

Federal Law on Unfair Competition (1995)

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Source: Communication from the Swiss authorities.

CHAPTER 1. PURPOSE ➡

Art. 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

Art. 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

Art. 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, his selling methods or his businesses 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 per cent 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, the total cost of the loan and the effective overall annual rate;

(m) offers or concludes, within the framework of his professional activities, a sale by installments, a sale with prior payments or a consumer 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

Art. 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 consumer 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

Art. 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

Art. 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

Art. 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

Art. 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

Art. 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, Organizations and the Confederation

Art. 10.—(1) Proceedings under Article 9 may also be instituted by customers whose economic interests are threatened or prejudiced by an act of unfair competition.

- (2) Proceedings under Article 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;
 - (c) the Confederation, if it considers it necessary in order to protect the reputation of Switzerland abroad and on behalf of those living abroad who have the right to commence proceedings.

Proceedings Against Employers

Art. 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 Article 9(1) and (2) may also be instituted against the employer.

Part 3. Procedural Provisions ➡

Place of Jurisdiction

Art. 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

Art. 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.

Reversal of the Burden of Proof

Art. 13a.—(1) The court may require the advertiser to produce evidence of the material accuracy of the factual information contained in advertising if, taking into account the legitimate interests of the advertiser and of any other party to the procedure, such requirement would appear justified.

(2) The court may hold the factual information to be incorrect if such evidence is not produced or is deemed inadequate.

Precautionary Measures

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

Preservation of Manufacturing and Trading Secrets

Art. 15.—(1) In disputes under Article 3(f), and in the case referred to in Article 13a, 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

Art. 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 Article 11 of the Metrology Law of June 9, 1977, shall also apply to measurable goods and services.

Announcement of Prices in Advertising

Art. 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

Art. 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

Art. 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 Article 42 of the Federal Law on the Federal Civil Procedure.

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

Execution

Art. 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 ➡

Arts. 21 and 22. [Repealed]

CHAPTER 4. CRIMINAL PROVISIONS ➡

Unfair Competition

Art. 23. Whoever intentionally commits an act of unfair competition within the meaning of Articles 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 Articles 9 and 10.

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

Art. 24.—(1) Whoever intentionally:

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

Art. 25. [Repealed]

Infringements Committed within an Undertaking

Art. 26. Articles 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

Art. 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 consumer 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

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

Referendum and Entry into Force

Art. 29.—(1) This Law shall be subject to optional referendum.

(2) The Federal Council shall determine the entry into force.

This text replaces the one previously published under the same code number.

1: Translation by the International Bureau of WIPO. ➡
