

TURKISH COMMERCIAL CODE

Law No. 6762 dated 2 July 1956

Enacted on 29 June

Preliminaries

Field of application of the code

I- Commercial clauses

Section I – The Turkish Commercial Code is an integral part of Turkish Civil Code. The provisions of this Code and the special provisions of other Laws concerning transactions, acts and affairs interesting any trading house, factory or establishment operated commercially are commercial clauses.

In commercial affairs for which there is no commercial clause the court shall decide according to commercial usage and customs and, in the absence of the same, according to general prescriptions.

II- Commercial usage and custom:

Section 2- In the absence of any clause to the contrary in the Law, practice may not be taken as a basis for judgment as long as it is not admitted as commercial usage and custom. The principle of considering also practice is, however reserved in the interpretation of the declaration of intention.

Commercial usages and customs special to region or to a trade shall be preferred to usages and customs in general. If the parties concerned are not in the same region, the commercial usages and customs of the place of execution shall apply as long as there is no provision to the contrary in the law or in the contract.

Commercial usage and custom shall apply to persons not having the capacity of merchant only if they are or should be known to them.

III- Commercial affairs:

Section 3- Matters regulated in this Code and all transactions, acts and business interesting a trading house, a factory or another establishment which is commercially operated are commercial affairs.

Chapter IV – Unfair competition :

In general : 1 – Definition :

Section 56. Unfair competition is the abuse of economic competition in any manner by means of deceitful acts or other acts incompatible with good faith.

II- Acts incompatible with good faith:

Section 57. Acts incompatible with good faith are as follows:

- 1- Discrediting others or their goods, their activities, or the products of their work or their commercial affairs by means of wrong, deceitful or uselessly offensive statements;
- 2- Giving information contrary to truth regarding the morality or financial capacity of another person;
- 3- Giving wrong or deceitful information regarding one's own situation, goods and the products of one's work, one's commercial activity or commercial affairs of acting in the same manner regarding third persons and putting them in a situation above their competitors.
- 4- Acting as if one had obtained a distinction, degree or reward without having obtained the same and trying to create thus the impression that one has exceptional capacities or using false titles or professional names which are liable to create this impression.
- 5- Trying to create confusion with the goods and products of the work, the activity or the commercial undertaking of another person or having recourse to measures likely to create this

confusion, particularly using names, titles, marks, signs and similar distinctive means legally used by another person, or selling or keeping for a reason other than personal needs, goods giving place to confusion, knowingly or unknowingly.

6- Assuring or promising to the employees, agents or other assistants or third persons advantages to which they are not entitled with a view or in a manner to secure advantages for self or for others by inciting them to fail in their duty.

7- Deducing the employees, agents or other assistants and getting them to divulge or obtain the trading or manufacturing secrets of their employer or of his agents.

8- Taking an illicit advantage from trading or manufacturing secrets obtained or learnt in a manner incompatible with good faith or divulging them to others.

9- Issuing certificates of good conduct or capacity, contrary to truth so as to deceive persons of good faith.

10- Failing to comply with the conditions of working life determined by laws, regulations, contracts and professional or local customs which are also effective as regards competitors.

B) Juridical liability: 1. Miscellaneous clauses:

Section 58. Anyone who, through unfair competition, suffers injury as regards his customers, his credit, his professional reputation, his commercial undertaking, or his other economic interests or is exposed to such a danger may demand:

(a) the establishment of the existence of unfair competition;

(b) the prevention of unfair competition;

(c) the suppression of the material conditions resulting from unfair competition and, if unfair competition rests on untrue or deceitful statements, the rectification of these statements;

(d) compensation of damages, if there is a fault;

(e) the payment of moral damages in case of existence of the circumstances in Section 49 of the Code of Obligations.

The judge may also order the payment of the value of advantages which the defendant might secure through unfair competition, as damages in favour of the plaintiff and in accordance with the provision Paragraph (d).

Customers whose economic interests have been injured through unfair competition may also open the actions indicated in the first paragraph.

Chambers of Commerce and Industry, craftsmen's associations, Exchanges and other professional and economic unions empowered to protect the economic interests of their members according to their statutes may also open the actions indicated under Paragraphs (a), (b) and (c) where their members or the members of their branches have the right to sue in accordance with the first and second Paragraphs.

Any judgment passed against a person in pursuance of sub-paragraphs (a) and (b) of the first Paragraph shall also be enforceable against persons having –

033obtained directly or indirectly the goods which are the object of unfair competition.

II- Liability of employer:

Section 59. If unfair competition is committed by employees or workers during their service or work, the actions mentioned under sub-paragraphs (a), (b) and (c) of the first Paragraph may be brought also against their employers.

The provisions of the Code of Obligations apply to actions mentioned under sub-paragraph (d) and (e) of the first Paragraph of the foregoing section.

III- Responsibility of the press:

Section 60. – If unfair competition has been committed through the press, the actions mentioned under Paragraphs (a), (b) and (c) of Section 58 may be brought only against the persons having written the article or given the advertisement.

(a) If the article or the advertisement have been published without the knowledge or the approval of the author of the article or of the advertiser;

(b) If it is refused to disclose the identity of the person having written the article or given the advertisement;

(c) If, for other reasons, it is impossible to find out the author of the article or the advertiser or to sue them before a Turkish court;

These actions may be brought also against the editor in chief and if it is an advertisement, against the advertising manager, if the editor in chief or the advertising manager have not been designated or do not exist, against the publisher and if he has not been designated either, against the printer.

Furthermore, if a fault can be attributed to the editor in chief the advertising manager, the publisher or the printer, an action may be brought against the persons who are at fault, without taking into account the foregoing order.

The provisions of the Code of Obligations apply for the actions indicated under sub-paragraph (d) and (e) of the first Paragraph of Section 58.

IV- Publication of the judgment

Section 61. On application by the winning party the court may order the publication of the judgment, after it has become final, at the expense of the losing party, The judge shall determine the form and the extent of the advertisement.

V- Prescriptions:

Section 62. Actions indicated under Section 58 are barred by limitation at the end of one year after the date at which the party entitled to sue has obtained information that these rights have originated and in any case at the end of three years after these rights have originated. If however a punishable act has been committed which is subject to a longer period of prescription according to penal laws, this period shall also apply in civil actions.

VI- Measures of conservation:

Section 63. Following the petition of the person entitled to sue, the court may decide that the existing conditions be maintained, that the material situation resulting from unfair competition be suppressed as indicated under sub-paragraphs (b) and (c) of the first Paragraph of Section 58, that unfair competition be prevented, that untrue or deceitful statements be rectified and that the other necessary measures be taken, in accordance with the provisions of the Civil Procedure Code regarding measures of conservation.

C) Penal liability: I- Punishable acts:

Section 64. I- Anyone who commits wilfully the acts of unfair competition indicated under Paragraphs I; 2, 4, 5, 6, 8 and 9 of Section 57;

2- Anyone who intentionally supplies untruths or deceitful information regarding his personal situation, his goods, the products of his work, his commercial activity and his business so as to have his proposals and offers preferred to those of his competitors;

3- Anyone who seduces employees, agents and other assistants in order to get them to disclose the trading and manufacturing secrets of his employer or principals;

4- Anyone who learns from employers or agents that their worker employees or agents commit an act of unfair competition liable to be punished, when doing his work, and does not prevent this act or does not rectify statements contrary to truth;

Shall, on a complaint made by one of those who are entitled to bring a civil action under section 58, be sentenced by the criminal court to imprisonment for a term of one month to one year or to a fine of 500 to 1.000 liras, or to both penalties.

Anyone who continues the act of unfair competition, unchanged or with accessory changes, not withstanding the final judgment concerning the prohibition of unfair competition shall be liable to imprisonment for a minimum term of six months and to a heavy fine of 5.000 to 10.000 liras and the offender shall be prosecuted ex officio.

II- Penal liability of legal entities:

Section 65. If an act of unfair competition has been committed when doing the work of legal entities, the provision of Section 64 shall apply to partners or to the members of the organ having acted or who should have acted on behalf of the legal entity. The legal entity is, however, liable to the fine and to expenses jointly with these real persons.