations have over the years been interpreted as indicating that the use of a company's registered trademark in comparative advertising could constitute trademark infringement in Nigeria. See Trademark Act and the Advertising Practitioners Council of Nigeria (APCON) Code of Advertising Practice are relevant.

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

Yes, trade dress infringement can be considered as a form of unfair competition and both could arise from the same set of facts. However, in appropriate cases, they can be differentiated.

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

Yes, passing off can be considered as a form of unfair competition by misrepresentation and both could arise from the same set of facts. However, in appropriate cases, they can be differentiated.

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. Administrative orders by the industry regulator (such as the FCCPC) for penalties for non-compliance with the applicable law.

b. Injunctive relief (a court order restraining a competitor from engaging in a particular fraudulent or deceptive practice).

c. Money damages (compensation for any losses suffered by an injured business) and or account for profits.

d. Anton Pillar Order

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

It can first be brought before the FCCPC Tribunal and if parties are not satisfied, can appeal to the Federal High Court.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Business entities and consumers.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes, depending on the facts and circumstances of the case. Unfair competition is basically the same as IP right infringement except the requirement of the existence of an exclusive IP right. The registration of an IP right is a prerequisite to commence action while unfair competition needs not be registered to commence action.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

The UC claim can be made in an IP right infringement proceeding if it relates to the same set of facts and needs not be initiated in different Courts.

b. Can damages be claimed twice?

Damages cannot be claimed twice in the same proceeding and or in respect of the same cause of action.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes.

IX. After which period do UC claims become subject to the statute of limitations?

There is no specific provision for a limitation period of UC claim actions, however, UC claims action can be brought as a tort action which has a 6year limitation period.

Norway

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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 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 Konkurransutvalg – 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.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

The Consumer Council (in regards to consumer related issues) or any person who has necessary legal interest may assert UC claims.

Any trader, association, competitor or private person is entitled to assert UC claims to the Norwegian Competition Authority. The Competition Authority's actions in relation hereto may come up as a result of tip-offs from traders or competitors. The Norwegian Competition Authority may for example order a company to terminate a competition law infringement and/or to impose an administrative fine on companies infringing competition law, see Chapter 7 of the Competition Act. Such decisions may be appealed to the Courts (Konkurransklagenemda and the Appeal Court), see Chapter 8 of the Competition Act. If the Norwegian Competition Authority decides not to order an undertaking to terminate a competition law infringement, an undertaking affected by the infringement may bring an action before Courts.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes, UC claims can be asserted in parallel with IP claims.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

Yes, UC claims may be asserted in the same court proceedings.

b. Can damages be claimed twice?

Provided that damages have been awarded, the Norwegian courts will not award damages for the same act twice, due to principles against overcompensation.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes, the UC claim can still be asserted

IX. After which period do UC claims become subject to the statute of limitations?

In principle there is no time bar for UC claims under the Marketing Act. Further the general statute of limitation for damages is three years, and also applies to damages claims under the Marketing Act and the Competition Act. Also, a follow-on claim for damages may be filed with the Courts within one year following a decision by the Norwegian Competition Authority or judgement by the Courts. Several exceptions from the general statute of limitations exists and an assessment must be made on a case-by-case basis.

Panamá

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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 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.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

According to Article 16 of Law No. 5 dated January 11, 2017 any merchant/businessman who considers himself affected by the acts of unfair competition, will have civil action to request the commercial courts the suspension of said acts and the reparation of the damages caused, without these actions excluding any administrative sanctions that may take place.

Additionally, Article 283 of the Penal Code establishes that whoever discloses false or altered information about a competitor or uses any fraudulent method to divert foreign customers to their own or a third party, provided that it causes damage, will be sanctioned with imprisonment from 18 months to 3 years or their equivalent in days fine or weekend arrest.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes, it is possible.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

If it is a civil claim that concerns specifically unfair competition, consumer protection related, IP rights, they can all be included in the same proceeding and will be ventilated before the Civil Courts specialized in IP. If a criminal claim is requested, it must be addressed in a separate proceeding and will be ventilated before the Specialized Prosecutor for Crimes against Intellectual Property.

b. Can damages be claimed twice?

No.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

No.

IX. After which period do UC claims become subject to the statute of limitations?

Article 108 of Law 45 establishes that the limitation is 3 years for consumer protection counted from the moment in which the fault occurred in cases of restrictive competition practices, or from the moment of effective knowledge of the fault in cases of unfair trade practices, and will prescribe after 5 years action for consumer protection claims. In this case, the term will be counted from the moment in which the consumption relationship is perfected.

Paraguay

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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 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.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Competitors, associations and any individual or corporation who considers his/her rights have been infringed on the basis of an action, illegitimate as per the terms of the Trade-mark Law or the Merchant Law, Law No. 1034/83, by another third party.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes, it is.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

The proceedings may be initiated jointly or separately. In this sense, the party who considers that his/her rights have been infringed, may initiate a civil action for trademark infringement and unfair competition, jointly.

Nonetheless, it is worth noting that, in Paraguay, there is a criminal action for IP infringement/violation, whereas unfair competition may only be recurred via civil instances and before the Civil Courts only.

Therefore, the party may initiate a Civil action for unfair competition and a criminal action for trademark infringement for example.

b. Can damages be claimed twice?

Yes, where the proceedings were initiated and prosecuted separately and not jointly, damages may be claimed in both proceedings, separately.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes, it can be asserted even if the IP right has expired. Nevertheless, it could not be asserted if the IP right never existed.

IX. After which period do UC claims become subject to the statute of limitations?

2 years, as per the terms of the Paraguayan Civil Code.

Peru

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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 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?

- Injunctive relief (including preliminary injunctions, ex parte injunctions, etc.).
- Recovery of legal fees.
- Recovery of administrative fees.
- Administrative fines/Sanctions.
- 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.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Competitors, associations and even consumers can assert UC claims. In fact, there is even a reduced official fee when consumers or a consumer association files the UC claim.

However, in every case, even if a third party files the complaint, the sanctioning procedure is always initiated ex officio, so the third party that files the complaint is only considered a collaborator in the procedure.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

It is possible to assert an UC claim parallel to the claim of an IP right and many lawyers do so. However, if both claims are about the same fact, it is very likely that the Authority will reject the UC claim and maintain only the IP right claim. In order for the Authority to sustain both claims there has to be a difference between the unfair competition act and the IP infringement.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

UC claims related to IP rights can be asserted in the same proceeding.

b. Can damages be claimed twice?

Damages are not claimed in the administrative procedure. If damages are claimed, a civil procedure must be initiated. In said procedure, damages cannot be claimed twice if they are for the same fact. In Peru, compensation for damages is only granted for the real demonstrated amount of damages, so one cannot be granted two compensations for the same damages.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes, a UC claim can be asserted even if there are no registered IP rights, provided that risk of confusion or an unlawful exploitation of the third-party reputation exists.

IX. After which period do UC claims become subject to the statute of limitations?

The statute of limitations for UC claims is of five years counted from the date the act of unfair competition ends.

Poland

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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 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).

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Competitors whose interest is threatened or infringed and a national or regional organization the statutory aim of which is to protect the interests of undertakings.

The organization can only claim selected types of infringements; article 19 of CUCA. For example, the organization cannot claim infringement because the designation of an undertaking could mislead customers as to the identity of the undertaking because of the use of a name or other distinctive sign previously used to designate another undertaking. Besides, the organization can never claim damages or surrender of unjustly obtained benefits.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes.

If this is the case:

- a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?**

UC and IP claims can be made in the same proceedings.

- b. Can damages be claimed twice?**

Damages can be claimed cumulatively under both legal grounds i.e. CUCA and Act of 30 June 2000 the Industrial Property Law (hereinafter "IPL"). However, that does not mean that the amount of damages is doubled. Damages are awarded to a plaintiff for the harm that has been caused and in an amount that is proven. Therefore, it is impossible to obtain double damages because that would be regarded as being an unjustified enrichment.

- VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?**

UC claims are asserted regardless of whether IP right is registered or not. The main prerequisite for UC claims is the earlier use in Poland of a designation, trade dress or other IP (whether registered or not).

- IX. After which period do UC claims become subject to the statute of limitations?**

The general rule is that the claims are time-barred after three years; the time-bar commences separately for each infringement.

The three-year time limit is calculated from the day when a plaintiff learns or could have learnt about the harm and the infringer. There is, however, inconsistency about how to calculate a time bar for claims under CUCA and IPL; it is a matter of law to be decided by the Supreme Court.

Portugal

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- 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?**

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, if against “honest commerce practices”.

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

Comparative advertising does not qualify as unfair competition if it complies with the comparative advertising law. If it does not comply with such law, then it may qualify as unfair competition if against “honest commerce practices”.

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

Yes, if against “honest commercial practices.”

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

Yes, if against “honest commercial practices.”

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

Yes, if against “honest commercial practices.”

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

Yes.

IV. What are the remedies available?

- a. Damages
- b. Preliminary injunctions against competitor or third parties (e.g. intermediaries)
- c. Penalty sanctions for non-compliance
- d. Prosecution for administrative infringement

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

Courts.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Competitors.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

It can be asserted in the same procedures.

b. Can damages be claimed twice?

It is possible to individualize a claim for damages for trademark infringement and a claim for unfair competition, although typically damages are claimed in bulk, not specifying which ones are awarded to UC and which ones to TM infringement.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes, the grounds for trademark infringement lawsuits are different from the ones grounding UC lawsuits.

IX. After which period do UC claims become subject to the statute of limitations?

- a. Civil liability: 3 years
- b. Administrative liability: 6 months

Romania

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

Unfair competition is addressed by Law no 11/1991 (as subsequently amended; the last substantial update is Government Ordinance no 12/2014) and will be herein referred to as the Unfair Competition 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?

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?

No. False advertising is not specifically considered as unfair competition according to the Unfair Competition Law.

False advertising is however specifically regulated and forbidden by Law no 158/2008 regarding misleading advertising and comparative advertising.

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

No. Comparative advertising is not specifically considered as unfair competition according to the Unfair Competition Law.

Comparative advertising is however specifically regulated and forbidden by Law no 158/2008 regarding misleading advertising and comparative advertising.

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

Yes. The use of a packaging that is likely to cause confusion with a packaging that is legitimately used by another trader is expressly considered unfair competition according to art. 5 par (1) (a) of the Unfair Competition Law.

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

Passing-off is not specifically acknowledged either in the Unfair Competition Law or by the doctrine/case-law. However, the use of a trade name or emblem that is likely to cause confusion with the ones that are legitimately used by another trader is expressly considered unfair competition according to art. 5 par (1) (a) of the Unfair Competition Law.

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

Yes. Denigration (disparagement) of a competitor or its products/services by communicating or disseminating false information about that competitor's activity or its products is considered unfair competition if such acts are conducted by another entity, its representatives or employees and if capable of harming the interests of that competitor.

Disparagement of a competitor is expressly addressed as unfair competition by art. 2 par (2) (a) of the Unfair Competition Law.

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

Yes. Misleading acts are expressly addressed as unfair competition by art. 5 par (1) (f) and art. 5 par. (2) of the Unfair Competition Law:

Manufacturing, import, export, storage, offering for sale or sale of goods or services bearing false indications regarding patents, trademarks, geographical indications, industrial designs, topographies of semiconductor products, other types of intellectual property, such as the appearance of the company, the design of the shop's showcase or the clothing of the staff, the advertising means and the like, the origin and characteristics of the goods, as well as the name of the manufacturer or marketer, in order to mislead competitors or consumers).

False indications regarding the origin of the goods are further defined by the Unfair Competition Law as any indication that could lead to believing that the goods were produced in a certain city, territory or state. A product name that has become generic does not represent a false statement of origin.

IV. What are the remedies available?

The Romanian Unfair Competition Law provides the following categories of remedies:

- a. Civil remedies
- b. Criminal charges
- c. Administrative fines

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

According to the Romanian Unfair Competition Law, unfair competition claims can be brought before the Romanian Competition Council or before a court of law.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Unfair competition claims can be exercised by any person that justifies a legitimate interest. Criminal proceedings can be initiated as well by the Territorial Chambers of Commerce, other professional associations, or the Competition Council.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Asserting UC claim parallel to the claim of an IP right was and still is subject to debate in the Romanian doctrine and case-law, however prior to 2014 (when the last amendment to the Romanian Unfair Competition Law was published) the Romanian case-law has generally accepted such assertion in parallel.

After 2014, Romanian courts have also begun (i) to question if analyzing UC claims should be done separately from IP rights claims (thus splitting these actions in separate cases, further judged by separate courts), (ii) analyzing IP rights exclusively, dismissing UC claims or (iii) in a few isolated cases confirming that such parallel assertion is still possible.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

The Romanian case-law in the past years have rather confirmed a separate proceeding should be initiated in different courts.

b. Can damages be claimed twice?

No.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

This is still subject to debates in the Romanian doctrine (in line with some foreign cited doctrine) who has until now affirmed that once the IP right has been canceled or has expired, the UC claim should be denied. No relevant case-law has been identified.

IX. After which period do UC claims become subject to the statute of limitations?

The current amended form of the Unfair Competition Law does not expressly provide any specific term as statute of limitation for UC claims; therefore, the general 3 years period statute of limitation is applicable.

Russia

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

Yes, there is the Federal Law “On protection of competition” dd. 26.07.2006 № 135-FZ which contains provisions related to the legal basis for the protection of competition. Additional general provisions in Russian Civil Code, plus 10bis of Paris Convention. Public liability is also governed by Russian Criminal Code and Code of Administrative Offences.

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 Law mentioned above UC is prohibited by Russian Constitution. Point 2 of the article 34 says: Economic activity aimed at monopolization and unfair competition is not allowed.

Russia is also a part of the Paris Convention for the Protection of Industrial Property. Thus, its norms, including related to UC, are applicable in Russia.

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, in accordance with the art. 14.1 of the Law “On protection of competition”: UC is not allowed by discrediting, that is, spreading false, inaccurate or distorted information that can cause losses to an economic entity and (or) damage its business reputation.

A cause of action for false advertising arises when a defendant misrepresents the nature or characteristics of its own goods to consumers. Such behavior infringes a prohibition set by Art. 14.2 of Federal Law “On protection of competition”. In accordance with the art. 14.2 of the Law “On protection of competition”: UC by misleading is not allowed included providing false information about the quality and consumer characteristics of the goods offered for sale, the purpose of such goods, methods and conditions of its manufacture or use, the results expected from its use, its suitability for certain purposes.

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

Yes, in accordance with the art. 14.3 of the Law “On protection of competition”: UC is not allowed by incorrect comparison of an economic entity and (or) its product with another competing business entity and (or) its product.

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

Yes, in accordance with the art. 14.6 of the Law “On protection of competition”: UC is not allowed by performing actions (inaction) by an economic entity that can cause confusion with the activities of a competing business entity or with goods or services introduced by a competing business entity into civil circulation on the territory of the Russian Federation, including copying or imitating the appearance of goods, introduced into civil circulation by a competing economic entity, packaging of such goods, its labels, names, colors, corporate identity as a whole (in the aggregate of branded clothing, design of a sales area, shop window) or other elements that individualize a competing business entity and (or) his product.

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

Passing off cause of action arises when a defendant makes a false representation that suggests to consumers that the defendant’s business, good or services come from or are sponsored by or affiliated with the plaintiff. Such behavior falls under the rule in Art. 14.6 of the Law. In accordance with the Art. 14.6 of the Law “On protection of competition”, UC is not allowed by performing actions (inaction) by an economic entity that can cause confusion with the activities of a competing business entity or with goods or services introduced by a competing business entity into civil circulation on the territory of the Russian Federation, including copying or imitating the appearance of goods, introduced into civil circulation by a competing economic entity, packaging of such goods, its labels, names, colors, corporate identity as a whole (in the aggregate of branded clothing, design of a sales area, shop window) or other elements that individualize a competing business entity and (or) his product.

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

Yes, in accordance with the art. 14.1 of the Law “On protection of competition”: UC is not allowed by discrediting, that is, spreading false, inaccurate or distorted information that can cause losses to an economic entity and (or) damage its business reputation.

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

Yes, in accordance with art. 14.2 of the Law “On protection of competition”: UC by misleading is not allowed.

IV. What are the remedies available?

- a. filing a complaint before a state body (FAS – Federal Antimonopoly Service and/or through its territory authorities);
- b. filing a claim before a civil court (commercial courts).

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

There is a special state body who deals with UC issues in Russia - the Federal Antimonopoly service (FAS). It is possible to bring claims before this authority. In the meantime, it is also possible to bring UC claims before civil courts.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

UC claims can be asserted by competitors only. The following criteria must be met before filing of a claim with FAS: existence of competitive relations (one commodity and geographic market, one price category, and goods (services) are interchangeable); likelihood of confusion; intention to obtain advantages from the original product/service in the conduct of business activities; ability to cause losses to a competitor. As regards civil courts, depending on the case, the competitiveness existence requirement could be a little less strict.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes, it is possible.

If this is the case:

- a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?**

It is recommended to proceed with UC claim with the FAS first (provided meeting the competition existence requirement) who will recognize action of an adverse party as UC. And then this decision can be used as evidence of illegal behaviour in civil proceedings in a court.

- b. Can damages be claimed twice?**

Damages can be claimed only once in a court.

VIII. In the event an IP right which could or does concern a subject matter of

the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

It is possible to assert the UC claim in respect to some IP objects which have never existed, e.g. it is prohibited to copy or imitate the appearance of goods introduced into civil circulation by a competing economic entity, packaging of such goods, their labels, names, colors, corporate identity in general or other elements that individualize the competing business entity and (or) its goods. At the same time, as it follows from the legal practice, if the IP right has expired and the result of intellectual activity has passed into a public state, protection through a complaint for unfair competition may be denied.

IX. After which period do UC claims become subject to the statute of limitations?

UC claims cannot be initiated, and the initiated case is subject to termination after three years from the date of the violation of the legislation, and in case of a continuing violation of the legislation - from the date of the end of the violation or its detection.

Singapore

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

No. It is helpful to note that there is a distinction between anti-competitive behaviour, and unfair competition. Singapore has an established framework governing the former (underpinned by the Competition Act 2004 (“CA”) and its related rules and regulations) but does not recognise the latter as a tort or statutory construct in itself. The CA specifically addresses issues relating to competition in the market such as anti-competitive behaviour in Singapore. While there are other sources of law which address quasi-competition issues, such as the Consumer Protection (Fair Trading) Act 2006 (“CPFTA”) and the tort of passing off, these laws do not directly address 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?

No. Singapore does not recognize a tort of unfair competition: *Lifestyle 1.99 Pte Ltd v S\$1.99 Pte Ltd (trading as ONE.99 SHOP)* [2000] 1 SLR(R) 687, citing *Cadbury-Schweppes Pty Ltd v The Pub Squash Co Ltd* [1981] 1 All ER 213. However, the underlying mischief of unfair competition may be addressed through various other statutory provisions or common law torts (such as the tort of passing off).

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?

No. However, under the CPFTA, it is an unfair practice to make a false claim, or to do or say anything (or omit to do or say anything) that might reasonably lead to a consumer being deceived or misled. In addition, the Singapore Code of Advertising Practice (administered by the Advertising Standards Authority of Singapore) (“SCAP”) adopts truthful presentation as one of its general principles. It is also an offence under the Consumer Protection (Trade Descriptions and Safety Requirements) Act 1975 (“CPTDA”) to apply a false trade description to goods or supply goods to which a false trade description is applied.

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

No. Comparative advertising is allowed in Singapore, albeit within the strictures of the CPFTA (see paragraph III(a) above). The SCAP also provides that all comparative advertisements should be so designed that they are clear and fair, and there is no likelihood of the consumer being misled as a result of the comparison. This can be achieved where (a) the basis of comparison is the same for the products being compared and (b) the list of items used in the comparison are not chosen to provide an unfair advantage to the product being advertised.

Section 28(4)(a) of the Trade Marks Act 199 (“TMA”) also provides that use of a registered mark does not amount to trade mark infringement if such use, among other things, constitutes fair use in comparative commercial advertising or promotion.

Comparative advertising that amounts to an injurious falsehood may be actionable: *White v Mellin* [1895] A.C. 154

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

No. Trade dress infringement (or trade mark infringement) would constitute a separate cause of action to unfair competition under the TMA.

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

No. The tort of passing off is a separate cause of action, which requires separate and distinct elements to be established. In particular, passing off includes a strict requirement for misrepresentation that one trader’s good is that of, or associated with, another trader’s. Although the Court has noted that the goal of the tort of passing off is to “prevent [...] unfair competition brought about through deception or misrepresentation by the defendant as to, amongst other things, the origin of goods” (see *Singsung Pte Ltd v LG 26 Electronics Pte Ltd* [2016] 4 SLR 86) at [55]], this should be read in light of the English Court of Appeal’s comments that the tort of passing off “cannot and should not be extended into some general law of unfair competition” (see *L’Oreal SA and others v Bellure NV and others* [2007] EWCA Civ 968 at [161]). The tort of passing off has not yet developed into a general tort of unfair competition: *Golden Season Pte Ltd and others v Kairos Singapore Holdings Pte Ltd and another* [2015] 2 SLR 751.

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

No. However, making false allegations against a competitor may fall foul of the SCAP. In particular, Part II Paragraph 11.1 of the SCAP states that “advertisements should not unfairly attack or discredit other products, organisations or professions directly or by implication.” Making false allegations and/or disparaging other traders may also constitute an unfair practice under the CPFTA, insofar as they constitute false claims or may lead

to consumers being deceived or misled.

False allegations and disparagement may also constitute defamation if the allegations have the effect of lowering the subject “in the estimation of right-thinking members of society” or which causes the subject to be “shunned or avoided”. Alternatively, false allegations and disparagement may constitute malicious falsehood, upon proof that:

- (a) the defendant published to third parties words which are false;
- (b) they refer to the claimant or his property or his business;
- (c) they were published maliciously; and
- (d) special damage has followed as a direct and natural result of their publication.

It is also possible for the subject of false statements of fact to apply for various orders or interim orders under the Protection from Harassment Act 2014. These orders may include orders (i) requiring a respondent to stop publishing the false statement of fact; (ii) requiring the publication of correction notices by the maker of the false statement or an internet intermediary service or publishing or broadcasting service; (iii) requiring an internet intermediary service to disable access by end-users to material containing the false statement of fact.

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

No. However, misleading acts may constitute unfair practices under the CPFTA, if they are reasonably likely to mislead or deceive a consumer. It is also an offence under the CPTDA to apply a false trade description to goods or to supply goods to which a false trade description is applied.

IV. What are the remedies available?

Not applicable, as Singapore does not consider unfair competition as a tort or statutory construct in itself.

However, in situations where Singapore recognises standalone torts which address the prohibited conduct described above (such as the tort of passing off (see section III(d) above), or the tort of defamation (see section III(e) above)), the remedies available could include (a) damages and/or (b) injunctions restraining the prohibited conduct. Where an application under the Protection from Harassment Act 2014 is involved, the remedies may include a stop publication order, correction order, disabling order, targeted correction order, or general correction order.

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

Not applicable, as Singapore does not consider unfair competition as a tort or statutory

construct in itself.

However, assuming the prohibited conduct falls within the ambit of a standalone tort recognised under Singapore law, such claims would be brought before the Singapore courts. The specific court in question would depend on the nature and value of the claim. Generally, claims with a value below S\$250,000 would be heard in the State Courts, whereas claims with a value of S\$250,000 and above would be heard in the High Court. The High Court has the exclusive jurisdiction to hear claims of passing off. The District Court or Family Court has the exclusive jurisdiction to hear applications under the Protection for Harassment Act 2014.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Not applicable, as Singapore does not consider unfair competition as a tort or statutory construct in itself.

However, assuming the prohibited conduct falls within the ambit of a standalone tort recognised under Singapore law, the person with standing to bring a claim would generally be the individual whose rights have been infringed, and who has suffered or may suffer damage as a result.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Not applicable, as Singapore does not consider unfair competition as a tort or statutory construct in itself.

However, assuming the prohibited conduct falls within the ambit of a standalone tort recognised under Singapore law, there is no bar against bringing a claim in tort in parallel to a claim of infringement of a related intellectual property right. For example, it is not uncommon to see a claim of passing off being brought in parallel to a claim of trade mark infringement.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

Not applicable, as Singapore does not consider unfair competition as a tort or statutory construct in itself.

However, assuming the prohibited conduct falls within the ambit of a standalone tort recognised under Singapore law, such a claim could be asserted in the same proceedings.

b. Can damages be claimed twice?

Not applicable, as Singapore does not consider unfair competition as a tort or statutory

construct in itself.

There is a general prohibition against double recovery under Singapore. Whether the principle against double recovery is engaged depends on whether the remedies are cumulative. If a claimant seeks different remedies against several tortfeasors causing different damage, or cumulative remedies against the same person for distinct claims, the principle against double recovery would not be applicable.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Not applicable, as Singapore does not consider unfair competition as a tort or statutory construct in itself.

However, assuming the prohibited conduct falls within the ambit of a standalone tort recognised under Singapore law (distinct to any rights arising from statutory regimes that protect intellectual property), such claims could be brought even if the intellectual property right never existed or has expired, as the claim would be based on a completely distinct cause of action.

IX. After which period do UC claims become subject to the statute of limitations?

Not applicable, as Singapore does not consider unfair competition as a tort or statutory construct in itself.

The general limitation period for torts under the Singapore Limitation Act 1959 is six (6) years.

Slovakia

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

In Slovakia, the unfair competition is complexly regulated by Slovak Act No. 513/1991 Coll. the Commercial Code as amended. In general, the Commercial Code considers as unfair competition, which is expressly prohibited, any conduct in economic competition which is against good manners and is eligible to harm other competitors or consumers. In this connection, the Commercial Code contains a demonstrative list of examples of unfair competition practices (such as misleading advertising).

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?

Please see our response to 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 country?

The Commercial Code considers as unfair competition such advertising that is misleading. In this connection, the misleading advertising is defined as advertising of goods, services, real property, business name, trademark, designation of origin of products and other rights and obligations, which is misleading or which may be misleading to persons to whom it is addressed or by whom it is received, and which due to its deceptiveness may influence their economic behavior, or which harms or may harm another competitor or customer.

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

The comparative advertising, which is defined as advertising that directly or indirectly refers to another competitor or its product, is not explicitly considered as unfair competition.

However, it is allowed only under strict conditions. More specifically, only in case it:

- (i) Compares goods, services or real property that satisfy the same needs or are intended for the same purpose;
- (ii) Objectively compares one or more specific, typical, substantial and verifiable characteristics of goods, services or real property, including their price; or in case of goods with designation of origin, it compares only goods with the same designation of origin;
- (iii) Does not discredit or disparage trademarks, business names, other distinguishing signs, goods, services, activities or circumstances of competitor;
- (iv) Does not unfairly use advantage of good name of trademark, business name or other distinguishing signs of competitor or designation of origin of competing products;
- (v) Does not present goods or services as imitations or copies of goods or services marked by protected trademark or business name;
- (vi) Does not create interchange between traders, between person ordering the advertisement and competitor or between trademarks, business names, other distinguishing signs, goods or services of person ordering the advertisement and competitor;
- (vii) Is not misleading.

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

Depending on the circumstances of the case, trade dress infringement may likely fall under creation of danger of interchangeability that is considered as unfair competition according to the Commercial Code.

The Commercial Code prohibits:

- (i) Using of business name or special designation of business that is already rightly used by another competitor;
- (ii) Using of special designations of business or special designations or design of products, services or commercial materials of business that are considered as characteristic for a certain business or establishment in relevant customer circles (including designation of packaging, forms, catalogues, advertising materials);
- (iii) Imitation of products, their packaging, or services, except for cases where the imitation relates to elements that are due to the nature of the product functionally, technically, or esthetically pre-determined and the imitator performed all measures that may be

required by him to exclude the risk of interchangeability between products or to substantially reduce such risk.

Practices under (i) – (iii) above are prohibited in case they can create danger of interchangeability with business, business name, special designation or products or services of another competitor.

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

The Commercial Code considers as unfair competition misleading designation of goods and services. In this connection, misleading designation means any designation that can create a false impression in economic relationship about the fact that the designated goods or services come from a certain country, area or place or from a certain manufacturer or that they show special characteristic signs or special quality.

In addition, the Commercial Code considers as unfair competition such incorrect designation of goods or services which is supplemented by an addendum with aim to distinguish them from the true origin (expressions such as "sort", "type", "method"), in case that despite such addendum, the designation can create a false impression about the origin or nature of the goods or services.

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

Yes. More specifically, the Commercial Code prohibits any conduct by which a competitor states or spreads false information about circumstances, products or performance (services) of other competitors that may bring him harm. Even stating and spreading true information about the aforementioned matters of another competitor could be prohibited if such conduct may bring him harm, unless it is used as part of allowed comparative advertisement or if a competitor stating or spreading such information has been forced to do so by circumstances (i.e. it is used as a justified defense).

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

Misleading acts may fall (for example) under creation of danger of interchangeability that is considered as unfair competition according to the Commercial Code. Please see our response to III. c. above.

IV. What are the remedies available?

Persons rights of whom were violated or endangered (such as competitors or consumers) by unfair competition may bring proceedings against the violator and particularly request

the violator to:

- a. Refrain from unfair competition and remedy the unlawful situation;
- b. Provide adequate satisfaction (which may consist of a monetary amount);
- c. Return unjust enrichment.

Claims under a. above, may be generally asserted also by associations authorized to protect the interests of competitors or consumers. Courts may also grant the claimant the right to publish the judgement at the expenses of the violator. In addition, if the unfair competition caused damage, the harmed party may seek damages.

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

Assuming the matter is not resolved out of court (by settlement), the unfair competition claims are generally brought before a court.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

The unfair competition claims may be asserted by any person whose rights were infringed or endangered by unfair competition (such as by other competitors, consumers or in case of some claims, by their associations).

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

The laws do not seem to expressly exclude the possibility of asserting unfair competition claim parallel to the claim of an IP right.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

In case that in addition to IP rights, the claim at the same time concerns unfair competition, such claim may be asserted in a single proceeding before a single court, namely District Court Banská Bystrica (as a court of first instance).

b. Can damages be claimed twice?

In principle, it is not possible to claim the same damages twice. In general, the damaged party should decide on what legal ground the damages shall be claimed by the damaged party. In a particular case, there may be possibly multiple legal grounds for the damages claim.

VIII. In the event an IP right which could or does concern a subject matter of

the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

The law does not seem to make unfair competition claims conditional upon the existence of an IP right. Therefore, provided that all statutory signs of unfair competition are met, it should be possible to assert the unfair competition claim even without an existing (or with an expired) IP right.

IX. After which period do UC claims become subject to the statute of limitations?

Periods of limitation are a rather complex legal concept under Slovak law. In practice, the length of periods of limitation may vary depending on the specific circumstances of a particular case. However, generally the unfair competition claims should become subject to the statute of limitations after 4 years that start running from the moment when the claim could be for the first time exercised in court.

* * *

Please note that our responses contain only general information that should not be considered as legal advice. We recommend assessing any specific case on an individual basis.

Slovenia

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

In Slovenia unfair competition in a strict sense is regulated by Prevention of Restriction of Competition Act (Official Gazette of Republic of Slovenia No. 36/08, as amended; hereinafter "PRCA").

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?

Unfair competition in a broader sense is also regulated by

- a) Slovenian Consumer Protection Act (hereinafter "CPA") and
- b) Consumer Protection against Unfair Commercial Practices Act (hereinafter "CPUCPA").

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

Unfair competition acts are defined in paragraph (2) of Article 63a of PRCA (general clause), namely commercial practices carried out by a company (on the market) which are contrary to good business practices and cause or might cause damage to other companies.

Paragraph (3) of Article 63a of PRCA provides several unexhausted examples of acts that are to be deemed as an act of unfair competition, if the above conditions are met; following are two examples related to IP:

- selling of goods with markings or data creating or likely to create confusion as to the origin, method of production, quality or other characteristics of goods;
- unjustified use of the name, company name, brand or any other designation of another company, irrespective of the fact that the latter gave its consent, if such practice results in or might create confusion on the market.

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

False advertising is not explicitly cited as an example of an act of unfair competition in the PRCA, however under the conditions under paragraph (2) of Article 63a of PRCA, such activities could constitute unfair competition acts.

False/misleading advertising is also prohibited by the (1) Slovenian Consumer Protection Act (CPA) and (2) Consumer Protection against Unfair Commercial Practices Act (CPUCPA). Both cited acts are primarily aimed at protecting the consumers/buyers, and only secondarily at protecting the competitors, especially in terms of legal remedies. Nevertheless, both acts offer definition of false, misleading, indecent, comparative advertising, etc.

According to Article 12 of the CPA the following is prohibited: indecent or misleading advertising of goods and services and advertising contrary to the law.

Article 12.b of the CPA refers to two types of false/misleading advertising namely:

- 1) Misleading advertising addressed to consumers shall be any deceptive business practice under CPUCPA (Article 5), for example advertising which is misleading with regard to main properties or price of the product.
- 2) Advertising addressed to companies or that could reach companies shall be considered misleading when by any means, including its presentation, it misleads or could mislead companies and, by reason of its deceptive nature, is likely to influence their economic behaviour or which, for the same reasons, injures or is likely to injure competitors.

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

Comparative advertising is not explicitly cited as an example of an act of unfair competition in the PRCA, however under the conditions under paragraph (2) of Article 63a of PRCA, such activities could constitute unfair competition acts.

Comparative advertising is however regulated by CPA and CPUCPA. As mentioned above, both acts are primarily aimed at protecting the consumers/buyers, and only secondarily at protecting the competitors, especially in terms of legal remedies.

According to Article 12.c of the CPA, comparative advertising shall be any advertising which in any manner, explicitly or by indication identifies a competitor or goods or services offered by a competitor. However, comparative advertising shall be permitted, when:

- 1) it is not misleading;
- 2) it compares real data on goods or services meeting the same needs or having the same meaning;
- 3) it objectively compares one or more objective, purpose-related and representative

feature of those goods, including prices;

- 4) it does not create confusion on the market between the advertiser and a competitor or between the advertiser's trademarks, trade names, other distinguishing marks, goods or services and those of a competitor;
- 5) it does not discredit or denigrate the trademarks or service marks, trade names, other distinguishing marks, services, activities or circumstances of a competitor;
- 6) for products with designation of origin, it relates in each case to products with the same origin;
- 7) it does not take unfair advantage of the reputation of a trademark or service mark, trade name or other distinguishing marks of a competitor or the designation of origin of competing products;
- 8) it does not present goods or services as imitations or replicas of goods bearing a protected trademark trade name.

Additionally, the CPUCPA regulates unfair commercial practices such as misleading business practices (misleading acts, misleading omissions, misleading business practices which are considered unfair under all circumstances) and aggressive business practices.

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

Yes, according to the case law, use of one's trade dress may be considered as use of the competitor's distinctive markings. This has been confirmed in the case *Wok to Walk Franchise BV v Naravno zdravilišče Bukovnica doo* (Ref No V Cpg 164/2018, 5 April 2018, released in May 2018), in which the Higher Court has confirmed a first-instance decision ordering the defendant to stop using an infringing sign, change the appearance of its restaurant and pay damages to the plaintiff. The courts held that imitating the trade dress of the plaintiff's restaurants constituted unfair competition, even if the trade dress as such was not protected by copyright or any other right.

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

Passing off, as understood in common law countries, will usually fall within the general clause for unfair competition, mentioned above (paragraph (2) of Article 63a of PRCA).

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

Again, if conditions under the general clause (paragraph (2) of Article 63a of PRCA) are met, such act will be deemed as unfair competition act.

Additionally, Article 12.a of the CPA defines indecent advertising of goods and services

as any advertising containing elements that are offensive or which could be offensive to consumers, readers, listeners or viewers, or elements which are contrary to morality.

Therefore, in case indecent advertising conducted by a company falls within the scope of the cited act and damage or possible damage caused to another company is proved, such advertising should be considered as an act of unfair competition. There is however no case law on this subject in Slovenia yet.

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

Again, if conditions under the general clause (paragraph (2) of Article 63a of PRCA) are met, such act will be deemed as an unfair competition act.

As already mentioned above, the CPUCPA regulates unfair commercial practices such as misleading business practices (misleading acts, misleading omissions, misleading business practices which are considered unfair under all circumstances) and aggressive business practices.

According to Article 5 of the CPUCPA, a business practice is considered misleading if it contains incorrect information and is therefore untrue. A commercial practice is also considered to be misleading if, in any way, including the whole presentation, it misleads or is likely to mislead the average consumer, even if the information is accurate about one or more of these elements, and in any case causes or could cause the average consumer to accept a decision on a transaction that it would not otherwise take.

A business practice shall also be considered misleading if, in a specific case, taking into account all its characteristics and circumstances, it causes or is likely to cause the average consumer to make a decision on a transaction which he would not otherwise take.

IV. What are the remedies available?

A competitor may initiate the following legal remedies under PRCA:

- a. Civil action seeking prohibition, removal of infringing state, damages,
- b. Request for temporary injunction.

The injured party may claim damages in accordance with the rules on regulating obligations; the injured party may also claim prohibition of further acts of unfair competition, the destruction of the goods involved in the act of unfair competition, and restoration of the initial condition, when applicable.

When an act of unfair competition has been perpetuated by the means of media or by similar means (e.g. leaflets, inscriptions in public places) or has affected a large number of parties, the party affected may request the publication of the court decision in the media.

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

Unfair competition actions (claims) under PRCA are brought before the competent Court.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

According to article 63.b of the PRCA any company that suffers damage or might suffer damage might initiate civil action. An injured party will usually be one of the competitors of the company involved in unfair competition.

If the unfair act presents also an unfair commercial practice according to CPA or CPUCPA, the claims may also be asserted by consumer organizations which are organisations registered as societies or institutes or other non-profit organizations, and are founded by consumers in order to protect their rights and entered in the register of consumer organisations held by the Ministry.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Both legal grounds could be used in the civil procedure. However, very likely the court would not allow two separate pending procedures based on the same factual state but with two different legal bases (UC and IP) and two separate sets of claims.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

The UC claim can be asserted in the same proceedings.

b. Can damages be claimed twice?

No, damages can only be claimed once, if the same act constitutes an infringement of the IP right and at the same time constitutes an unfair competition.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Generally, the UC claim per se does not depend on the validity of the IP right and can potentially be asserted after a registered design right expired, if the above-mentioned conditions in the general clause are met. In some circumstances the expiry of the right may exclude the practice from being considered as contrary to good business practice.

IX. After which period do UC claims become subject to the statute of limitations?

Absolute time limit: 5 years counted from the time the damage occurred.

Relative time limit: 5 years for non-monetary claims and 3 years for monetary claims, counted from the time the injured party found out about the damage and the infringing party.

South Africa

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

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?**

Through common law and 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 country?**

Yes - if it leads to blurring or tarnishment, or takes unfair advantage of another party's advertising goodwill.

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

Only if there is blurring or tarnishing of a reputation. In other words, if the comparative advertising is misleading/confusing, if it infringes the advertising goodwill of another or if it disparages another's product, this will amount to UC.

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

Yes - if unfair advantage is taken of another party's reputation/goodwill.

- 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 - tarnishing another's reputation is considered UC.

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

Yes.

IV. What are the remedies available?

a. damages/reasonable royalty

b. order to cease the UC

c. an order as to costs

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

Court.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Anyone in whom the reputation vests may assert a UC claim. Ordinarily this would mean that the owner should assert the claim. In certain instances, however, a distributor may act on behalf of the right's owner.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

May be in the same procedure, before the same Court.

b. Can damages be claimed twice?

No. It is therefore important to request an order compelling the infringer to cease its UC activities at the same time as claiming damages.

VIII. In the event an IP right which could or does concern a subject matter of

the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes.

IX. After which period do UC claims become subject to the statute of limitations?

If the activity has ceased AND 3 years have elapsed since the rights holder became aware of the UC activities, then the claim for damages prescribes. If UC continues then a new cause of action arises, and the right to claim continues, even if the rights holder does not initiate action immediately. The rights holder, in the latter instance, will not be able to claim damages caused by actions that he was aware of but that took place more than 3 years before action was initiated.

Spain

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

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.

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

1. 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

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.

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)

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

Yes.

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 at satisfying 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 of 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.

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

Yes.

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.

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

Yes.

Same article 6 would apply to this case. One of the most common unfair practices consists of 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.

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

Yes.

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.

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

Yes.

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)

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.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

1. Any individual or legal entity that participates in the market (thus does not need to be based in Spain but to participate in the Spanish market in some manner), whose economic interests are directly harmed or threatened by an unfair conduct, is entitled to assert the following claims under UC:

- i) Declaration that a given conduct is unfair
- ii) Cease in a given unfair conduct/Prohibition to repeat said conduct in the future.
- iii) Removal of the effect of a given unfair conduct
- iv) Rectification of misleading or incorrect information
- v) Damages, in case the defendant has acted fraudulently or recklessly.

Damages can also be claimed by associations engaged in the defense of users/consumers.

2. In addition to damages the Spanish UC Act includes a second monetary relief (unjust/unfair enrichment), which unlike the damages action does not require the claimant proves the existence of fraud or fault in the course of action of the defendant.

Legal standing to ask for said unfair/unjust enrichment is limited to the holder of the asset/position on which the unfair conduct is targeted.

3. In cases dealing with illicit advertising any natural or legal person who is affected and, in general, those who have a subjective right, or a legitimate interest are entitled to assert the claims listed above in bullets i) to v).

4. Associations, professional corporations or representatives of economic interests can ask for the remedies listed above in bullets i) to iv) when the interests of their members are affected

If said associations have an express mandate to defend its members' rights in Court and claim for damages caused they could also do this. Otherwise, a case-by-case assessment needs to be made in order to confirm whether the association at hand can ask for damages or unfair enrichment.

5.-The following entities also have legal standing to ask for the remedies listed above in bullets i) to iv):

a) The National Institute for Consumer Affairs and the corresponding bodies or entities of the autonomous communities and of the competent local corporations in matters of defense of consumers and users.

b) Consumer and user associations in certain conditions.

c) The entities of other Member States of the European Union constituted for the protection of the collective interests and the interests of consumers and users in certain conditions.

6. The Public Prosecutor may ask for the cease in unfair conducts that contravene general interests or interests of users/consumers.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

If the UC claim is based on the very same fact/title of the IP right, the first should be dismissed.

NOTE: even if in principle the response to these two questions would not apply, given how the questionnaire is designed, input is provided below.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

It could be done in the very same proceeding. The Spanish mercantile Courts, which are

competent to know of IP matters, can also hear of UC related matters.

b. Can damages be claimed twice?

The principle is that damages cannot be duplicated, meaning that a single conduct cannot give rise to two damage awards.

A different thing is that in a single procedure the plaintiff accumulates a claim based on an IP right (design or trademark for instance) and a second one which is related to the first but can be considered different (for instance claim that he is part of the official distributor network of plaintiff). In this last scenario, there could be two damages award, since the facts at hand, this is to say, the facts on which the claims are based are different.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

The question is debatable, and there are judgments in Spain that point in both directions (it is not legitimate to extend the protection of an IP right via UC/it could be legitimate to extend the protection of an IP right via UC). In our view trying to extend the protection of an expired IP right, either because its duration reached its limit (designs) or since the rightsholder left it expire (not renewal, trademarks) should not be acceptable, and this has also been the most recent approach of the Spanish Supreme Court (Tribunal Supremo. Sala de lo Civil, appeal 4074/2016, Order of 08/05/2019, “CONTINENTE” case).

IX. After which period do UC claims become subject to the statute of limitations?

One year from the date on which said claims could be asserted, and in any case, three years from the date of the termination of the contested conduct.

That said it is not less true that if the conduct is reiterated in time the above said period of 1 year is automatically renewed with each illicit act.

Sweden

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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 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.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

The Competition Act (Sw. Konkurrenslagen (2008:579))

Any trader, association, competitor or private person is entitled to assert UC claims to the Swedish Competition Authority. Thus, it is not unusual that the Competition Authority's actions in relation hereto are a result of tip-offs from traders or competitors. The Swedish Competition Authority may, inter alia, order a company to terminate a competition law infringement and/or to impose an administrative fine on companies infringing competition law, see Chapter 3 Sections 1 and 5 of the Competition Act. Such decisions may be appealed to the Patent and Market Court, see Chapter 7 Section 1 of the Competition Act. If the Swedish Competition Authority decides not to order an undertaking to terminate a competition law infringement, an undertaking affected by the infringement may bring an action before the Patent and Market Court, see Chapter 3 Section 2 of the Competition

Act.

The Marketing Act (Sw. Marknadsföringslagen (2008:486))

The Consumer Ombudsman, any trader affected by the UC claims, or an association of consumers, traders or employees are entitled to assert UC claims, see Section 47 of the Marketing Act.

The Trademark Act (Sw. Varumärkeslagen (2010:1877))

The holder of the trademark or the holder of a license, which gives the licensee a right to use the trademark, are entitled to assert UC claims, see Section 8 Chapter 3 of the Trademark Act.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes, UC claims can be asserted by a trader under the Marketing Act and the Trademark Act in parallel. Moreover, the Swedish Competition Authority can assert UC claims at the same time if the action falls within the Competition Act.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

Yes, UC claims under the Marketing Act and the Trademark Act can be asserted in the same proceeding before the Patent and Market Court. In regards to the UC claims under the Competition Act, The Swedish Competition Authority is the first instance and thus, there will be a separate proceeding for such a matter.

b. Can damages be claimed twice?

The Marketing Act, the Trademark Act and the Competition Damages Act (Sw. Konkurrensskadelagen) all open up possibilities to claim damages. However, as long as made aware of that damages have already been awarded, the Swedish courts will not award damages for the same act twice, due to principles against overcompensation.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes, the UC claim can still be asserted under the Competition Act and the Marketing Act but not the Trademark Act. The right to damages remains under all three fields of law even if the IP right has expired.

IX. After which period do UC claims become subject to the statute of limitations?

The statute of limitation is generally five years for UC claims under Chapter 3 Section 20 of the Competition Act, Sections 34 and 38 of the Marketing Act as well as Chapter 8 Section 6 of the Trademark Act. However, several exceptions from this general rule exist and an assessment must be made on a case-by-case basis.

Switzerland

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

Yes, the Federal Act against Unfair Competition (“UCA”) (“Bundesgesetz gegen den unlauteren Wettbewerb”/“Loi fédérale contre la concurrence déloyale”/“Legge federale contro la concorrenza sleale”).

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: Art. 3 para. 1 lets. b and e UCA.

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

Comparative advertising is considered unfair competition in any of the following cases:

- The comparison is wrong or false (Art. 3 para. 1 lets. b and e UCA).
- The comparison is misleading (Art. 3 para. 1 lets. b and e UCA).
- The comparison is unnecessarily disparaging (Art. 3 para. 1 lets. a and e UCA).
- The comparison is unnecessarily taking advantage of the reputation of a competitor or of another’s products (art. 2 and art. 3 para. 1 let. e UCA).

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

Trade dress infringement can be unfair competition in any of the following cases:

- The trade dress creates a likelihood of confusion (Art. 3 para. 1 let. d UCA).
- The trade dress takes unfair advantage of the reputation of another trade dress / competitor (art. 2 and art. 3 para. 1 let. e UCA).
- Imitation of a significant number of models or of a whole series of products in a sneaky manner (under the catch-all clause of art. 2 UCA).

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

Yes (Art. 3 para. 1 let. d UCA; however, Switzerland does not know the concept of passing off).

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

Yes (Art. 3 para. 1 lets. a and e UCA).

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

Yes (Art. 3 para. 1 lets. b and e UCA).

IV. What are the remedies available?

- a. Injunctions to prohibit future violations (Art. 9 para. 1 let. a UCA).
- b. Injunctions to eliminate existing violations (Art. 9 para. 1 let. b UCA).
- c. Declaratory judgement (declaration that a violation is illegal; Art. 9 para. 1 let. c UCA).
- d. Order that a correction or the judgement shall be submitted to a third party or be published (Art. 9 para. 2 UCA).
- e. Financial restitution (damages, satisfaction, accounts for profits; Art. 9 para. 3 UCA in combination with Arts. 41, 47, 62 and 423 of the Swiss Code of Obligations).
- f. Criminal sanctions (Art. 23 UCA).
- g. Revocation of second level domain names and phone numbers (Art. 26a UCA).

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

Unfair competition claims are usually brought before a court. In addition, or instead, parties can, in some cases, bring claims before the Swiss Commission for Fair Competition (a neutral and independent institution of the communication industry, which can only

make recommendations).

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Whoever is infringed or jeopardized in its clientele, credit, professional reputation, business or otherwise in its economic interests can assert UC claims (Art. 9 UCA). It is not required that Claimant is a competitor.

Further, professional and economic associations, who are authorized by their statutes to defend the economic interests of their members, and consumer protection organizations of federal or regional relevance can also assert claims (Art. 10 para. 2 UCA). The same applies to the Swiss Federation if it is required to protect public interests such as the reputation of Switzerland abroad or collective interests (Art. 10 para. 3 UCA).

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

Same proceedings.

b. Can damages be claimed twice?

No. Damage claims are capped at the amount of the actual damage suffered.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes.

IX. After which period do UC claims become subject to the statute of limitations?

Injunctions are not subject to statute of limitations. However, they may be subject to estoppel or acquiescence (with no fixed time limits).

Financial claims: 3 years from the date on which the infringed person became aware of the damage/injury and of the identity of the liable person but in any event 10 years after the date on which the violation took place or ceased (Art. 60 para. 1 of the Swiss Code of Obligations). The statute of limitation can be longer if the unfair competition triggers criminal sanctions and the criminal law provides for a longer period (Art. 60 para. 2 of the

Swiss Code of Obligations).

Thailand

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

No. There is no single comprehensive statute/act that addresses IP-related unfair competition in Thailand.

While Section 57 of Trade Competition Act, B.E. 2560 covers the issue of unfair trade practices, it primarily takes an anti-trust approach, focusing on issues such as acts that create barriers to operations, the exploitation of superior market power or bargaining power, fixing and restricting trade conditions or business operations, or other matters as indicted in the Notification of the Trade Competition Committee, e.g. franchise business. As such, Trade Competition Act, B.E. 2560 is largely irrelevant to IP-related unfair competition issue.

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?

Acts of unfair commercial practice are prohibited by several different laws. The law that applies will vary depending on the nature of the act. There are unfair competition claims related to trademark rights, such as passing off claims, as well as other forms of unfair competition claims not related to trademark.

The relevant laws include, but are not limited to, the Trademark Act B.E.2534, the Civil and Commercial Code, the Criminal Code, and the Consumer Protection Act B.E.2522.

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 Thailand, false advertising (all type, not only IP-related) is considered as “unfair consumer advertisement” or “advertisement that may produce adverse effects on society at

large”, which are unfair competition acts prohibited by Section 22 of Consumer Protection Act B.E.2522. False advertising covers advertisements which contain a false or exaggerative statement, a statement causing fundamental misunderstanding as to the goods or services, and a statement directly or indirectly supporting a violation of law or morals or which could cause the depreciation of the culture of the nation.

Additionally, there are specific regulatory requirements for the advertising of certain types of goods, such as food products, medicine, medical device, cosmetics, hazardous materials and psychotropic substances. The false advertisement of some such products may also be prohibited by the relevant laws.

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

In Thailand, there is no specific law which regulates or prohibits comparative advertising in relation to either IP or non-IP goods. Therefore, comparative advertising is not legally prohibited or considered as an unfair competition, as long as it does not constitute a violation of a right under other laws (such as tort laws).

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

In Thailand, “trade dress” is not protected as trademark or service mark under Thai Trademark Act B.E.2534. Therefore, the infringement of trade dress, such as the imitation of the visual appearance of a product or its packaging, may not be considered as an unfair competition, as long as it does not constitute a violation of trademark law or other laws.

Please note that, in some cases, trade dress infringement may be considered as an act of passing off, which is considered as an unfair competition and protected by Trademark law.

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

Yes, an act of passing off goods as those of the owner of the unregistered trademark is considered as an unfair competition, and is protected as unregistered trademark right under Section 46 paragraph two of the Thai Trademark Act B.E.2534.

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

If the purpose of false allegations is to obtain any commercial benefit, it would be regarded as unfair competition.

Please note that, in Thailand, false allegation is considered as a defamation offense under Sections 326 and 328 of the Criminal Code of Thailand, and the injured person also has a right to bring a civil claim based on Sections 420 and 423 of the Civil and Commercial Code.

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

If the purpose of misleading acts is to obtain any commercial benefit, it would be regarded as unfair competition.

In Thailand, a misleading act includes the circulation or propagation of false information to discredit the trading premises, goods, industry or commerce of any person. This misleading act will constitute a criminal offense relating to trade, according to Section 272(3) of the Criminal Code of Thailand. Additionally, if the misleading act is conducted in the form of an advertisement, the person who carried out the act will also be liable for misleading advertisement according to Section 47 of the Consumer Protection Act B.E.2522.

IV. What are the remedies available?

For civil claim, potential remedies include: 1. payment a sum of money; 2. delivery of disputed goods; 3. performance of any act, such as destroying infringed goods; and 4. an order restraining a person from performing any act (including preliminary injunctions and permanent injunctions).

For criminal case, the primary sanctions are fines (paid to the Court), imprisonment, or both.

In case of the Trade Competition Act and the Consumer Protection Act, the Trade Competition Commission and the Consumer Protection Board are empowered to issue an administrative order against the violation.

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

Civil claims related to unfair competition under the Trademark Act B.E.2534, the Civil and Commercial Code, and the Consumer Protection Act B.E.2522 must be brought before the Court of Justice.

For criminal claims related to unfair competition, a complaint can be filed with a police officer, or filed directly with the Court.

For the case related to Trade Competition Act, B.E. 2560, a complaint can be filed with the Trade Competition Commission or filed directly with the Court.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Generally, only a directly affected/injured person can bring UC claims against the alleged infringer. In case of the Consumer Protection Act, since the law intends to protect consumers rather than business competitors, it may be disputable whether a competing trader is legally qualified as a directly affected/injured person or not.

An association or foundation recognized by the Consumer Protection Board is also entitled to take an action under the Consumer Protection Act and the Trade Competition Act.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes, it is possible to assert an UC claim parallel to the claim of an IP right.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

In Thailand, IP-related cases as well as cases under the Trade Competition Act must be brought before the Central Intellectual Property and International Trade Court (IP&IT Court), which only has jurisdiction over IP and IT matters.

If the UC claim is not directly related to IP rights or the Trade Competition Act, such as false advertising or false allegation claims, the claim will have to be brought separately to other courts/authorities.

b. Can damages be claimed twice?

The damages caused by the same action/ground cannot be claimed twice.

However, damages from IP-related claims and other non-IP claims may be claimed separately, as it may be considered not to have originated from the same action/ground.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

It depends on the subject matter of the case and the type of the claim.

If the IP right has expired, the damages caused during the registered period should still be claimable. Additionally, it also depends whether the IP right is relevant or relates in any way with the specific UC claim. For example, for passing off, if the IP right never existed, it would affect the issue of the likelihood of confusion and reputation of the mark, which are the core elements of a claim in a passing off case.

IX. After which period do UC claims become subject to the statute of limitations?

The prescriptive period for a tort claim, which is a basis of most UC-related claims, is one year from the date when the wrongful act and the person bound to make compensation became known to the injured person, but no more than ten years from the date when the wrongful act was committed.

For criminal claims, the prescription period will differ for each offense. For instance, defamation and offenses relating to trade are compoundable offense that have a prescription

of three months.

Turkey

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

YES.

- i. Article 57 of the Turkish Code of Obligations
- ii. Articles 54-63 of the Turkish Commercial Code
- iii. Articles 83-84 of the Law on Intellectual and Artistic Works
- iv. The Law on the Prevention of Unfair Competition in Imports

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 – Turkish Commercial Code / Article 55-1-a.

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

Yes – Turkish Commercial Code / Article 55/1-a-5.

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

Yes – Turkish Commercial Code / Article 55/1-a-4.

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

this country?

Yes – Turkish Commercial Code / Article 55/1-a-4.

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

Yes – Turkish Commercial Code / Article 55/1/a-1.

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

Yes – Turkish Commercial Code / Article 55/1/a-1, 2, 5 and 55/1/f.

g. Other

IV. What are the remedies available?

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

Yes.

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

Yes.

c. Corrective advertising/public apology/public retraction

Yes.

d. Recovery of legal fees

Yes.

e. Recovery of court costs

Yes.

f. Criminal penalties, criminal fines or imprisonment

Yes.

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

The unfair competition claims are brought before the Turkish Commercial Courts. If the matter is also IP-related, the claim can be brought before the specialized Civil IP Courts

– if the claim is to be filed in Istanbul, Ankara and Izmir.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Natural/legal persons whose customers, credit, professional reputation, commercial activities or other economic interests are/may be harmed due to UC acts

Natural/legal persons whose customers, credit, professional reputation, commercial activities or other economic interests are/may be harmed, as per Art. 56/1 of Turkish Commercial Code (TCC).

Customers whose economic interests are/may be harmed, as per Art. 56/2 of TCC.

Chambers of commerce and industry, chambers of tradesmen, stock exchanges and other professional and economic associations authorized to protect the economic interests of their members according to their statutes, non-governmental organizations and public institutions that protect the economic interests of consumers according to their statutes, as per Art. 56/3 of TCC.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

Yes.

b. Can damages be claimed twice?

No.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes. The UC claim does not require a valid IP right registration. However, the plaintiff should have earlier use for the subject matter in Turkey. (e.g. earlier use for the design in the Turkish market).

IX. After which period do UC claims become subject to the statute of limitations?

If the UC act has been stopped: The statute of limitation for such UC lawsuits expire after one year from the date which the plaintiff learned the act of UC, and in any case after

three years from the date of this act. (If the act of UC is at the same time an offense according to the Turkish Penal Code and this penalty is subject to a longer statute of limitation, this longer period will also be valid for civil cases.)

If the UC act has been continued: The above-mentioned statute of limitation period does not start as soon as the UC act continues. However, if a serious period has passed before filing the UC lawsuit, there is a risk that the Court may decide that the plaintiff has lost the right to claim UC due to the silence for a serious period.

UAE

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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 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?

- 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.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Anyone with capacity in the form of an existing and legal interest has the right to file such a claim, including, competitors. It is unlikely that an association would have sufficient interest to assert a UC claim unless it is directly impacted by the relevant conduct (e.g., it has suffered damage as a result of the conduct).

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

These are two different types of claims that are addressed by the law. You can file both, or any one of these claims separately.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

Such claims are filed before the same courts. No specialized courts for unfair competition claims.

b. Can damages be claimed twice?

No. A claimant is not entitled to be compensated twice for a single loss, even if it brings claims based on separate causes of action (i.e., a UC claim and an IP infringement claim). However, if separate losses arise out of the two causes of action, then yes, the claimant is entitled to two separate damages claims.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes. While, for example, a registered design requires the claimant to hold a valid design registration, a UC claim is not dependent on the claimant holding any valid registered rights. A UC claim can therefore be brought in circumstances where a registered right has expired or if no registered rights ever existed.

IX. After which period do UC claims become subject to the statute of limitations?

Article (298) from Federal Law No. (5) of 1985 On the Civil Transactions Law of the United Arab Emirates stipulates that:

"1. An action for damages arising from an unlawful act is prescribed after three years from the date upon which the victim knew of the injury and the identity of the person who was responsible.

2. Where a claim arises out of a criminal offense and the hearing of the penal action is still pending after the lapse of the periods above-mentioned in the preceding clause, the action for damages may still be heard.
3. An action for damages is prescribed in any case after fifteen years from the date on which the prejudicial act was committed".

UK

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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.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

The owner of goodwill which arises from use of the particular name, logo, get-up that is

being asserted is the party who can assert a claim for passing off.

Note that both the UK government and the judiciary have on several occasions declined to expand the law of passing off into the broader concept of unfair competition as it exists in some EU territories.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes.

If this is the case:

a. Can the UC claim be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

Same proceedings. In fact, the Claimant runs certain risks if s/he does not assert the other IP right in the same proceedings in which s/he asserts his passing off right. If not, s/he could be precluded from relying on that IP right against the same Defendant in the UK on the basis of *res judicata*.

b. Can damages be claimed twice?

No.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes.

IX. IV. After which period do UC claims become subject to the statute of limitations?

In terms of issuing the claim itself: (i) on the assumption that the acts of passing off are continuing acts, the claim can be issued any time (although if the Claimant has been able to tolerate the Defendant's alleged acts of passing off for many years, that is likely indicative of no deception, or in some circumstances could give to an estoppel); (ii) if the acts of passing off are not continuing and ceased on a particular day, the claim must be issued within 6 years of the day that the acts ceased (naturally the court would not grant an interim injunction in these circumstances and may take this into account when considering a permanent injunction).

Damages can only be claimed for the 6-year period prior to issue of legal proceedings.

Ukraine

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

The Uniform Commercial Code of Ukraine contains Article 32, which defines the concept of "unfair competition" and states the legal responsibility for acts that qualify as unfair competition. The Law of Ukraine "On Protection from Unfair Competition" is the main legislative act regulating the issue of 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

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 one of the means of dissemination of misleading information which is forbidden by Article 15-1 of the Law of Ukraine "On Protection from Unfair Competition".

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

Comparative advertising is considered unfair competition only if it is in violation of the respective rules on comparative advertising. Namely, Article 11 of the Law of Ukraine "On Advertisement" prescribes that the use of comparative advertising is permitted if:

(1) advertising does not contain the signs of unfair business practice defined by the legislation on consumer protection;

(2) advertising compares similar products that meet the same needs or have the same purpose, or compares activities covered by one area or one kind of activity;

(3) advertising objectively compares one or more essential, comparable and representative characteristics of a similar product, activity, including price, information about which

may influence consumer choices;

(4) advertising does not discredit, does not contain false information about the quality of similar goods from other manufacturers or sellers, does not discredit the activities or position of others, the reputation of brands, commercial (brand) names, other features of competitors or indications of origin;

(5) in the case of goods with an indication (simple or qualified) of origin the comparison is made in respect of goods with a similar indication;

(6) advertising does not create confusion between the advertiser and the competitor, between the goods, trademarks, commercial (brand) name and other designations of the advertiser and competitors;

(7) a competitor's product protected by a trademark or trade name is not depicted by imitation.

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

Ukrainian law does not contain a legal definition of "trade dress". Despite this, Article 6 and Article 4 contain prohibitions on infringement, which by analogy can be considered as infringement of trade dress.

Article 6 of the Law of Ukraine "On Protection from Unfair Competition" prohibits trade dress infringement, specifying that it is not considered illegal to copy the appearance of the product or its parts, if such copying is due solely to their functional use. This provision, however, does not apply to products that are protected as objects of intellectual property rights.

Article 4 of the Law also prohibits the misuse of the trademark (mark for goods and services), advertising materials, packaging of goods and periodicals, and other designations.

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

Yes, Article 4 of the Law of Ukraine "On Protection from Unfair Competition" prohibits passing off which caused or may cause confusion with activities of the other subject on the market by using the name, commercial (brand) name, trademark (mark for goods and services), advertising materials, packaging of goods and periodicals, other designations of another entity in the market. The same regulation provided in Article 33 of the Uniform Commercial Code of Ukraine.

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

Yes, Article 8 of the Law of Ukraine "On Protection from Unfair Competition" establishes

as an act of unfair competition the dissemination in any form of false, inaccurate or incomplete information related to a person or activity of an entity, including its goods that have caused or could have damaged a business reputation of an entity.

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

Yes, the Law of Ukraine "On Protection from Unfair Competition" in Article 15-1 prohibits dissemination of misleading information. Some elements of misleading acts may also be found in several other provisions, such as illegal use of designations (Article 4), illegal use of goods from another manufacturer (Article 5), trade dress (Article 6).

IV. What are the remedies available?

- a. imposition of a fine for unfair competition;
- b. compensation;
- c. seizure of goods with illegally used designation thereon and copies of products of another business entity;
- d. refutation of false, inaccurate or incomplete information.

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

Unfair competition claims can be brought before a court or the Antimonopoly Committee of Ukraine.

The Antimonopoly Committee of Ukraine decides on the case merits and may issue one of the following decisions:

- a. recognition of the fact of unfair competition;
- b. cessation of unfair competition;
- c. official refutation at the expense of the violator of false, inaccurate or incomplete information;
- d. imposition of fines;
- e. closing the proceedings.

The decisions of the Antimonopoly Committee of Ukraine may be further appealed to the commercial court.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Any person whose rights have been violated by actions defined as unfair competition may, within six months from the day when they learned or should have learned about the violation of their rights, assert an unfair competition claim to the Antimonopoly Committee

of Ukraine.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes, the law does not prohibit unfair competition claim assertion parallel to the IP right claim.

If this is the case:

a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

The unfair competition claim may be asserted in the same proceedings as a claim of an IP right.

b. Can damages be claimed twice?

No, damages may not be claimed twice.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Under a general rule, in order to bring a lawsuit for protection of IP rights either under the unfair competition or the trademark laws, one should hold these rights. If the IP right holder initiated the dispute and the right expired in the process of case consideration, this may serve as a basis for closure of proceedings for the absence of dispute's subject matter.

IX. After which period do UC claims become subject to the statute of limitations?

One may assert an unfair competition claim to the Antimonopoly Committee of Ukraine within six months from the day when they learned or should have learned about the violation of their rights, and an unfair competition claim may be brought to court within three years from the date of the violation, and in the case of ongoing violation - from the date of termination of the violation.

Uruguay

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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.

Uruguay has a specific provision regarding “Promotion and Defense of Competition” Law No. 18.159. An article (4) establishes some forbidden acts, however none of them are related directly with IP rights or “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 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).

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Only competitors are entitled to assert UC claims.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the

IP right in question?

Yes, UC claims can be claimed parallel to the claim of IP rights if the UC claim concerns the subject matter of the IP right in question. Usually, it is a subsidiary claim.

If this is the case:

- a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?**

It must be asserted in the same proceeding.

- b. Can damages be claimed twice?**

No.

- VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?**

Yes, the UC claim can still be asserted even after the IP right expired.

- IX. After which period do UC claims become subject to the statute of limitations?**

The applicable statute of limitations is 4 years. Therefore, the claimant can only assert damages for the four previous years to the date the defendant is given notice of the UC claim.

USA

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

Yes. Section 43 of the Lanham Act of 1946 (15 U.S.C. § 1125), which states in part:

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, of any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

15 U.S.C. § 1125(a). In addition, the law of unfair competition is governed by state common 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?

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.

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.

All of the foregoing examples of unfair competition are subject to meeting the requirements set forth at 15 U.S.C. § 1125.

IV. What are the remedies available?

The remedies available for claims of unfair competition are set forth at Sections 34 and 35 of the Lanham Act (15 U.S.C. §§ 1116 and 1117) and include those listed below.

a. Injunctive relief. 15 U.S.C. § 1116.

b. Monetary damages to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. 15 U.S.C. § 1117.

c. Reasonable attorneys' fees in certain exceptional cases, such as in certain willful infringement cases. 15 U.S.C. § 1117.

d. Remedies in state courts vary.

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

UC claims are brought before courts – often in Federal Court, but also before state courts

based on individual states' laws.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Standing to bring an unfair competition claim is established where (1) the claim is within the “zone of interest” protected by the Lanham Act, and (2) there is “proximate causation” between plaintiff’s injury and the alleged statutory violation. *Lexmark Int’l., Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014).

The Congressional statement of intent for the Lanham Act lists five statutory objectives that represent the “zone of interest”:

- Making actionable the deceptive and misleading use of marks in commerce;
- Protecting registered marks used in commerce;
- Protecting persons engaged in commerce against unfair competition;
- Preventing fraud and deception in commerce by the use of reproductions, copies, counterfeits, or colorable imitations of registered marks; and
- Providing rights and remedies with respect to trademarks, trade names, and unfair competition vis-à-vis treaties and conventions between the U.S. and foreign nations.

Id. (citing Section 45 of the Lanham Act (15 U.S.C. § 1127)). “Proximate causation” requires a plaintiff to allege and prove that the injury was proximately caused by the statutory violation, that is, “the harm alleged has a sufficiently close connection to the conduct the statute prohibits” (e.g., “economic or reputational injury flowing directly from the deception wrought by the defendant’s advertising” and loss of sales). *Id.*

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes. Unfair Competition claims are often brought together with trademark infringement claims and other related claims concerning the underlying IP rights.

If this is the case:

- a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?**

Yes, unfair competition claims can be asserted in the same proceeding.

b. Can damages be claimed twice?

Not if the unfair competition claims and infringement claims arise out of the same subject matter, that is, the same set of facts and wrongful conduct.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

N/A

IX. After which period do UC claims become subject to the statute of limitations?

There is no federal statute of limitations under the Lanham Act. Instead the Lanham Act expressly provides for defensive use of “equitable principles, including laches, estoppel, and acquiescence.” 15 U.S.C. § 1115(b)(9); see also 15 U.S.C. § 1069. Federal circuits may use different criteria in applying equitable principles such as laches.

Venezuela

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

There are no special statutes that address unfair competition. UC claims are handled by special provisions contained in the Anti-Trust Act and Civil Law provisions and supported as a principle by the Constitution of Venezuela.

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, unfair competition is prohibited through special provisions of the Anti-Trust Act and Civil Law provisions that address tort liability and damages (Article 1.185 of the Venezuelan Civil Code): “Whoever, intentionally, or through negligence or recklessness, has caused damage to another, is obliged to repair it”.

“Whoever has caused damage to another, exceeding, in the exercise of his right, the limits set by good faith or by the object, in view of which that right has been conferred, shall likewise owe reparation”.

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. Article 17.2 of the Anti-Trust Act contemplates within its provisions the following:

“The following shall be understood as unfair practices:

2. Simulation or imitation: It is that situation that generates confusion about the business origin of a product, for its own benefit or for economic agents linked to each other, as a means through which it is intended that the public associate the company of the imitator with another or others that enjoy a prestige or notoriety that the unfair competitor lacks. In this sense, the unauthorized use of distinctive signs of others or false or misleading appellations of origin, imitation of packaging or wrappings shall be considered unfair”.

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

There is no express prohibition about comparative advertising.

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

Trade dress infringement is not contemplated in the Venezuelan law. The Anti-Trust Act only protects packaging and wrappings through its Article 17.2.

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

No. It is claimed through Article 17.2 of the Anti-Trust Act and Civil Law provisions.

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

No, they are not. However, it might be considered as a criminal offense in accordance with the Venezuelan Criminal Act.

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

Yes. Article 17.1 of the Anti-Trust Act establishes:

“The following shall be understood as unfair practices:

1. Misleading advertising: Any act that has as its object, real or potential, mislead the consumer or user of a good or service, on the fundamental characteristics of the same, their origin, composition and effects of its use or consumption. Likewise, advertising that has as its purpose the dissemination of claims about goods or services that are not true and exact, that places the economic agents that produce them or market at a disadvantage compared to their competitors”.

IV. What are the remedies available?

Tort liability claims in Civil Jurisdiction.

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

They are brought before civil courts.

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

Competitors or consumers who may have suffered any actionable injury.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of

the IP right in question?

Yes, it is possible.

If this is the case:

- a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?**

Same jurisdictional proceedings before civil courts.

- b. Can damages be claimed twice?**

No, if both claims are filed in the same proceeding.

- VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?**

Yes, there are no prohibitions in the matter.

- IX. After which period do UC claims become subject to the statute of limitations?**

After 10 years.

Vietnam

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

Yes, Vietnam enacts the two following domestic laws governing unfair competition:

- The IP Law (Article 130); and
- The Competition Law.

Unfair competition in Vietnam is the land of interference between the competition law and the IP law. Though the two laws both touch on the institution, only the competition law provides a definition for the unfair competition. Generally, in accordance with the definition, unfair competition refers to acts that run contrary to good conscience in business practice.

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. The act of providing false information is considered unfair competition under Article 45.5 of the Competition Law. However, this regulation is not related to IP.

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

Yes. The comparative advertising constitutes unfair competition under Article 45.5 of the Competition Law. However, this regulation is not related to IP.

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

Yes. The trade dress infringement amounts to unfair competition as per Article 130 of the IP Law.

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

Under the laws of Vietnam, there is no definition as well as specified regulation about passing off. However, as passing off could equate to trade dress infringement, in most cases, we can rely on Article 130 of IP Law to curb the act.

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

Yes. The false allegations, including disparagement is considered unfair competition under Article 45.3 of the Competition Law.

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

The act of using misleading trade indication is the unfair competition under Article 130 of IP Law.

IV. What are the remedies available?

The remedies will vary depending on the specific acts of unfair competition. Decree No. 99/2013/ND-CP (amended by Decree 126/2021/ND-CP) and Decree 75/2019/ND-CP provides for such remedies. Generally, the remedies include, among other things, monetary fines.

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

Yes, competitors can bring a cease and desist claim on the merits of unfair competition before the following authorities:

- Courts;
- Vietnam Competition Authority (VAC) under the Ministry of Industry and Trade (for the unfair competition acts set forth under the Competition Law);
- Inspectorate of the Science and Technology (for IP-related unfair competition acts such as misleading trade indication, trade secret infringement, and cyber-squatting)

VI. Who is entitled to assert UC claims (competitors, associations etc.)?

The competitor (company or personal) can assert UC claims before the authority.

VII. Is it possible to assert an UC claim parallel to the claim of an IP right (e.g. design right, trademark) if the UC claim concerns the subject matter of the IP right in question?

Yes. We can include UC claims along with the trademark rights/design right in one case. However, in such situation, we must choose the authorities, which can assert jurisdiction over not only IP dispute but also unfair completion (such as court or the Inspectorates of the Science and Technology in certain cases).

If this is the case:

a. Can the UC claim can be asserted in the same proceedings or must separate proceedings be initiated (possibly in different courts/authorities)?

We can assert all claims in the same proceeding.

b. Can damages be claimed twice?

We can claim damage for each act of infringement. However, only court has power to award damages.

VIII. In the event an IP right which could or does concern a subject matter of the UC claim never existed or has expired, can the UC claim (still) be asserted (e.g. after a registered design right expired)?

Yes, but it would depend on the case details. For example, if the expired design acquires the secondary meaning, we can rely on unfair competition to prevent a third party from using the design.

IX. After which period do UC claims become subject to the statute of limitations?

The statute of limitations varies depending on the legal actions for which the client opts.

In an administration action, the statute of limitations shall be two years per Article 6 of the Law on Handling Administrative Violations 2012.

In a civil action, as provided under the Code on Civil Procedure and Civil Code, the statute of limitations is three years.

In case where the infringement has ended, the statute of limitations shall run from the termination of the infringement. If the infringement is on-going, the statute of limitations shall start from the date on which we detect or should have detected the infringement (i.e., trademark infringement and the cyber-squatting).