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ACT
of 16 April 1993
On combating unfair competition¹

(consolidated text)

Chapter 1

General provisions

Article 1. The Act governs the prevention and combating unfair competition in the economic activity, in particular in industrial and agricultural production, in construction works, trade and services – in the interest of general public, entrepreneurs and customers, in particular consumers.

Article 2. The entrepreneurs, for the purpose of the present Act, shall mean natural and legal persons and organisational units without the legal status, which by performing, even casually, paid or professional activity participate in the economic activity.

Article 3 1. The act of unfair competition shall be the activity contrary to the law or good practices which threatens or infringes the interest of another entrepreneur or customer.
2. The acts of unfair competition shall be in particular: misleading designation of the company, false or deceitful indication of the geographical origin of products or services, misleading indication of products or services, infringement of the business secrecy, inducing to dissolve or to not execute the agreement, imitating products, slandering or dishonest praise, impeding access to the market and unfair or prohibited advertising and organising a system of pyramid selling

Article 4. The rights resulting from the provisions of the Act shall apply to the foreign natural and legal persons by virtue of the international agreements binding the Republic of Poland or by reciprocity.

Chapter 2

Acts of unfair competition

Article 5. The designation of the undertaking in a way which may mislead customers in relation to its identity, due to the use of trade mark, name, emblem, letter abbreviation or another characteristic symbol already lawfully used to indicate another undertaking, shall be the act of unfair competition.

Article 6.1. Where designation of the undertaking with the name of the entrepreneur may mislead customers in relation to the identity with another undertaking which earlier used

similar indication, this entrepreneur should take measures aimed at elimination of the risk to misguide third parties.

2. Upon request of the interested party the court shall order the entrepreneur who later started to use such designation to take appropriate preventive measures, consisting in particular in introducing changes to the designation of the undertaking, restricting territorial scope of its use or its use in the determined way.

Article 7. 1. Where as a result of liquidation, division or transformation of an undertaking the question arises which of entrepreneurs is entitled to use the designation of the liquidated, divided or transformed undertaking, such designation should be defined as to prevent misleading third parties.

2. In the case of a dispute, the court, upon request of the interested entrepreneur, shall define the designation of the undertaking, taking into account interests of the parties and other circumstances of the case.

Article 8. Labelling products or services with false or deceitful geographic indication, directly or indirectly indicating country, region or locality of their origin, or the use of such indication in the commercial activity, advertising, business letters, invoices or other documents, shall be the act of unfair competition.

Article 9. Where the product or service is protected in the place of its origin and its specific features or properties are connected with originating from a given region or locality, the false or deceitful use of such geographical regional indications shall be the act of unfair competition, even if the words “kind”, “type”, “method” are added.

Article 10.1. Such indication of products or services or its lack, which may mislead customers in relation to the origin, quantity, quality, components, manufacturing process, usefulness, possible application, repair, maintenance and another significant features of products or services as well as concealing the risks connected with their use, shall be the act of unfair competition.

2. Releasing for free circulation products in the packing which may cause effects referred to in section 1 above shall be the act of unfair competition, unless the use of such packing is justified by technical reasons.

Article 11.1. A factor of unfair competition is the transfer, disclosure or use of third party information, which is company confidential or their receipt from an unauthorised person, if it threatens or violates the interests of the entrepreneur.

2. The provisions of section 1 shall also apply to the person who has been rendering work based on employment contract or another legal relation, for the period of three years from its expiration, unless the contract stipulates otherwise or there is no longer secrecy.

3. The provisions of section 1 shall not apply to the person who, *bona fide*, by way of a legal operation against payment, acquired the information constituting a business secrecy. The court may oblige the acquirer to the appropriate remuneration for its use, nevertheless for a period not longer than duration of secrecy.

4. Company confidentiality is understood to include the entrepreneur’s technical, technological organisational or other information having commercial value, which is not disclosed to the public to which the entrepreneur has taken the necessary steps to maintain confidentiality.

Article 12.1. To induce person rendering to the entrepreneur her work, based on employment contract or another legal relation, to neglect performing or to perform inadequately her employee's or another contractual obligations in order to yield benefits to oneself or third parties or to the detriment of the entrepreneur, shall be the act of unfair competition.

2. To induce customers of the entrepreneur or another persons to dissolve a concluded contract, or to neglect performing, or to inadequately perform an agreement in order to yield benefits to oneself or third parties, or to the detriment of the entrepreneur, shall be the act of unfair competition.

3. The provisions of sections 1 and 2 shall not apply to the actions of labour unions, taken in conformity with the provisions on the settlement of collective disputes.

Article 13.1. Imitating a finished product by way of technical means of reproduction, to copy an external image of such product where it may mislead customers as to the identity of the producer or product, shall be the act of unfair competition.

2. Imitating functional features of a product, in particular its make, structure and form ensuring its usefulness shall not be deemed the act of unfair competition. Where the imitation of functional features of a finished product requires including its characteristic form, which may mislead customers as to the producer or product identity, the imitator is under obligation to adequately mark the product.

Article 14.1. Disseminating untrue or misleading information on oneself or another entrepreneur or undertaking in order to yield benefits or bring detriment shall be the act of unfair competition.

2. The untrue or misleading information referred to in section 1 above shall be in particular on the following:

- 1) persons managing the undertaking,
- 2) manufactured products or provided services,
- 3) charged prices,
- 4) economic or legal status.

3. The use of the following shall be also considered as dissemination of the information referred to in section 1:

- 1) unlawful or inaccurate titles, university degrees or another information on professional skills of the employees,
- 2) false certificates,
- 3) unreliable results of research,
- 4) unreliable information on distinctions or indications of products or services.

Article 15.1. An act of unfair competition is the introduction of difficulties for other entrepreneurs to access the market through:

- 1) the sale of goods or services below their purchase cost in order to eliminate other entrepreneurs,
- 2) the enticement of third parties to refuse to sell to other entrepreneurs or to purchase goods or services from other entrepreneurs,
- 3) materially justified differences in the treatment of some customers,
- 4) collection of charges other than commercial margins for accepting goods for sale,
- 5) acts having the purpose of enforcing on customers the need to choose a specific trading partner or imposing conditions enabling third parties to enforce the purchase of goods or services from a defined entrepreneur.

2. The act described in clause 1 item 5, may be based in particular on:

- 1) the restriction in a significant manner or the exclusion of the possibility of the customer making purchases from another entrepreneur,
 - 2) the creation of a situation causing the direct or indirect imposition on customers of the need to make purchases from a given entrepreneur by third parties with whom the given entrepreneur has a commercial relationship,
 - 3) the issue and offering of coupons for implementation, which are subject to exchange for goods or services from one entrepreneur or a group of entrepreneurs who have a commercial relationship under the circumstances indicated in item 1 or 2.
- 3.** An act of unfair competition is also the introduction of difficulties for small enterprises, as understood by the act of 19 November 1999 - Law on commercial activity (Journal of Laws No. 101, item 1178, from 2000 No. 86, item 958 and No. 114, item 1193, from 2001 No. 49, item 509, No. 67, item 679, No. 102, item 1115 and No. 147, item 1643 and from 2002 No. 1, item 2 and No. 115, item 995), to access the market by selling goods or services in commercial buildings of a surface area in excess of 400 m² at a price that does not take into account the sales margin with the reservation of clause 5.
- 4.** The introduction of difficulties for market entry as described in clause 3, is also:
- 1) the issue and implementation of coupons that are subject to be exchanged for goods and services offered at a price below their nominal value,
 - 2) the issue and implementation of coupons which are subject to exchange for goods or services at a price that exceeds their nominal value.
- 5.** Sales mentioned in clause 3 are not an act of unfair competition if they are carried out within the framework of:
- 1) an end-of-season sale implemented twice a year at the end of the summer and winter seasons, each time lasting no more than one month,
 - 2) discount sale as a result of the approaching best before date for food products or the approaching minimum durability date,
 - 3) the liquidation of commercial premises if the sale lasts no longer than 3 months from the date of informing the public of the liquidation of the premises and in the case of the liquidation of all entrepreneur's commercial premises as a result of stopping commercial activities - no longer than a year.

Article 15a. The act of unfair competition consisting in corruption of the natural person performing public function shall be behaviour of the natural person defined in Article 229 of the Penal Code:

- 1) being entrepreneur,
- 2) acting on behalf of the entrepreneur within the powers to represent him or to make decisions on his behalf or to exercise control over him,
- 3) acting on behalf of the entrepreneur upon a consent of the person referred to in item 2.

Article 15b.1. The creation, import, distribution, sales, rental or passing over for use through another legal title, as well as possession of non-permissible devices as understood by the laws on the protection of some services provided electronically supported by or based on conditional access is an act of unfair competition for monetary gain.

2. Additionally, the installation, servicing or replacement of non-permissible devices for monetary gain, as well as the use of the broadcasting of commercial information to promote these devices or the services related to them is also an act of unfair competition.

Article 16.1. In the field of advertising the act of unfair competition shall be, in particular, the following:

- 1) advertising contrary to provisions of the law, good practices or offending human dignity,
- 2) advertising misleading the customer, thus susceptible to influence his/her decision to purchase a product or service,
- 3) advertising appealing to emotions of customers by provoking fear, exploiting superstitions or credulity of children,
- 4) statement encouraging the purchase of products or services, creating the impression of a neutral information,
- 5) advertising significantly interfering with privacy, in particular arduous pressing customers in public places, sending on customer's expense unsolicited products or abusing use of technical means of communication.
- 6) (deleted)

2. When assessing the misleading advertising all its elements should be taken into account, in particular those related to quantity, quality, components, way of manufacturing, usefulness, possible use, repair or maintenance of the advertised products, as well as customer's behaviour.

3. The advertising enabling to identify, directly or indirectly, the competitor or products or services offered by the competitor, hereinafter referred to as "comparative advertising", shall be the act of unfair competition where it is contrary to good practices. The comparative advertising shall not be contrary to good practices provided that jointly fulfils the following prerequisites:

- 1) it is not misleading advertising referred to in section 1 item 2;
- 2) in a fair and verifiable way compares products or services meeting the same needs or intended for the same purpose,
- 3) objectively compares one or several material, characteristic, verifiable and typical features of these products and services, including price,
- 4) it does not lead to confusion on the market place between the advertiser and his competitor nor between their products or services, trade marks, trade names or other distinguishing marks,
- 5) it does not discredit products, services, activities, trade marks, trade names, products, services, activities or circumstances of a competitor,
- 6) in relation to products with geographical regional designation, it relates always to products with the same designation,
- 7) it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of the competitor or of the geographical regional designation of competing products,
- 8) it does not present product or service as imitation or replica of product or service bearing the protected trade mark or another distinguishing designation.

4. The comparative advertising connected with a special offer should, depending on its terms, clearly and unequivocally indicate the date on which the offer expires or to contain information that the offer is valid till the stock of products is exhausted or till cessation of rendering services and, where the special offer is not binding yet, it should also indicate the date since which the special price or other specific terms of the offer shall be binding.

Article 17. The act of unfair competition, in a meaning of Article 16 shall be committed also by the advertising agency or another entrepreneur who elaborated the advertisement.

Article 17a.1. The sale to consumers of goods or services with the award of all or some purchasers of the products or services with a free bonus in the form of different products or

services than those representing the subject of the sale, with the reservation of clause 2 is an act of unfair competition.

2. The sale mentioned in clause 1 is not an act of unfair competition if the bonuses are goods or services:

- 1) are of low value or a sample of the product,
- 2) are prizes in promotional lotteries organised on the basis of the *laws on gaming, mutual wagers and automatic betting machines*⁽¹⁾, the result of which does not depend on the case.

Article 17b.1 Acts in the scope of promotional lotteries are unfair competition if the offer is formulated in such a way - regardless of the result of the lottery or the knowledge of the consumer - that winning is certain if the customer places an order for the goods or services or pays the bidder any amount in advance.

2. An act described in clause 1, is specifically the formulation of an offer in a document issued to the consumer by name, having the features of an official letter.

Article 17c.1. The organization of a system of pyramid sales based on proposing the purchase of goods or services by making the purchasers the promise that they will obtain material benefits in exchange for enticing other people to make the sale transaction, in order that they obtain the same benefits as a result of enticing further people to participate in the system is an act of unfair competition.

2. The organization of the system of sales described in clause 1 is not an act of unfair competition if the following conditions are satisfied:

- 1) the material benefits obtained from the participation in the sales system are obtained from the funds obtained from the sale of goods and services at a prices which may not flagrantly exceed the real market value of these goods and services,
- 2) the person who withdraws from participating in the sales system has the right to sell back all of the products, information and educational materials, product samples or presentation kits that are capable of being resold to the organizer of the system for at least 90% of the price at which they were purchased within 6 months preceding the date of notifying the organiser of the resignation from the sales system

Article 17d. The introduction by discount stores of products with brands which are the property of the owner of the network or his subsidiary companies in quantities exceeding 20% of the value of their turnover is an act of unfair competition.

Chapter 3

Civil liability

Article 18.1. Where the act of unfair competition is committed, the entrepreneur whose interest is threatened or infringed may request:

- 1) relinquishment of prohibited practices,
- 2) removing effects of prohibited practices,
- 3) making one or repeated statement of appropriate content and form,
- 4) repairing the damage, pursuant to general rules;
- 5) handing over unjustified benefits, pursuant to general rules,

- 6) adjudication of an adequate amount of money to the determined social goal connected with support for the Polish culture or related to the protection of national heritage – where the act of unfair competition has been deliberate.
2. The court, upon a motion of the entitled party, may also adjudge on products, their packing, advertising materials and another items directly connected with commitment of the act of unfair competition. In particular, the court may order their destruction or include them on account of the indemnity.

Article 18a. The burden of proof of the veracity of marking or information placed on products or their packing or of statements contained in the advertising shall fall upon the person accused of the act of unfair competition connected with misleading.

Article 19.1. The following may apply with the claims described in Article 18 clause 1 items 1-3 and 6:

- 1) (deleted)
- 2) a national or regional organization whose statutory objective is to protect the interests of entrepreneurs,
- 3) the President of the Office for Competition and Consumers Protection, if the act of unfair competition threatens or violates consumer interests,
- 4) (deleted)
2. The provision of clause 1 does not apply to the acts of unfair competition described in Article 5-7, 11, 14 and 15a.

Article 20. The requests pertaining the acts of unfair competition shall expire with the lapse of three years. The course of the expiry shall be initiated separately for each infringement. The provision of Article 442 of the Code of Civil Proceedings shall apply, respectively.

Article 21.1. In the cases related to combating unfair competition the application for temporary order may be lodged also to the court appropriate for the district where the property of the perpetrator of such act is located or where the act of unfair competition have been committed.

2. Within the framework of temporary regulations, the court may judge the prohibition of the sale of specific goods at a defined price or another form of sale, as well as advertising of a specific content
3. The court shall assess without delay the motion to secure a complaint. The court shall adjudge during closed session, by one judge.

Article 22.1. In the case of the obviously groundless complaint concerning unfair competition, the court, upon a motion of the defendant, may order the plaintiff to make one or repeated statement of the determined content and form.

2. The defendant, who as a result of the complaint referred to in section 1 above have suffered a damage, may request its repairing pursuant to general rules.

Chapter 3a⁽²⁾ (deleted)

Chapter 4

Penal provisions

Article 23.1. Every person, who contrary to her obligation towards the entrepreneur discloses to another person or uses in her own economic activity information which is a business secrecy, shall be liable to the fine, probation or imprisonment up to 2 years, provided it is to the significant detriment of the entrepreneur.

2. The same sanctions shall apply to the person, who having acquired illegally the business secrecy, discloses it to another person or uses in her own economic activity.

Article 24. Every person, who by way of technical means of reproduction shall copy external image of a product or releases such product for free circulation creating the possibility to mislead customers as to the producer or product identity, thus significantly damaging the entrepreneur, shall be liable to the fine, custody or imprisonment up to 2 years.

Article 24a. Whoever organises a system of pyramid sales or manages such a system is subject to imprisonment for between 6 months and 8 years

Article 25.1. Whoever marks, or contrary to the obligation, does not mark goods or services which misleads the customer either as to their origin, quantity, quality, content, method of production, application, capabilities of use, repair or maintenance or other significant features of the products or services or does not make a notification of the risk associated with their use and exposes the customer to damage, is subject to the penalty of arrest or a fine.

2. The same penalty is applicable to anyone who performs an act of unfair competition in terms of advertising, promotional lottery or sale as described in Article 17a.

Article 26.1. Who is disseminating false or misleading information on the enterprise, in particular about persons managing undertaking, manufactured products, provided services, or charged prices, or economic or legal status of the undertaking in order to bring detriment to the entrepreneur, shall be liable to the custody or fine.

2. The same sanction shall apply to the person who, in order to yield benefits for herself, her undertaking or third parties, disseminates false or misleading information about her undertaking or entrepreneur, in particular about persons managing the undertaking, manufactured products, provided services or charged prices, or about economic or legal status of the entrepreneur or undertaking.

Article 27.1. The prosecution of the offences specified in the present Act shall be instituted upon a motion of the injured party, and in the case of misdemeanors – upon a request of the injured.

2. The request for prosecution of the misdemeanor listed in Article 25 may be lodged also by the entities referred to in Article 19 section 1.

Chapter 5

Amendments to the existing provisions

Article 28. In the ordinance of 24 June 1953 on cultivation of tobacco and manufacturing tobacco products (O.J.L. No 34 item 144, 1988 No 41 item 324, 1989 No 35 item 192) after Article 8 the following Article 8a shall be added: (changes omitted).

Article 29. The following amendments shall be introduced to the Act of 10 October 1991 on pharmaceuticals, medical materials, pharmacies, wholesale firms and pharmacological supervision (O.J.L. No 105 item 452 and 1993 No 16 item 68): (changes omitted).

Chapter 6

Final provisions

Article 30. The Act of 2 August 1926 on combating unfair competition (O.J.L. 1930 No 56 item 467) shall expire.

Article 31. The present Act shall come into force six months after its publication, with the reservation of Article 28 which shall come into force on 1 January 1995.

¹ The Present Act, within the scope of hereby regulated matters, implements the following directives of the European Communities:

1. Council Directive 84/450/EEC, of 10 September 1984, relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ L 250, 19.9.1984),
2. Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising (OJ L 290, 23.10.1997).

Details on the publication of the legal acts of the European Union, referred to in the present Act – from the day of Poland's membership in the European Union – concern the publication of these regulations in the Official Journal of the European Union – special edition.⁽³⁾

⁽¹⁾ Presently: provisions on games of chance and mutual wagering, according to article 14 of the act of 10 April 2003, amending the act on games of chance, mutual wagering and slot machine games and other acts (O.J.L. 03.84.774), which entered into force on 15 June 2003.

⁽²⁾ Chapter 3a was cancelled by article 44 of the Act of 28 October 2002 on legal liability of collective entities for acts prohibited by law (O.J.L. 02.197.1661) amending the present act, as of 28 November 2003.

⁽³⁾ Reference No. 1 added by article 9 of the Act of 20 April 2004 amending and canceling some acts, due to Poland's membership in the European Union (O.J.L. 04.96.959), as of 1 May 2004.
