

## **LAW OF UKRAINE ON PROTECTION AGAINST UNFAIR COMPETITION**

As amended and supplemented according to the Laws of Ukraine  
No. 642/97-VR of 18 November 1997,  
No. 783-XIV of 30 June 1999,  
No. 2783-III of 15 November 2001,  
No. 762-IV of 15 May 2003

(Enacted under SC's Resolution #237/96-VR, of 06.07.96)

*(Changed and amended according to Law of Ukraine*

*No. 642/97 of November 18, 1997;*

*No. 783-XIV of June 30, 1999)*

*This Law determines the legal principles of protection of business entities (entrepreneurs) and consumers against unfair competition.*

*This Law is aimed at establishing, developing, and ensuring trade and other fair traditions in competition when pursuing one's line of business in market economy conditions.*

### **CHAPTER I. GENERAL PROVISIONS**

#### **Article 1. Unfair Competition**

Unfair competition shall be understood as any actions performed in the course of competition running counter to the rules, trade, and other fair customs in business activities.

In particular, actions stipulated by Chapters 2-4 hereunder shall be qualified as unfair competition.

Terminology used in the context of this Law is defined by the Law of Ukraine *On Monopoly Restrictions and Prevention of Unfair Competition in Business Activities* (2131-12).

#### **Article 2. Application**

This Law shall apply to relations involving business entities (entrepreneurs), their associations, organs of state authority, [private] citizens, legal entities and their associations that are not business entities (entrepreneurs) in conjunction with unfair competition, including actions made by them outside Ukraine, provided these actions have negative effect on competition in its territory.

This Law shall not apply to relations involving said entities if their actions have consequences outside Ukraine, unless otherwise provided for by an international treaty to which Ukraine is a party.

#### **Article 3. Ukraine's Legislation on Protection against Unfair Competition**

Relations in conjunction with protection against unfair competition shall be governed by this Law, as well as by the Laws of Ukraine *On Monopoly Restrictions and Prevention of Unfair Competition in Business Activities*; *On the Antimonopoly Committee of Ukraine* (3659-12); *On Foreign Economic Activities* (99-12), and by other legislative acts issued as per Laws or Resolutions of the Supreme Council of Ukraine.

## CHAPTER II. UNLAWFUL USE OF A BUSINESS ENTITY'S (ENTREPRENEUR'S) BUSINESS REPUTATION

### **Article 4. Unlawful Use of Others' Trademarks, Advertising Material, and Packing**

Unauthorized use, without the permission of a person authorized for this purpose, of somebody else's name, trade name or brand name, marks or signs for goods and services, other indications, as well as advertising materials, packing of goods, titles of literary works, works of art, periodicals, indications of origin of goods that can be confusing in regard to other business entity (entrepreneur) that has the priority right to use them shall be qualified as unlawful.

(Part one of Article 4 as amended according to the Law of Ukraine No. 2783-III of 15.11.2001)

Use of a natural person's name in a company name shall not be qualified as unlawful if this person's name is somehow made distinct, so as to rule out confusing it with the activities of that other business entity (entrepreneur).

### **Article 5. Unlawful Use of Goods Made by Other Manufacturers**

Unlawful use of goods made by other manufacturers shall be understood as launching into circulation under one's name [trademark] goods belonging to a different manufacturer by changing or lifting that manufacturer's name [trademark] without permission from an authorized person..

### **Article 6. Copying Goods' Outward Appearance**

Copying [duplicating] goods' outward appearance shall be understood as making outwardly exact replicas of goods belonging to other business entities (entrepreneurs) and launching them into circulation without explicitly indicating the manufacturer of copies, which can be confusing in regard to the activities of those other business entities (entrepreneurs).

Copying goods' — or their parts' — outward appearance shall not be qualified as unlawful if this copying [duplicating] is warranted by their purely functional use.

This Article shall not apply to goods being protected as objects of intellectual property.

### **Article 7. Comparative Advertising**

Comparative advertising shall be understood as advertising comparing goods, works, and services or activities of different business entities (entrepreneurs).

Comparative advertising shall not be considered unlawful if information contained therein, pertaining to goods, works or services, is corroborated by factual data, being authentic, unbiased, and useful for consumers.

## CHAPTER III. OBSTRUCTING OTHER ENTITIES' (ENTREPRENEURS') BUSINESS IN THE COURSE OF COMPETITION AND GAINING UNLAWFUL ADVANTAGE IN COMPETITION

### **Article 8. Discrediting Business Entities (Entrepreneurs)**

Discrediting a business entity (entrepreneur) shall be understood as spreading any form of untruthful, inaccurate or incomplete information about this entity or entrepreneur or their (his) activities which has harmed or can damage their (his) business reputation.

**Article 9. Sales and Purchase of Goods, Fulfilling Works, and Rendering Services with Compulsory Assortment**

Sales and purchase of goods, fulfilling works, and rendering services with compulsory assortment shall be understood as sales and purchase of certain goods, fulfilling works, and rendering services on condition of sales and purchase of other goods, fulfilling works, and rendering services that are not needed by the consumer or counterpart.

**Article 10. Instigation of Boycott vs. Business Entity (Entrepreneur)**

Instigation of boycotts against business entities (entrepreneurs) shall be understood as the rival's actions aimed at instigating a third party — directly or via a go-between — to refuse to make contract with the given business entity (entrepreneur).

**Article 11. Instigating Suppliers to Discriminate against Buyers (Customers)**

Instigating suppliers to discriminate against buyers (customers) shall be understood as the buyer's (customer's) rival's actions aimed at instigating — directly or via a go-between — the supplier to give the buyer's (customer's) rival certain unjustifiable advantages over the buyer (customer).

**Article 12. Instigating a Business Entity (Entrepreneur) to Abrogate Contract with the Rival**

Instigating a business entity (entrepreneur) to abrogate contract with another business entity's (entrepreneur's) rival shall be understood as such instigation motivated by mercenary considerations or made in the interests of a third party, to make the given business entity (entrepreneur) being a party to a contract to abrogate or mishandle this contract by giving this party to the contract — directly or via a go-between — a material reward or other advantages.

**Article 13. Bribing the Supplier's Employee**

Bribing the supplier's employee shall be understood as the buyer's (customer's) rival giving or offering this employee — directly or via a go-between — material values, property or non-property benefits in return for that employee's fulfillment or non-fulfillment of his duty ensuing from or in conjunction with the contract between the supplier and the buyer, concerning delivery of goods, carrying out works or rendering services, which has caused or may cause this rival to receive certain advantages over the buyer (customer).

Any other person being under authority to make decisions in the supplier's behalf on delivery of goods, carrying out works or rendering services, and thus influence the supplier, or being otherwise involved with the supplier shall be placed on the same footing as that supplier's employee.

**Article 14. Bribing the Buyer's (Customer's) Employee**

Bribing the buyer's (customer's) employee shall be understood as that buyer's (customer's) rival's offering this employee — directly or via a go-between — material values, property or non-property benefits in return for improper fulfillment or non-fulfillment of his duties ensuing from or in conjunction with the contract between the supplier and the buyer, concerning delivery of goods, carrying out works or rendering services, which has caused or may cause this rival to receive certain advantages over the supplier.

Any other person being under authority to make decisions in the buyer's behalf on purchase of goods, works or services, and thus influence the buyer, or being otherwise involved with the buyer shall be placed on the same footing as that buyer's employee.

**Article 15. Gaining Unlawful Advantage in Competition**

Gaining unlawful advantage in competition shall be understood as gaining such advantage over another business entity (entrepreneur) by breaching any of the laws currently in effect and reaffirmed by decisions made by a competent authority.

**CHAPTER IV. UNLAWFUL COLLECTION, DISCLOSURE,  
AND USE OF COMMERCIAL SECRETS****Article 16. Unlawful Collection of Commercial Secrets**

Unlawful collection of commercial secrets shall be understood as illegally obtaining data which is qualified by Ukraine's legislation as confidential commercial information, if by doing so a business entity (entrepreneur) has been or can be damaged.

**Article 17. Disclosure of Commercial Secrets**

Disclosure of commercial secrets shall be understood as disclosure of information qualified under Ukraine's legislation as confidential by the party entrusted with this information to a third party without the knowledge and consent of the authorized party, provided this information was entrusted to that party in due course or was made known in that party's line of duty, and provided this disclosure has damaged or can damage the given business entity (entrepreneur).

**Article 18. Instigating to Disclose Commercial Secrets**

Instigating to disclose commercial secrets shall be understood as instigating a person duly entrusted with information qualified as commercial secrets under Ukraine's legislation or made privy to it in the line of duty to disclose this information, provided this disclosure has damaged or can damage the given business entity (entrepreneur).

**Article 19. Unlawful Use of Commercial Secrets**

Unlawful use of commercial secrets shall be understood as information used in production or taken into account when planning and doing business, which information was illicitly obtained, without the knowledge and consent of the authorized person, and which is qualified as a commercial secret under the laws of Ukraine.

**CHAPTER V. RESPONSIBILITY FOR UNFAIR COMPETITION****Article 20. Types of Responsibility**

Committing acts of unfair competition as envisaged hereunder shall entail penalties levied by the Antimonopoly Committee of Ukraine, as well as civil liability and criminal prosecution as provided by law..

**Article 21. Penalties Levied on Business Entities, Legal Entities, and their Associations**

Acts of unfair competition, as envisaged hereunder, committed by business entities, legal entities, and associations thereof, shall entail penalties levied by the Antimonopoly Committee of Ukraine and its territorial divisions in amounts of up to three percent of the business entity's proceeds from the sales of goods, works, and services over the fiscal year preceding the year in which this penalty was meted out.

If such proceeds are impossible to compute, or in the absence of such proceeds, penalties indicated in Section 1 heretofore shall be levied in amounts of up to five thousand tax-free minimum citizens' incomes.

#### **Article 22. Penalties Levied on Legal Entities, Associations Thereof, and Citizens' Associations Not Being Legal Entities**

Acts of unfair competition, as envisaged hereunder, committed by legal entities, associations thereof, and by citizens' associations not being legal entities shall entail penalties meted out by the Antimonopoly Committee of Ukraine and its territorial divisions in amounts of up to two thousand tax-free minimum citizens' incomes.

#### **Article 23. Citizens' Administrative Responsibility**

Acts of unfair competition, as envisaged hereunder, committed by citizens engaged in business without forming legal entities, shall result in administrative liability as provided by law.

Acts of unfair competition, as envisaged hereunder, committed by citizens in the interest of a third party, these citizens not being engaged in business, shall entail administrative penalties in keeping with legally set procedures.

#### **Article 24. Restitution**

Damage caused by actions qualified hereunder as unfair competition shall be indemnified as per claims by interested parties in keeping with procedures established by Ukraine's civil legislation.

#### **Article 25. Confiscation of Unlawfully Labeled Goods and Duplicated Goods Originating from a Different Business Entity (Entrepreneur)**

On establishing unlawful use of others' trademarks, advertising material, and/or packing, as set forth by Article 4 heretofore, or on discovering duplicated goods envisaged by Article 6 heretofore, the interested party may bring the issue before the Antimonopoly Committee of Ukraine or any of its territorial divisions, requesting confiscation of unlawfully labeled goods or duplicated goods originally made by a different business entity (entrepreneur) from both the [unlawful] manufacturer and the seller.

Goods thus confiscated shall be disposed of in keeping with procedures determined by the Cabinet of Ministers of Ukraine.

Unlawfully labeled goods or duplicated goods originally made by a different business entity (entrepreneur) shall be confiscated when there is no other way to prevent mistaken identity damaging that other entity's business.

#### **Article 26. Refutation of Untruthful, Inaccurate or Incomplete Data**

On discovering that a business entity (entrepreneur) has been discredited, the Antimonopoly Committee of Ukraine and/or its territorial divisions shall have the right to demand official retraction, by the guilty party and that party's own cost, of such untruthful, inaccurate or incomplete information, within a term and in a manner determined by law or by a decision passed in this case.

CHAPTER VI. LEGAL PRINCIPLES OF PROTECTION  
AGAINST UNFAIR COMPETITION

**Article 27. Procedural Principles of Handling Unfair Competition Cases by the Antimonopoly Committee of Ukraine and its Territorial Divisions**

Unfair competition cases shall be dealt with by the Antimonopoly Committee of Ukraine and its territorial divisions in keeping with procedures established by this Law, the Law of Ukraine *On Monopoly Restrictions and Prevention of Unfair Competition in Business Activities* (212-12), the Law of Ukraine *On the Antimonopoly Committee of Ukraine* (3659-12), and other legislative acts of Ukraine.

**Article 28. Term of Statement of Claim**

Persons whose rights are upset by actions defined hereunder as unfair competition may, within six months from the date on which they discovered or might have discovered these transgressions, file statements of claim at the Antimonopoly Committee of Ukraine and/or its territorial divisions. Expiry of the term of statement of claim shall warrant rejection of such statements.

If the Antimonopoly Committee of Ukraine or any of its territorial divisions finds that this term was surpassed due to valid reasons, the statement of claim shall be accepted.

**Article 29. Means of Securing the Implementation of Decisions Made by the Antimonopoly Committee of Ukraine and its Territorial Divisions**

When handling a case as per statement of claim, the Antimonopoly Committee of Ukraine and its territorial divisions shall have the right to take measures to secure the implementation of their rulings if in the absence of such measures their implementation will be difficult or impossible.

In order to secure the implementation of such decisions, the Antimonopoly Committee of Ukraine and its territorial divisions shall issue directives:

Forbidding a person (respondent) to perform certain actions if there are signs of transgression in that person's conduct;

Seizing property or sums in the respondent's possession.

Such rulings may be appealed to a court of law in keeping with procedures set forth by Article 32 hereunder, within fifteen days from the date of receipt of a copy of the ruling.

( Part three of Article 29 as amended according to the Law of Ukraine No. 762-IV of 15.05.2003 )

The respondent, should the case be closed for lack of evidence, may, in keeping with procedures set by the laws of Ukraine, exact from the claimant damage in the amount of losses inflicted on the respondent when securing the implementation of the ruling.

**Article 30. Decisions Made by the Antimonopoly Committee of Ukraine and its Territorial Divisions**

The Antimonopoly Committee of Ukraine and its territorial divisions, when handling unfair competition cases, shall make decisions to be complied with under all conditions, namely:

Ones recognizing the fact of unfair competition;

Ones terminating unfair competition;

Ones ordering official retraction of untruthful, inaccurate or incomplete information, to be made by the guilty party at its own cost;

Ones levying penalties;

Ones confiscating unlawfully labeled goods or duplicated goods originally made by a different business entity (entrepreneur);

Ones annulling or overriding unlawful acts and abrogating contracts adopted and made by central or local organs of state executive authority, and executive bodies of local self-administration.

Decisions meting out penalties in amounts surpassing four hundred tax-free minimum citizens' incomes shall be the sole prerogative of the Antimonopoly Committee of Ukraine, each to be passed at a sitting thereof.

Decisions on confiscation of unlawfully labeled goods or duplicated goods originally made by different business entities (entrepreneurs) shall be complied with in keeping with procedures followed when implementing court rulings.

### **Article 31. Procedures of Implementation of Decisions on Penalties**

A transgressor meted out a penalty shall pay it within thirty days from the date of receipt of the ruling on the penalty, unless otherwise instructed by the ruling.

Each day in default shall entail an additional penalty in the amount of one percent of the sum of the penalty.

If a transgressor refuses to pay a fine, the Antimonopoly Committee or any of its territorial divisions shall exact this fine and penalties levied as per court ruling.

*(Paragraph 3, Article 31 changed and amended according to Law of Ukraine #642/97 of November 18, 1997)*

*(Paragraph 4, Article 31 invalidated by Law of Ukraine #783-XIV of June 30, 1999)* Penalties collected shall be distributed as follows: fifty percent shall be transferred to the State Budget of Ukraine, twenty-five percent to the Republican Budget of the Autonomous Republic of the Crimea and to local budgets, and twenty-five percent to the state organ meting out the penalty, to help create the scientific, material-technical, and data base on which to develop and protect competition.

### **Article 32. Appeal of Decisions of the Antimonopoly Committee of Ukraine and its Territorial Divisions**

Decisions made by the Antimonopoly committee of Ukraine and its territorial divisions in regard to cases of unfair competition shall be appealed in court of law by interested persons within thirty days from the date of receipt of a copy of the court ruling.

( Article 32 in the wording according to the Law of Ukraine No. 762-IV of 15.03.2003 )

### **Article 33. Rules of Professional Ethics**

Business entities (entrepreneurs), assisted by the Chamber of Trade and Industry of Ukraine and other interested organizations, may develop rules of professional ethics to be adhered to in competition in certain lines of business, as well as in certain sectors of the economy. The Rules of Professional Ethics in Competition, developed by business entities (entrepreneurs), shall be agreed with the Antimonopoly Committee of Ukraine.

The Rules of Professional Ethics in Competition may apply when making contracts and drawing up constituent and other documents binding on business entities (entrepreneurs).

Leonid Kuchma, President of Ukraine  
City of Kyiv, June 7, 1996  
#236/96-VR

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