

UNFAIR COMPETITION LAW No. 11/1991
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- Art.1** Tradesmen are obliged to practice their activity in good faith and according to the fair usances.
- Art.2** In the sense of the present Law it constitutes unfair competition any document or act contrary to the fair usances in commercial or industrial activity.
- Art.3** Infringement of the obligation provided by Art.1 incurs civil contraventional or penal responsibilities under the terms of the present Law.
- Art.4** There are contraventions the acts as follows whether they are not committed in such conditions that they are considered infractions according to the penal Law:
- a) infringement by the physical persons of the interdictions provided by Art.36 of the Law No. 15/1990 concerning the re-organization of the State economical units into autonomous administrations and Trade Companies;
 - b) offer of services by an exclusive employer of a tradesman to a competitor or acceptance of such an offer;
 - c) divulgation by an employee of a tradesman of secret data concerning his activity to a competitor;
 - d) concluding agreements whereby a tradesman ensures delivery of goods or carrying out of services advantageously providing that the customer brings other purchasers with whom the tradesman might conclude similar agreements;
 - e) concluding agreements whereby the purchaser might receive a prize depending exclusively on a drawing of lotto or hazard;
 - f) communication or dissemination in public by a tradesman of affirmations on his enterprise or on activity thereof, meant to mislead and to create a favorable situation in detriment of competitors;
 - g) communication or dissemination by a tradesman of a false affirmations on a competitor or his goods liable to prejudice the run of the enterprise course.
Confidential communications is considered unfair competition only when the author of said communication knows that the facts are not in accordance with the truth;
 - h) offering, promising or giving directly or indirectly presents or other advantages to the employee of s tradesman or to his representatives with the aim that by unfair behavior he may find out the industrial process and to know or to use his customers or to obtain any other advantage for himself or for other person in the detriment of a competitor;
 - i) defalcation of the customers of a tradesman using connections established with said customers during prior holding of a situation at said tradesman;
 - j) dismissing of the employees of a tradesman with the end in view of setting up of a competing company to obtain surreptitions of the employees of a tradesman with the end in view to disorganize his activity;
- Contravention of let. a) are sanctioned with fine from 5.000 to 20.000 Lei, those of let. b) to e) with fine from 10.000 to 40.000 Lei and those of let. f) to j) with fine from 20.000 to 60.000 Lei. Sanctions may be applied also to juridical persons.
- Contravention are found out, at the intimation of the damaged party, by the employees special empowered by the territorial Chambers of Commerce and Industry or by the State Commercial Inspection.
- The finding agents apply also the fine simultaneously with the finding out of the contravention.
- The stipulations of the Law No.32/1968 concerning the assessment and sanctions of contravention are applicable also to the contravention provided in par.1.

Art.5 There are infractions of unfair competition and are punished with prison from one month to two years or with fine from 20.000 lei to 100.000 lei:

a) using of a firm, emblem, special designations or packages liable to create confusions with those legitimately used by another tradesman;

b) making in any way, importing, exporting, storing, putting for sale or selling of goods bearing false mentions regarding the invention patents, origin and characteristics of goods as well as regarding the manufacturer name or of the tradesman in order to mislead the other tradesmen and beneficiaries.

By false mention on the origin of goods is meant any indication liable to make credible that the goods have been produced in a certain territory or in a certain state.

It is not considered as a false mention on the origin of goods the denomination of a product which name has become generic and indicates in the trade only its nature, unless the denomination is accompanied by a mention that could make credible it has said origin.

Art.6 The tradesman committing an act of unfair competition is obliged to cease or to remove the act and, on the case, to pay compensations for the damages caused.

Art.7 Actions arising from the unfair act are of the competence of the Court where it has been committed or the territorial where the defendant has the residence.
Without such residence the competence is transferred to the Court where the defendant has the domicile.

Art.8 Penal actions, in cases stipulated by art.5, are stirred to action at the plaint of the damaged party or at the intimation of the territorial Chamber of Commerce and Industry or any other professional organization.

Art.9 Whether any of the actions stipulated by the arts. 4 or 5 causes patrimonial or moral damages, the prejudiced party is entitled to address to the competent Instance acting with corresponding civil responsibility.

If the action stipulated by this Law has been committed by an employee in the course of exercising his service duties, the tradesman will be solidary responsible with the employee for the damages caused excepting the case he will prove that according to the usage he might not be in the position to prevent the perpetration of the action.

The persons who together created the prejudice are solidary responsible for the perpetrated unfair competition acts or facts.

For taking steps that do not afford postponement, the dispositions of the arts. 581 and 582 of the Civil Code can be applied.

Art.10 Through the decisions given on the substance the Instance may dispose the seized goods to be sold after destruction of the false mentions.

From the amount obtained after sale the indemnification will be first recovered.

Art.11 At the same time with the verdict or the obligation to cease the illicit fact or reparation of the damage, the Instance may oblige for the publication of the decision in mass-media on the perpetrator expenses.

- Art.12** The right to action stipulated by art.9 is prescribed within one year from the date when the damaged party has known or might have known the damage and the perpetrator, but not later than 3 years from the date of perpetration.
- Art.13** The stipulations of the present Law are completed with the provisions of the Civil Code or if case of the Penal Code.
- Art.14** The stipulations of the present Law are applied also to the foreign physical or juridical persons committing unfair competition acts on the territory of Romania.
- Art.15** The present Law comes into force at the date of publication in Official Gazette of Romania.

EXPLANATORY NOTES

A. The stipulations of the Penal Code which art.13 of the Unfair Competition Law id referring to are the arts. 299 to 301 running as follows:

"Art.299 Counterfeiting or using of the object of an invention without having the right is punished by prison from 3 months to 2 years or by fine.

Art.300 Putting into circulation of the counterfeiting goods or using of the object of an invention without having the right is punished by prison from 3 months to 2 years or with fine.

Art.301 Taking or putting into circulation of the goods with false appellations or origin or indication of provenance as well as the application on the goods put into circulation of false mentions concerning the Invention patents or using of trade names or denominations of industrial or commercial organizations in order to mislead the beneficiaries are punished by prison from one month to two years or with fine."

B. The seizure mentioned in art.10 of the Unfair Competition Law is treated by art.118 of the Penal Code running as follows:

"Art.118 There are submitted to special seizure:

- a) Things produced by the facts stipulated in the Penal Code
- b) things which served or were meant to serve to the perpetration of an infringement whether they pertained to the infringer
- c) things which have been given in order to determine the perpetration of an infringement or to reward the infringer
- d) things obviously obtained by perpetration of the infringement whether they have not been returned to the damaged person as far as they did not served to recover his damages
- e) things observed against legal dispositions."

C. The stipulations of the Civil Code which art.13 of the Unfair Competition Law id referring to are the arts.581 and 582 running as follows:

"Art.581 In urgent cases the Court can order temporary steps in order to preserve a right which might be harmed by retardation, to prevent an imminent damage which could not be repaired and to remove impediments which could appear with the occasion of an executor action.

The ordinance may be also given without subpoena of the parties and even when there is a judgement on the substance of the right.

The ordinance is temporary and executory.

The Court can decide for the execution to be made without summons or terms to run.

Art.582 The ordinance may be appealed within 5 days from pronouncement if given with subpoena of parties and within 5 days from communication if given without subpoena.

Against Presidential ordinance an appeal can be made.