



Protection Against Unfair Competition Training for Economic Students

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Abstract

The subject matter of this article is the training in the discipline "Protection against unfair competition" for Intellectual Property and Business students, including digital education. "Protection against unfair competition" is an object of industrial property system that seeks to prosecute unfair business practices. "Protection against unfair competition" training course provides students with knowledge on the definition of unfair competition and the differences with other industrial property objects. This course presents unfair competition as a legal nature and different types of unfair business practices are presented, such as causing confusion, misleading, imitation of appearance and foreign business signs, use of someone else's reputation, discrediting competitors, and unfair comparative advertising. The course provides knowledge about the importance of good commercial practice and how it provides a competitive position for companies. Examples representing unfair competition are given and real cases from the Bulgarian practice are identified. The essence and characteristics of trade secret, as well as the mechanisms for protection of trade secret are analyzed. Basic European regulations, national laws on Protection against unfair competition and new Trade secret law with specific legal and defense mechanisms for counteracting unfair competition are discussed.

Keywords: *Unfair competition, intellectual property education, digital education, competitiveness.*

1. INTRODUCTION

This paper will address the topic of unfair competition (UC), by identifying the protection of unfair competition as intellectual property and presenting the main points of the training provided to students of Intellectual Property and Business in the discipline "Protection against unfair competition", including online learning in a digital environment. Of importance to modern society is also digitalization, which helps students to deliver training globally by online platforms and systems through which to deliver learning in an online environment. [1] The role of protection against unfair competition as intellectual property makes a significant contribution to the economic development of companies that protect their technological developments as objects of industrial property and monitor other companies to see whether they are taking advantage of their good reputation and well-known marks. Unfair competition is an essential part of the intellectual property system that companies need to be aware of and prosecute future infringers. A key role for the company's competitiveness is played by the company's IP portfolio. [2] The acquisition of knowledge by students during the course "Protection against unfair competition" has a significant impact on their acquirement of knowledge and skills in business management and achieving sustainable competitiveness. Protection against unfair competition as part of intellectual property is a factor of company competitiveness. [3]

The essence of unfair competition is identified, and examples of UC are given. The actions that are considered unfair competition under Bulgarian law are indicated.

The subject matter of this paper is the protection against unfair competition training for economic students.

2. UNFAIR COMPETITION

Competition as a contest of market entities, including in a digital environment, is beneficial for the market economy. Unlike fair competition, unfair competition is pursued and sanctioned and is subject



to attack. Unfair competition was mentioned as part of intellectual property as early as 1900 in the Brussels revision of the Paris Convention.

2.1. ESSENCE OF UNFAIR COMPETITION

In unfair competition, one market participant tries to succeed among its competitors by gaining an advantage from the work of another or by influencing consumer demand through misleading statements without relying on its own achievements. Students of Intellectual Property and Business, studying the discipline “Protection against unfair competition“, should be familiar with the nature of unfair competition, and a list of acts that constitute unfair competition. Unlike other industrial property objects such as inventions, utility models, trademarks and industrial designs, where the nature of the objects themselves and their legal protection are defined, unfair competition identifies the acts that represent unfair competition.

The Bulgarian Competition Protection Act includes a general prohibition of unfair competition, which prohibits any act or omission in the conduct of business which is contrary to good commercial practice and harms or is likely to harm the interests of competitors shall be prohibited. [4] The Bulgarian competent authority is the Commission for Protection of Competition.

2.2. TYPES OF UNFAIR BUSINESS PRACTICES

The main actions of unfair competition, according to the Bulgarian legislation and practice, which the students should get acquainted with, will be presented.

2.2.1. Discrediting competitors

Discrediting a competitor is generally defined as any false statement concerning the competitor that is likely to damage its reputation. In discrediting, false information is used to damage the competitor's name, product or service. The Law on Protection of Competition prohibits damage to the good name and trust of competitors, as well as of the goods or services offered by them by alleging or disseminating false information, as well as by presenting facts in a distorted form.

2.2.2. Misleading

Both discrediting and misleading try to attract customers through incorrect information. While in discrediting it refers to the competitor, in misleading it mostly refers to own products and services. [5] Bulgarian law prohibits misleading as to the essential characteristics of goods or services or as to the manner in which the goods or services are to be used by means of a false statement or misrepresentation.

2.2.3. Imitation of appearance and foreign business signs

It shall be prohibited to offer goods or services with an appearance, packaging, marking, name or other features which mislead or are likely to mislead as to the origin, manufacturer, seller, manner and place of production, source and manner of acquisition or use, quantity, quality, nature, consumer characteristics and other essential characteristics of the goods or services. National law also prohibits the use of a company, trade mark or geographical indication identical or similar to those of others in a way that may cause damage to the interests of competitors. It is also prohibited to use a domain name or the appearance of a website identical or similar to those of others in a way that may mislead and/or harm the interests of competitors. [6]

2.2.4. Causing confusion

In confusion, one market participant misrepresents its own goods and services as those of another, thereby inducing consumers to make erroneous purchases. Causing consumer confusion covers any act in the course of commercial activity which causes confusion as to the brand, distinctive sign, label, slogan, packaging, shape and colour of the goods, or any other distinguishing indication used by an entrepreneur.

2.2.5. Use of someone else's reputation

Contrary to honest business practice, it is dishonest to profit from the reputation of an entrepreneur's market performance. The concept can be applied not only to indications but also to product



appearance, but only if it has been perceived as an indication of a certain degree of quality and prestige.

2.2.6. Unfair comparative advertising

The Bulgarian legislation defines comparative advertising as any advertising which explicitly or implicitly identifies a competitor or its goods or services, i.e. the competitor is either explicitly stated or can be implicitly identified and this is done in a fair manner. Misleading advertising and unauthorised comparative advertising are prohibited. The advertiser and the advertising agency which prepared the advertisement shall be liable for misleading and unauthorised comparative advertising.

2.2.7. Disclosure of manufacturing or trade secrets

There is a special section in the Competition Protection Act entitled "Prohibition of disclosure of manufacturing or trade secrets". It prohibits the knowledge, use or disclosure of manufacturing or trade secrets contrary to good commercial practice. It is also prohibited to use or disclose a manufacturing or trade secret even if it is known or communicated on condition that it not be used or disclosed. [7]

The Bulgarian Trade Secrets Protection Act also regulates the conditions and procedures for protection against unlawful acquisition, use and disclosure of trade secrets. According to Directive (EU) 2016/943, the definition of a trade secret should cover know-how, commercial information and technological information in cases where there is a legitimate interest in keeping them confidential and a legitimate expectation of confidentiality based on law. Such know-how or information should be considered to have actual or potential commercial value.

3. MECHANISMS FOR PROTECTION OF TRADE SECRET

Through the adoption of the Bulgarian Trade Secrets Protection Act, the legislator provides a means of protection for the benefit of companies against the unlawful use of valuable information to produce goods or services on the national and European market. The protection of trade secrets is usually implemented in two ways:

- through the so-called de facto monopoly - by keeping the information secret, the holder can use it as a competitive advantage not available to competitors and/or sell it to competitors;
- legal protection of confidential information - under certain conditions, the law provides protection to the holder of confidential information against its unauthorized knowledge, disclosure or use by competitors. [8]

Students studying the discipline "Protection against unfair competition" should be aware of the nature and mechanisms of trade secret protection. Liability for infringement of another's trade or manufacturing secret under the Competition Act and the Trade Secrets Protection Act is complementary. In order to be liable for infringement of its trade or manufacturing secret, the owner of the secret must have previously taken the necessary measures to preserve and protect it in a certain way - this is usually done by signing special contracts to protect the trade secret, as well as contracts with employees and partners, know-how license agreements, non-disclosure agreements etc.

4. UNFAIR COMPETITION EXAMPLES AND CASES FROM THE BULGARIAN PRACTICE

There are various examples and cases of unfair competition that involve, for example, trademark infringement, design infringement, imitating the appearance of a product, spreading false statements about a competitor's product, stealing a competitor's trade secrets or confidential information, etc.

Some examples and cases of unfair competition are as follows:

4.1. Misleading Advertising with the trademark of "Bruschette Maretti"

The Commission for Protection of Competition (CPC), Bulgaria, imposes a penalty of BGN 213 300 on the Bulgarian company „Ital Food Industries“ for broadcasting two commercials for "Bruschette Maretti" on Bulgarian television, which is considered to be misleading advertising and a form of unfair



competition. The characters in the two commercials have Italian names and the dialogue is in Italian, dubbed into Bulgarian, and the music is also Italian. One of the videos ends with „Un amore grande“. The fair commercial behavior required the producer to clearly indicate the Bulgarian origin of the product. The Commission for the Protection of Competition considers that the overall impression given by the advertising messages in the two videos points to the idea that it is an Italian product. The advertising clips are based entirely on elements of Italian culture in terms of subject matter and conception. [9]

4.2. Non mentioning essential information about the product offered

Failure by a manufacturer to mention essential information is also grounds for imposing a penalty. The CPC fined “Procter & Gamble International Operations” SA with BGN 300 000 for using misleading advertising of a stain removal and future stain prevention technology for the Ariel Prozyme 7 product. The reason is that nowhere in the advertisement or the promotional material used is it stated that repeated pre-treatment of a fabric with the product is required to achieve the desired effect.

In 2009, Raiffeisenbank was sanctioned by the CPC for a mortgage promotion campaign. According to the advertisement, which was broadcast from at least 2004 to 2007, free life insurance was provided with the loan. But it turns out that the policy was terminated as early as 2006, even though the bank continued to advertise free life insurance for the life of the loan in 2007. [10]

4.3. Case for unfair competition between “Zaharen Kombinat-Plovdiv” AD and “Pobeda” AD

In addition to theoretical training, students also receive practical training, examining a range of unfair competition cases. One of the examined cases is the following:

“Zaharen Kombinat-Plovdiv” AD, considers that there has been a infringement of the prohibition of unfair competition on the part of “Pobeda AD”, which are deemed to infringe the trademarks owned by “Zaharen Kombinat-Plovdiv” AD, by means of imitation and unfair attraction of customers. The case concerns the distribution of “tea biscuits” products, and the subject matter of the dispute being



trademarks

, Reg. No. 72998 with holder "Pobeda" AD and



, Reg. No. 45496 with holder "Zaharen Kombinat-Plovdiv" AD. According to the

materials in the case and the expert's opinion, an informed consumer could not be misled about the economic operators offering these products on the market, due to the expected awareness and attention of the consumer in the choice of food products and the market validity of the companies offering the products. In so far as tea biscuit products are freely available in shops and the consumer familiarises himself with the information on the packaging, he cannot be misled as to the origin of the product and/or the manufacturer/trader. The degree of similarity of the product marks, due to the common word element “tea” and the presence of the brand names on the packaging of the products, would not be such as to permit imitation or harm the interests of competitors. The consumer could not have been misled as to the origin of the “tea biscuits” products marketed by "Zaharen Kombinat-Plovdiv" AD and “Pobeda AD” and the CPC's decision establishes that no infringement has been committed and there is no imitation of foreign trade mark rights by “Pobeda” AD.

5. CONCLUSION

The study of the theoretical and practical aspects of the discipline "Protection against unfair competition" helps students to gain solid knowledge and experience in business management of companies, which contributes to achieving sustainable competitiveness. Protection against unfair competition as part of intellectual property is crucial for companies protecting their IP rights. IP is the balance between the private interest – of the creator, and the public interest of users and consumers of innovative goods and services.[11] In knowledge-based society, the knowledge of IP system as objects, rights and their management is a necessity in higher education [12]. Proper management of



IP rights has a positive impact on the competitiveness of companies, including in a digital environment. The implementation of IP into a business offer has the significant aim to achieve economic benefits from the implemented innovations and/or business indicators and to receive future revenues. [13] The training of "Protection against unfair competition" provides a solid base for all students of the discipline, through which they enrich their knowledge in the field of intellectual property and understand the importance of the subject matter in detail, by studying all actions that constitute unfair competition.

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