

Federal Law on Unfair Competition

of December 19, 1986*

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**Added by WIPO.

Chapter 1 Purpose

1. The purpose of this Law is to ensure fair and undistorted competition in the interest of all concerned.

Chapter 2 Civil Law and Procedural Law Provisions

Part 1 Unlawfulness of Unfair Competition

(Principle)

2. Any behavior or business practice that is deceptive or that in any other way infringes the principle of good faith and which affects the relationship between competitors or between suppliers and customers shall be deemed unfair and unlawful.

(Unfair Advertising and Sales Methods and Other Unlawful Behavior)

3. Shall be deemed to have committed an act of unfair competition, anyone who, in particular,
- (a) disparages another person, his goods, his works, his services, his prices or his business circumstances by incorrect, misleading or needlessly injurious statements,
 - (b) makes incorrect or misleading statements in respect of himself, his undertaking, his trade name, his goods, his works, his services, his prices, his stock or his business circumstances or who, by such statements, favors one party to the detriment of competitors,
 - (c) uses unfounded titles or professional designations that are likely to suggest special distinctions or capabilities,
 - (d) takes steps that are such as to cause confusion with the goods, works, services or businesses of others,
 - (e) compares in an incorrect, misleading, needlessly injurious or imitative manner his person, his goods, his works, his services or his prices with those of a competitor or who, by such comparison, favors one party to the detriment of its competitors,
 - (f) repeatedly offers a selection of goods, works or services below cost price and makes particular mention of such offer in his advertising, thus misleading the customers as to his own capabilities or those of his competitors; deception shall be presumed where the selling price is lower than the cost price for comparable purchases of goods, works or services of the same type; where the defendant is able to establish the effective cost price, that price shall be decisive for the judgment,
 - (g) misleads the customers, by means of gifts, as to the effective value of the offer,
 - (h) impairs the customer's freedom of decision by using particularly aggressive sales methods,
 - (i) misleads the customers by obscuring the quality, quantity, purpose, utility or danger of goods, works or services,
 - (k) omits in public advertising in respect of hire purchase sales or assimilated legal transactions to clearly state his trade name, to give clear information on the cash selling price or the overall selling price or to give exact figures, in francs and in percent per annum, of the additional price resulting from payment by installments,

- (l) omits in public advertising in respect of small loans to clearly state his trade name, to give clear information on the amount of the loan or on the maximum total amount to be reimbursed or to give exact figures, in francs and in percent per annum, of the maximum charges for interest,
- (m) offers or concludes, within the framework of his professional activities, a sale by installments, a sale with prior payments or a small loan contract using contractual forms containing incomplete or incorrect statements as to the subject of the contract, the price, the conditions of payment, the duration of the contract, the customer's right to cancel or denounce the contract or his right to pay the balance at an earlier date.

(Inducement to Breach or Termination of Contract)

- 4.** Shall be deemed to have committed an act of unfair competition, anyone who, in particular,
- (a) induces a customer to break a contract in order to conclude a contract with him,
 - (b) seeks to obtain advantage for himself or for someone else by affording or offering to employees, agents or other ancillaries of a third party benefits to which they are not legally entitled in order to induce those persons to act contrary to their duty in accomplishing their service or professional tasks,
 - (c) induces employees, agents or ancillaries to betray or pry into the manufacturing or trading secrets of their employer or principal,
 - (d) induces a purchaser or borrower who has concluded a sale by installments, a sale with prior payments or a small loan contract to revoke the contract, or a purchaser who has concluded a contract for sale with prior payments to denounce such sale, in order himself to conclude such a contract with that person.

(Exploitation of the Achievements of Others)

- 5.** Shall be deemed to have committed an act of unfair competition, anyone who, in particular,
- (a) without authorization, exploits results of work entrusted to him, for example, tenders, calculations or plans,
 - (b) exploits the results of work of another, for example, tenders, calculations or plans, although he must know that they have been handed to him or made available without authorization,
 - (c) by means of technical reproduction processes and without a corresponding effort of his own, takes the marketable results of work of another person and exploits them as such.

(Violation of Manufacturing or Trading Secrets)

6. Shall be deemed to have committed an act of unfair competition, anyone who, in particular, exploits or discloses manufacturing or trading secrets he has discovered or of which he has obtained undue knowledge in some other manner.

(Non-Compliance with Working Conditions)

7. Shall be deemed to have committed an act of unfair competition, anyone who, in particular, does not comply with the statutory or contractual working conditions that are also required of his competitors or which are customary in the trade or locality.

(Use of Abusive Conditions of Business)

- 8.** Shall be deemed to have committed an act of unfair competition, anyone who, in particular, makes use of preformulated general conditions that, to the detriment of a contracting party, misleadingly,
- (a) depart considerably from the statutory provisions that apply either directly or by analogy, or
 - (b) prescribe a distribution of rights and obligations in serious contradiction with the nature of the contract.

Part 2
Right to Institute Proceedings

(Principle)

9.—

(1) Whoever, through an act of unfair competition, suffers or is likely to suffer prejudice to his clientele, his credit or his professional reputation, his business or his economic interests in general, may request the courts:

- (a) to prohibit an imminent prejudice;
- (b) to remove an ongoing prejudice;
- (c) to establish the unlawful nature of a prejudice if the consequences still subsist.

(2) He may, in particular, require that a rectification or the judgment be communicated to other persons or be published.

(3) He may, further, in accordance with the law of obligations, institute proceedings for damages and redress and may also require the surrender of profits in accordance with the provisions on agency without authority.

(Action by Customers and Organizations)

10.—

(1) Proceedings under Section 9 may also be instituted by customers whose economic interests are threatened or prejudiced by an act of unfair competition.

(2) Proceedings under Section 9(1) and (2) may also be instituted by:

- (a) professional and trade associations whose statutes authorize them to defend the economic interests of their members;
- (b) organizations of national or regional scope devoted by statute to the protection of consumers.

(Proceedings Against Employers)

11. Where an act of unfair competition has been committed by an employee or other ancillary in the course of his service or professional tasks, proceedings under Section 9(1) and (2) may also be instituted against the employer.

Part 3
Procedural Provisions

(Forum)

12.—

(1) Proceedings in respect of unfair competition shall be instituted at the place of residence or of the registered offices of the defendant.

(2) Where linked with a civil law dispute under a Federal law stipulating a single Cantonal instance or other court, civil unfair competition proceedings may also be instituted before such instance or court. Where a single Cantonal instance is laid down, appeal to the Federal Court shall be admissible irrespective of the value in dispute.

(Arbitration Procedure or Simplified, Accelerated Judicial Procedure)

13. For disputes in respect of unfair competition, the Cantons shall lay down, up to a value in dispute to be set by the Federal Council, an arbitration procedure or a simplified, accelerated judicial procedure. Such procedure shall also apply to disputes without value.

(Precautionary Measures)

14. Sections 28c to 28f of the Swiss Civil Code shall apply *mutatis mutandis* to precautionary measures.

(Preservation of Manufacturing and Trading Secrets)

15.—

(1) In disputes under Section 3(f), the manufacturing and trading secrets of the parties shall be preserved.

(2) The opposing party may only have access to evidence liable to reveal such secrets where compatible with their preservation.

Chapter 3 **Administrative Law Provisions**

Part 1 *Announcement of Prices to the Consumer*

(Obligation to Announce Prices)

16.—

(1) Save for exceptions laid down by the Federal Council, the effective price to be paid for goods offered to the consumer must be announced. Exceptions may be permitted, in particular, for technical reasons or reasons of safety. This same obligation shall apply to the services designated by the Federal Council.

(2) The Federal Council shall regulate the announcement of prices and of tips.

(3) The provisions of Section 11 of the Metrology Law of June 9, 1977, shall also apply to measurable goods and services.

(Announcement of Prices in Advertising)

17. Where prices or price reductions are shown in advertising, such announcement shall comply with the provisions to be promulgated by the Federal Council.

(Misleading Announcement of Prices)

18. It shall be prohibited

(a) to announce prices,

(b) to announce price reductions or

- (c) to mention other prices in addition to the price to be effectively paid, in a misleading manner.

(Obligation to Provide Information)

19.—

(1) Where establishment of the facts so requires, the competent authorities of the Cantons may obtain information and require documentation.

(2) The obligation to provide information shall apply to:

- (a) persons and undertakings offering goods to the consumer, producing such goods, purchasing them, or trading in them;
- (b) persons and undertakings offering, providing, procuring or utilizing services;
- (c) trade organizations;
- (d) organizations of national or regional significance devoted by statute to consumer protection.

(3) The obligation to provide information shall not apply in those cases where statements can be refused under Section 42 of the Federal Law on the Federal Civil Procedure.

(4) The Cantonal provisions on administrative and criminal procedure shall remain unaffected.

(Execution)

20.—

(1) Execution shall be the responsibility of the Cantons and surveillance that of the Confederation.

(2) The Federal Council shall issue the implementing provisions.

Part 2
Sales and Similar Operations

(Obligation to Obtain an Authorization)

21.—

(1) No sale or similar operation, consisting in temporarily offering special advantages to purchasers, may be advertised publicly or carried out without an authorization from the responsible Cantonal authority.

(2) The authorization shall be refused or subjected to restrictive conditions where necessary in order to maintain fair competition. The authorization for total or partial sales shall only be granted to businesses that have existed for at least one year, subject, however, to cases of hardship.

(3) Following a total sale, the petitioner shall be prohibited, except in cases of hardship, from opening a business of the same type or from participating in such business in any manner whatsoever during a period of between one and five years. On infringement of this prohibition, the business may be closed down. This shall apply *mutatis mutandis* to partial sales.

(4) The Federal Council shall issue the implementing provisions. It shall first consult the Cantons and the professional and trade associations concerned, as also the consumer organizations of national or regional significance.

(Competence of the Cantons)

22.—

(1) The Cantons shall be authorized to lay down, within the limits of this Law and of the ordinance of the Federal Council, further provisions concerning sales and similar operations and to impose imprisonment or a fine for intentional or negligent infringement.

(2) The Cantons may levy fees on sales and similar operations.

Chapter 4 Criminal Provisions

(Unfair Competition)

23. Whoever intentionally commits an act of unfair competition within the meaning of Sections 3, 4, 5 or 6 shall be liable, on complaint, to imprisonment or a fine of up to 100,000 francs. A complaint may be lodged by anyone entitled to institute civil proceedings under Sections 9 and 10.

(Failure to Comply with the Obligation to Announce Prices to the Consumer)

24.—

(1) Whoever intentionally:

- (a) fails to comply with the obligation to announce prices (Section 16);
- (b) infringes the requirements concerning the announcement of prices in advertising (Section 17);
- (c) announces prices in a misleading manner (Section 18);
- (d) fails to comply with the obligation to provide information in relation to the announcement of prices (Section 19);
- (e) infringes the implementing provisions issued by the Federal Council as regards the announcement of prices (Sections 16 and 20),

shall be liable to imprisonment or a fine of up to 20,000 francs.

(2) Where the offender has acted by negligence, the penalty shall be a fine.

(Infringement of the Provisions on Sales)

25.—

(1) Whoever intentionally infringes the provisions on sales (Section 21) shall be liable to imprisonment or a fine of up to 20,000 francs.

(2) Where the offender has acted by negligence, the penalty shall be a fine.

(Infringements Committed Within an Undertaking)

26. Sections 6 and 7 of the Federal Law on Administrative Criminal Law shall apply to infringements committed within an undertaking, by agents and the like.

(Criminal Action)

27.—

(1) Criminal action shall be the responsibility of the Cantons.

(2) The Cantonal authorities shall communicate in full, immediately and free of cost, judgments, administrative sentences and nonsuits in respect of the announcement of prices to the consumers, sales and similar operations, to the Office of the Federal Prosecutor for the attention of the Federal Department of the Economy.

Chapter 5 Final Provisions

(Repeal of Previous Law)

28. The Federal Law on Unfair Competition of September 30, 1943, is hereby repealed.

(Referendum and Entry into Force)

29.—

- (1) This Law shall be subject to optional referendum.
- (2) The Federal Council shall determine the entry into force.