

**CHAPTER I
CIVIL LAW AND CRIMINAL LAW PROVISIONS**

**1. Unfair Trade Practices
Competitive Practices Contrary to Public Policy**

Section 1. Any party who in the course of business resorts to competitive practices which are contrary to public policy may be sued for a cease-and-desist order and payment of damages.

Misrepresentation

Section 2. (1) Any party who in the course of business for competitive purposes makes potentially deceptive representations with regard to business matters, including but not limited to representations about the condition, origin, manufacturing method or pricing of individual goods or services or of the entire range offered, about price lists, the manner of procurement or the source of supply of goods, about the award of quality certificates, about the occasion or purpose of the sale or about the quantity of stock, may be sued for an order to cease and desist from making such representations, and, in the event that such party knew or was bound to know that such representations were likely to be misleading, may be sued for payment of damages.

(2) Comparative advertising shall be permissible, provided that it does not violate this Para 1 nor Sections 1, 7 and 9 (1) to (3).

(3) Furthermore, any comparative advertising which directly or indirectly identifies a competitor, or goods or services offered by a competitor, shall be permissible with regard to comparison only if:–

1. in the case of goods with a designation of origin such advertising in all cases refers to goods of the same designation, or
2. the comparison refers to a special offer, and the closure date of the special offer and, if the special offer is not yet available, the commencement date of the period during which the special price or other special conditions will apply, are stated clearly and unequivocally.

(4) Any party who in the course of business violates Para 3 above may be sued for a cease-and-desist order and payment of damages.

(5) In a suit for a cease-and-desist order or payment for damages pursuant to Paras 1 to 4 and 6 above, the advertiser shall be required to furnish appropriate evidence for the correctness of the claims included in its advertising; however, in the case of deceptive advertising only if and when such requirement appears reasonable with due regard to the legitimate interests of the advertiser and other market participants with a view to the circumstances on a case-to-case basis.

(6) A claim for damages may be filed against persons whose trade it is to disseminate public announcements only if they knew that such representations were wrong, and against persons responsible solely under the Press Law only if it had been their duty to verify the announcement (Section 4 (2)).

Section 3. (1) If a potentially misleading representation is included in a notice published by a newspaper which notice is presented as a recommendation of another party's enterprise originating from the editorial staff, the publisher or owner of the newspaper may be sued for an order to cease and desist from publishing the notice.

(2) The right to sue (first sentence of Section 14) shall depend on the enterprise to which the recommending notice refers.

(Federal Law Gazette no. 74/1971, Article I Sub-para 2).

Section 4. (1) Any party who in the course of business for competitive purposes knowingly makes potentially misleading representations with regard to business matters (Section 2) in public advertisements or other notices designed to reach a large group of persons, shall be sentenced by the court to a fine of up to 180 per diem rates. (Federal Law Gazette no. 120/1980, Article I Sub-para 1).

(2) Where representations of the kind referred to in Para 1 above are published as announcements in publications, the persons responsible under the Press Law are not obligated to verify such representations provided that the announcements are clearly marked as being paid announcements.

(3) The offence shall be prosecuted only if so requested by a party entitled to file for a cease-and-desist order under the first sentence of Section 14. Proceedings shall take place in such court as is competent to rule on press affairs. (Federal Law Gazette no. 74/1971, Article I Sub-para 3)

(4) The fact that any action is covered by Para 1 above does not preclude application of other provisions of the criminal law. (Federal Law Gazette no. 74/1971, Article I Sub-para 3)

Section 5. (1) Upon application by the plaintiff, the court shall find in its sentence for removal and confiscation of the advertisement or notice containing the representations (Section 4 (1)), or if such removal is not possible, for confiscation of the object carrying the advertisement or notice provided that the sentenced offender or any other person involved in the legally punishable offence still has the disposal thereof.

(2) Where the physical elements of a legally punishable offence as set forth in Section 4 are present but no specific person can be prosecuted or sentenced, upon application of the party entitled to sue, the measures set forth in Para 1 above shall be provided for in the acquitting finding or in a separate suit. In the separate suit, the court which is competent to decide on the main issue, after enquiries have been conducted as required, shall decide upon oral proceedings by passing a sentence. The proceedings, the ruling and its appeal shall be governed *mutatis mutandis* by the regulations which would be applicable to the main issue.

(3) In either case, to the extent possible, persons who assert a claim to the objects referred to in Para 1 above shall be summoned to the hearing even when they are not charged. To the extent concerning the legal prerequisites of the measures set forth in Para 1 above, they shall be entitled to plead actual facts, make petitions and file any appeals permissible under the Code of Criminal Procedure. They may appeal for nullity of the sentence also in the event that the court has exceeded the authorities vested in it under Para 1 above. They may plead their case themselves or through an authorised representative and they may use a legal counsel selected from the persons registered in the list of defending counsels. They may not appeal against any sentence passed in their absence.

(4) In the event that the application for removal or confiscation is granted, all persons against whom the sentence is enforceable (Section 389 of the Code of Criminal Procedure) shall be sentenced to reimbursement of the special costs accruing from the application. If the application is dismissed, the applicant shall be sentenced to reimbursement of the said costs by court order.

Section 6. (1) Sections 2 through 4 shall not be applicable to the use of names which in business serve to describe certain goods or services without intending to indicate their origin.

(2) With regard to the issue of whether a name has such a meaning in business, the court shall obtain an expert opinion from the Federal Economic Chamber. In requesting the said opinion, the Federal Economic Chamber shall be granted a reasonable period for its preparation. If the period is exceeded, the trial shall be continued or concluded promptly. (Federal Law Gazette no. 74/1971, Article I Sub-para 4).

(3) Paras 1 and 2 above shall not be applicable to names which, under existing regulations, may be used only to indicate the origin.

Deceptive Packaging

Section 6a. Any party who for competitive purposes markets packaged goods where the disproportion between packaging size and filling quantity is not caused by the characteristics of the goods or by packaging engineering reasons, may be sued for a cease-and-desist order and, under the conditions of Para 1 of Section 2, for payment of damages.

(Federal Law Gazette no. 120/1980, Article I Sub-para 2)

Disparagement of an Enterprise

Section 7. (1) Any party who for competitive purposes alleges or disseminates facts about the enterprise of another person, about the person of the owner or manager of the enterprise or about the goods or services of another party which may be detrimental to the business of the enterprise or the credit standing of its owner shall be liable to pay damages to the injured party unless such facts are demonstrably true. The injured party may file a claim to cease and desist from alleging or disseminating the facts. The injured party may furthermore demand retraction and publication of the retraction.

(2) Where confidential information is concerned and the disclosing or receiving party has a legitimate interest in such information, any claim to cease and desist shall be permissible only when the facts have been alleged or disseminated contrary to the truth. Any claim for payment of damages may be asserted only when the disclosing party knew or was bound to know the untruthfulness of the facts.

Note:

With regard to effectiveness cf. Section 44 (3) as amended in Federal Law Gazette no. 55/2000

Geographical Indications

Section 8. (1) The protection of geographical indications within the meaning of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), Federal Law Gazette no. 1/1995, Annex 1C as amended in Federal Law Gazette no. 379/1995, shall be applied, unless their protection is otherwise provided for pursuant to separate regulations, to Sections 1, 2, 4 and 7, regardless of whether any actions referred to in such sections have been taken for competitive purposes.

(2) Para 1 above shall be also applied to geographical indications to identify the origin of services.

Misuse of Identifiers of an Enterprise

Section 9. (1) Any party who, in the course of business, uses any name, style or special designation of an enterprise or publication not subject to Section 80 of the Copyright Act (Urheberrechtsgesetz) in a manner that it is likely to be confused with a name, style or special designation rightfully used by another party, may be sued by the latter party to cease and desist from such action.

(2) The user shall be liable to compensate the injured party for any damage if the user knew or was bound to know that the abusive use was likely to cause confusion.

(3) The special designation of an enterprise shall also include any registered marks and such business marks and other facilities designed to distinguish the enterprise from other enterprises, including but not limited to the presentation of goods, their packaging or enveloping and of stationery, which are perceived as identifiers of the enterprise by the market participants involved.

(4) Supplementary to any claims accruing from any violation of identifier rights pursuant to Paras 1 and 3 above of this Federal Act, Section 150 (1) and (2) b (reasonable consideration and surrender of profit) as well as Sections 151 (rendering of accounts) and 152 (2) (entrepreneur's liability) of the 1970 Patent Law (Patentgesetz), Federal Law Gazette no. 259 as amended, shall apply *mutatis mutandis*. Section 1489 of the Civil Code shall apply to all monetary claims and the claim for accounting. The limitation period for any and all such claims shall also be interrupted by an action for the rendering of accounts.

(5) Section 58 of the 1970 Trademark Act (Markenschutzgesetz), Federal Law Gazette no. 260 as amended, shall apply *mutatis mutandis* with regard to the identifiers referred to in Paras 1 and 3 above.

Bonuses

Section 9a. (1) Any party who in the course of business for competitive purposes:

1. announces in public advertisements or other notices designed to reach a large group of persons that it grants free bonuses (premiums) to consumers in addition to goods or services, or that it offers, announces or grants free bonuses (premiums) to consumers in addition to periodic publications, or
2. offers, announces or grants free bonuses (premiums) to entrepreneurs in addition to goods or services,

may be sued for a cease-and-desist order and payment of damages. This shall also apply when the gratuitous nature of the bonus is disguised by inclusive prices for goods or services, by fictitious prices for a bonus or by other ways or means.

(2) Para 1 above shall not apply if the bonus consists of:

1. usual accessories to the goods or usual ancillary performances,
2. merchandise samples,
3. advertising articles which are marked as such by a highly visible and permanent inscription of the advertising enterprise,
4. low-value gifts (premiums) or small things of little value, provided that the latter are not designed for assemblies the value of which exceeds the sum of the values of the individual things given,
5. a certain amount of money, or amount of money to be calculated by a certain method, which money is not enclosed with the goods,
6. a certain quantity or fraction of the quantity of the same goods,
7. the granting of information or advice, or
8. the granting of an opportunity to participate in a competition (promotional game) where the value of each participating card, calculated from the total value of the prizes to be won as a proportion of the participating cards issued (tickets), does not exceed €0.36, and the overall value of the prizes to be won does not exceed €21,600; this shall be allowed solely in the form of a separate participating card.

Sub-para 8 shall not apply for bonuses added to periodic publications.

Section 9b. Cancelled in Federal Law Gazette 1994/422.

Sale Against the Presentation of Customer Cards, Vouchers and Similar Facility

Section 9c. Any party who:

1. issues customer cards, vouchers or similar facilities which entitle persons to repeatedly purchase goods, or
2. sells goods against presentation of such cards,

to persons who are consumers with regard to the goods involved, may be sued for a cease-and-desist order.

Bribing of Employees or Agents

Section 10. (1) Any party who in the course of business for competitive purposes offers, promises or gives presents or other advantages to an employee or agent of an enterprise in order to receive preferential treatment with regard to the supply of goods or services for such party or for a third party by the unfair conduct of such employee or agent shall be sentenced by the court to a term of imprisonment of up to three months or a fine of up to 180 per diem rates.

(Federal Law Gazette no. 120/1980, Article I Sub-para 4)

(2) The same punishment shall be meted out to the employee or agent of an enterprise who demands, obtains the promise of or accepts presents or other advantages in the course of business with a view to granting, by unfair conduct, preferential treatment vis-à-vis competitors to another party with regard to the supply of goods or services.

(3) Paras 1 and 2 shall not be applicable when the offence is punishable by the same or more severe punishment under other provisions.

(Federal Law Gazette no. 120/1980, Article I Sub-para 5)

(4) The offence shall be prosecuted only if so requested by a party entitled to assert a claim for a cease-and-desist order under the first sentence of Section 14. (Federal Law Gazette no. 74/1971, Article I Sub-para 5)

Disclosure of Business or Trade Secrets. Misuse of Entrusted Documents

Section 11. (1) Any party who, as the employee of an enterprise, without authorisation discloses any business or trade secret which because of his/her employment has been entrusted or is accessible to such party to another party for competitive purposes shall be sentenced by the court to a term of imprisonment of up to three months or a fine of up to 180 per diem rates.

(Federal Law Gazette no. 120/1980, Article I Sub-para 6)

(2) The same punishment shall be meted out to a party who, without authorisation and for competitive purposes uses or discloses to another party any business or trade secret made known to such party by information as set forth in Para 1 above or by an act of his/her own which is illegal or contrary to public policy.

(3) The offence shall be prosecuted only upon request of the injured party.

Section 12. (1) Any party who, without authorisation and for competitive purposes, uses or discloses to another party any technical documents or requirements entrusted to him/her in the course of business shall be sentenced by the court to a term of imprisonment of up to three months or a fine of up to 180 per diem rates. (Federal Law Gazette no. 120/1980, Article I Sub-para 7)

(2) Para 1 shall not be applicable when the documents or requirements have been entrusted by the owner of an enterprise to his/her employee.

(3) The offence shall be prosecuted only upon request of the injured party.

Claims Under Civil Law in the Cases Covered in Sections 10 through 12

Section 13. Any party who violates any of Sections 10 through 12 may furthermore be sued for a cease-and-desist order and payment of damages.

2. General Provisions Claim for a Cease-and-desist Order

Section 14. In the cases set forth in Sections 1, 2, 3, 6a, 9a, 9c and 10, a suit for a cease-and-desist order may be filed by any entrepreneur who manufactures or markets goods or services of the same or a similar kind (competitor) or by associations to promote the economic interests of entrepreneurs, provided that such associations represent interests which are affected by the offence. In the cases set forth in Sections 1, 2, 6a, 9a and 9c, a suit for a cease-and-desist order may also be filed by the Federal Chamber of Labour, the Federal Economic Chamber, the Presidential Conference of the Austrian Chambers of Agriculture or by the Austrian Trade Union Federation. In the cases of deceptive advertising pursuant to Sections 1 and 2 (1), a suit for a cease-and-desist order may also be filed by the Verein für Konsumenteninformation.

(2) If an offence involving deceptive advertising pursuant to Section 1 or 2 (1) originates in Austria, a suit for a cease-and-desist order may also be filed by any of the bodies and organisations of another European Union Member State published in the Official Journal of the European Communities by the Commission under Article 4 (3) of Directive 98/27/EC on injunctions for the protection of consumers' interests, OJ no. L 166 of 11 June 1988, p. 51, provided that:—

1. the interests protected by such body in such Member State are affected; and
2. the purpose of the body as stated in the publication justifies such suit.

(3) Evidence for publication pursuant to Para 2 above shall be furnished upon filing of the suit.

Section 15. The claim for a cease-and-desist order shall also include the right to demand from the liable party elimination of a condition which is contrary to the law, to the extent that the liable party has the disposition thereof.

Scope of Liability for Damages

Section 16. (1) Any party who, under this Act, is entitled to assert a claim for payment of damages may also demand damages for loss of profits.

(2) The court may furthermore award a reasonable amount of money in compensation for injuries suffered or other personal disadvantages if the special circumstances of a case justify such award.

Liability of Several Persons Responsible for a Damage

Section 17. In the event that several persons are responsible for a damage to be compensated under this Act, such persons shall be jointly and severally liable.

Provisions Concerning Liability for Actions Performed at the Place of Business of an Enterprise

Section 18. The owner of an enterprise may be sued for a cease-and-desist order for an action which is illegal under Sections 1, 2, 6a, 7, 9, 9a, 9b¹, 9c, 10 (1), 11 (2) and 12 when the action was performed by another person at the place of business of the owner's enterprise. The owner shall in such cases be liable for damages if the action was known or bound to be known to him/her.

Section 19. (1) The sentences provided for actions punishable under Sections 4, 10 (1), 11 (2), 12 shall be imposed on the owner of an enterprise also if he/she has wilfully failed to prevent such action being performed at the place of business of his/her enterprise by another person. (Federal Law Gazette no. 120/1989, Article I Sub-para 10)

(2) If the owner of the enterprise is a company, cooperative society, association or another legal entity which is not a physical person, Para 1 above shall be applicable to such bodies of the enterprise as have been at fault for such omission.

(3) The penal provisions referred to in Para 1 above shall not be applicable to employees who have performed the action by order of their employer provided that due to their economic dependence they could not reasonably be expected to refuse performing the action.

Time Limitations of Claims Under Civil Law

Section 20. (1) Any claim for a cease-and-desist order under this Act shall be time-barred six months after the claimant has been informed of the violation and the person of the offender; and three years after the violation irrespective thereof.

(2) For as long as an illegal state continues, the claim for its removal (Section 15) and the claim to cease and desist from the violation shall be maintained.

(Federal Law Gazette no. 120/1980, Article I Sub-para 11)

Discontinuance of Illegal Notices in Publications

Section 21. (1) If a business communication or notice, whereof an enforceable writ of execution to cease and desist within the meaning of Sections 2, 7, 9, 9a and 9b² has been obtained, is published in a publication with regard to which the offender has no right of disposition, the court which is competent to grant the writ of execution may, upon the plaintiff's application, order (Section 355 of the Execution Law (Exekutionsordnung)) the owner of the enterprise concerned with printing or distribution of the publication (publisher or owner of the newspaper) to discontinue further

¹ Cancellation of this provision has not (yet) been considered in this text version.

² Cancellation of this provision has not (yet) been considered in this text version.

publication of the communication or notice in the numbers, issues or circulations of the publication published after service of the order or, if the publication contains only the said communication or notice, to discontinue its further distribution.

(2) This measure may also be ordered as a temporary injunction within the meaning of Section 382 of the Execution Law, subject to the provisions of the Execution Law, upon application by the endangered party. Section 24 shall apply.

(3) Any claim for payment of damages due to the applicant for violation of the order (Section 355 of the Execution Law) shall be governed by Section 16.

Section 22. (Cancelled including its heading; Federal Law Gazette no. 135/1983, Article XVII Section 3 Sub-para 3; Article V Para 2 of the promulgation)

Section 23. (Cancelled including its heading; Federal Law Gazette no. 135/1983, Article XVII Section 3 Sub-para 3; Article V Para 2 of the promulgation)

Temporary Injunctions

Section 24. Temporary injunctions may be issued in order to secure the claims to cease and desist as set forth in this Act even if the preconditions referred to in Section 381 of the Execution Law do not apply.

(Federal Law Gazette no. 135/1983, Article XVII Section 3 Sub-para 3)

Publication of Sentence

Section 25. (1) In the cases of Sections 4 and 10, publication of the sentence may be ordered at the expense of the sentenced party.

(2) In the cases of Sections 4 and 10, the court may, upon application by the acquitted party, authorise such party to have the acquittal published at the expense of the plaintiff in the private prosecution within a specified time limit. (Federal Law Gazette no. 120/1980, Article I Sub-para 12)

(3) Where, except in the cases of Sections 11 and 12, the plaintiff sues for a cease-and-desist order, the court shall, upon application, authorise the prevailing party, if such party has a legitimate interest in it, to have the sentence published at the opposing party's expense within a specified time limit. (Federal Law Gazette no. 120/1980, Article I Sub-para 12)

(4) Publication shall comprise the wording of the sentence. The manner of publication shall be defined in the sentence. (Federal Law Gazette no. 120/1980, Article I Sub-para 12)

(5) In civil proceedings, the court may, upon application by the prevailing party, define a text of the publication which varies from or supplements the scope or wording of the sentence. Such application shall be filed not later than four weeks after the sentence has become final. If such application is not filed until after the end of the hearing, it shall be decided by the court of first instance by an order after the sentence has become final. (Federal Law Gazette no. 120/1980, Article I Sub-para 12)

(6) Upon application of the prevailing party, the court of first instance shall specify the costs of publication and shall order the opposing party to reimburse them. (Federal Law Gazette no. 120/1980, Article I Sub-para 12)

(7) Publication based on a final sentence or another enforceable writ of execution shall be made by the media entrepreneur without any unnecessary delay. (Federal Law Gazette no. 120/1980, Article I Sub-para 12)

General Public to Be Excluded

Section 26. Upon application, the general public may be excluded from the trial of a charge or hearing of a claim under civil law based on this Act if a public hearing would endanger a business or trade secret.

CHAPTER II PROVISIONS UNDER ADMINISTRATIVE LAW

1. Prohibition of Entering into Contracts Under the Snowball Sales System and of Game-of-chance-like Forms of Marketing Goods

Section 27. (1) It shall be prohibited for business operations to enter into contracts under the so-called snowball (pyramid) sales system.

(2) The term shall be understood to mean arrangements whereby the customer is promised delivery of a good or performance of a service against a required payment on condition that such customer, by means of the orders or vouchers handed over to the customer, finds for the enterprise of the promising party or of another party other purchasers who enter into the same contractual relationship with such enterprise.

(3) Any contract of this kind made between the business operator and the customer or between the customer and a third party shall be null and void.

(4) The customer's performance may be reclaimed against renouncing delivery of the good or rendering of the service or against return of the good received.

Section 28. It shall be prohibited to market goods or services in such a manner that delivery of the good or rendering of the service is linked to the result of a lottery or another chance event.

Section 28a. It shall be prohibited to advertise, in the scope of business and for the purpose of competition, for registration in directories, such as the yellow pages, telephone directory or similar lists, by way of a payment form, money order form, invoice, offer of correction or similar manner or to offer such registrations directly without unequivocally and also by clear graphical means pointing out that such advertisement is solely an offer for a contract.

Section 29. (1) It shall be prohibited to invite any party to enter into a contract prohibited in Sections 27 and 28 in the course of business by sending invitations, vouchers, etc. or by any written notice whatsoever designed to reach a large group of persons.

(2) Any party who violates this prohibition or the prohibitions set forth in Sections 27, 28 and 28a shall be deemed to commit an administrative offence and shall be punished by a fine of up to €2,900 imposed by the District Administrative Authority.

2. Prohibition of Reference to Bankrupt's Assets When Selling Goods

Section 30. (1) If any public advertisement or notice designed to reach a large group of persons announces the sale of goods which stem from a bankrupt's assets but are no longer part of such assets, any reference to the origin of the goods from a bankrupt's assets shall be prohibited.

(2) Any party who violates this prohibition shall be deemed to commit an administrative offence and shall be punished by a fine of up to €2,900 imposed by the District Administrative Authority.

3. Arrogation of Awards and Privileges

Section 31. (1) It shall be prohibited when operating an enterprise to arrogate for the owner or enterprise an award which is not due to them, or to wrongfully attribute the holding of a qualification, authorisation or permit approved or awarded by a government authority, or to use an award or designation which makes reference to any of the above privileges so that such action is likely to deceive about the occasion or reason for conferral of the award or the scope of the privilege.

(2) Regulations may be passed by an ordinance which specify which awards and which designations concerning the privileges set forth in Para 1 above may be used in operating an enterprise and in which manner the permitted use shall be admissible.

(3) Any person who violates the prohibition set forth in Para 1 above and the regulations of ordinances passed under Para 2 above shall be deemed to commit an administrative offence and shall be punished by a fine of up to €2,900 imposed by the District Administrative Authority.

4. Regulations Concerning Marking

Section 32. (1) An ordinance may be issued to order that certain goods may be commercially offered for sale or otherwise marketed:–

1. only in stipulated quantities, packaging or on condition that a certain ratio be observed between the packaging size and the filling quantity,
2. only with the marking of:–
 - a) the producer's or dealer's name (designation) and principal place of business,
 - b) the quantity (weight, dimensions, number of pieces),
 - c) the characteristics (including data essential for their use),
 - d) data essential for their proper use and care, and
 - e) the geographical origin.

(2) An ordinance may be issued to order that certain services may be commercially offered or rendered:–

1. only in stipulated unit quantities (including but not limited to unit work, unit dimensions or unit times),
2. only with the marking of:–
 - a) the name (designation) and principal place of business of the party offering or rendering the service,
 - b) the quantity (including but not limited to work, dimension, time),
 - c) the characteristics (including data essential for the recipient of the service), and
 - d) the price.

Item 2 d) shall not apply to services offered subject to the Industrial Code of 1973 as amended.

(3) The ordinances issued under Paras 1 or 2 above may define how the characteristics are to be determined; in this, the applicable state of the art shall be taken into account. The ordinances may also stipulate how, where (in the case of goods preferably on the said goods) and when the mandated markings are to be applied and define their content as well as any deviations or exceptions permitted because of the characteristics of the goods or services or because of special conditions, and monitoring measures suitable to ensure observance of the ordinance. Depending on the kind of goods or services, the ordinances may refer to all or individual marking features. Ordinances under Para 1 above may furthermore be restricted to goods designed to be taken from their shelves by customers. Regulations to mark goods may also include the provision that the manufacturer or importer is solely responsible for their observance.

(4) Ordinances under Para 1 above may specifically define the relevant permissible limits for goods the weight or size of which normally shrinks during storage due to their special nature.

(5) Specific designations for goods and services may be stipulated, permitted or prohibited by ordinance. Such an ordinance shall be subject to the above paragraphs to the extent applicable.

(6) Paras 1, 3 and 5 above shall be applicable to foodstuff, products designed for human consumption and food additives only to such extent as it is possible to stipulate by ordinance that such goods be offered for sale or otherwise marketed only in prescribed unit quantities or only by the marking of the price in terms of specified unit weights or unit quantities.

Section 33. (1) Any person who violates the regulations of an ordinance passed under Section 32 shall be deemed to commit an administrative offence and shall be punished by a fine of up to €2,900 imposed by the District Administrative Authority.

(2) Any punishment for violation of a Marking Ordinance passed under Section 32 shall find for application of the omitted proper marking on the objects which are at the offender's disposal, if necessary after removing an existing improper or illegal marking or the envelope or packaging carrying the objects or, if neither is possible, for confiscation of the said objects.

(3) If an ordinance passed under Para 5 of Section 32 has been violated, in the event of punishment removal of the improper or illegal designation or application of the omitted proper designation of the objects which are at the offender's disposal or, if this is not possible, their confiscation shall be ordered.

(4) In order to secure the measures, which shall be executed at the convicted offender's expense, the District Administrative Authority may order, already in the course of the proceedings, confiscation of those objects which, due to their characteristics not meeting the stipulations of the ordinance, have caused the offence to be committed.

(5) If prosecution or sentencing of a specific person is not permissible or not feasible, the orders permitted under Paras 2 through 4 above may be issued independently for the objects designed for business transactions. The order, which shall be notified to all parties involved, may be appealed against by any of the parties involved.

(6) An appeal lodged against confiscation (Para 4 or 5 above) shall not suspend the effect of the order.

4a. Announcement of Sales

Section 33a. (1) Announcement of a sale within the meaning of this Federal Act shall mean all public advertisements or notices designed to reach a large group of persons which allow drawing the conclusion that a party intends to clear in the form of a retail sale large quantities of goods, and which are likely to make the impression that the businessman is forced by special circumstances to sell quickly and therefore offers the goods at extraordinarily advantageous conditions or prices. Any advertisement or notice using the German equivalents of "sale", "liquidation sale", "clearance sale", "quick sale", "sale at bargain prices", "stock clearance" or wording to such effect shall also be deemed to be an announcement of a sale.

(2) The provisions of Sections 33a through 33e, however, shall not apply to advertisements and notices concerning end-of-season sales, seasonal clearance sales, stocktaking sales or similar sales and special sales customary in the relevant line of business and at given seasons (e.g. "white sale", "coat bargain week").

Section 33b. Announcement of a sale shall be permissible only when it is authorised by the District Administrative Authority which is competent for the location of the sale. The application for a permit shall be filed in writing and shall include the following information:

1. the goods to be sold, broken down by quantity, characteristics and selling value;
2. exact location of the sale;
3. the period in which the sale is to be held;
4. the reasons why the sale is to be held, such as death of the owner of the business, discontinuance of the business or of a certain category of goods, relocation of the business, acts of God, etc.;
5. where the trade is practised by a lessee, the lessor's consent to the announcement of a sale when approval of the application will result in termination of the trade licence under Para 1 of Section 33e, or partial termination of the trade licence under Para 3 of Section 33e.

Section 33c. (1) Before deciding on the application, the District Administrative Authority shall request the Provincial Economic Chamber competent for the location of the sale to furnish an expert opinion within two weeks.

(2) The District Administrative Authority shall decide on the application within one month of receiving it.

(3) A permit shall be refused if no reasons within the meaning of Sub-para 4 of Section 33b have been given or if the sale is not to be announced for a continuous period. A permit shall also be refused if the sale is to be held at some time between the penultimate week before Easter and Whitsuntide or between November 15 and Christmas or for more than six months, except in the cases of the businessman's death, acts of God or other cases which merit similar consideration. If the business has

been established for less than three years, a permit shall be given only in the case of the businessman's death, acts of God or other cases which merit similar consideration.

(4) The permit shall in its award include the following information:

1. the goods to be sold, broken down by quantity, characteristics and selling value;
2. the exact location of the sale;
3. the period during which the sale is to be held;
4. the reason for which the sale is to be held.

Section 33d. (1) Any announcement of a sale shall include the reason for the accelerated sale, the period during which the sale is to be held, and a general designation of the goods to be sold. This information must correspond to the permit.

(2) No further announcement of a sale may be made upon expiry of the sales period as stated in the permit.

(3) During the sales period stated in the permit, sale of the goods designated in the announcement shall be permitted only in the quantity identified in the permit. No further supply of goods of these kinds shall be allowed.

(4) If the District Administrative Authority has found any violation of Para 3 above it shall immediately order the businessman to cease and desist from any further announcement, notwithstanding the punishment.

Section 33e. (1) If the permit for an announcement was granted because of complete discontinuance of the business, the trade licence and the right to exercise the trade underlying the sales activity in the place of business shall terminate upon expiry of the sales period stated in the permit. For the next three years, the owner of the trade licence and, in the event that the trade is leased, the lessee shall not be permitted to open or lease a similar operation in the municipality of the former location or to invest in such an operation in a way which may yield a profit to them. If the holder of the permit is a Personengesellschaft des Handelsrechtes (partnership under commercial law) or a registered Erwerbsgesellschaft (partnership of professionals), the prohibition shall also apply to the personally liable partners. If the holder of the permit is a legal entity, the prohibition shall also apply to persons who exercise a decisive influence on the operation of the business of the legal entity. For the said period, they shall not become personally liable partners or limited partners of a Personengesellschaft des Handelsrechtes or a registered Erwerbsgesellschaft which exercises or has a lessee exercise a similar trade in the municipality of the former location.

(2) The District Administrative Authority may approve exceptions from the prohibition of Para 1 above in the event of a change, not caused by the intervener, in the circumstances which were relevant for discontinuance of the business or if the failure to grant an exception would cause serious economic disadvantages to the intervener. Before a decision is reached on such an application, the Provincial Economic Chamber competent for the location shall be requested to furnish an expert opinion within four weeks.

(3) Paras 1 and 2 above shall apply *mutatis mutandis* if the permit has been granted due to the discontinuance of a certain category of goods.

(4) Paras 1 through 3 above shall also apply *mutatis mutandis* if a party announces a sale without having first obtained a permit. The respective trade licence in this case shall terminate with the actual termination of the announcement of the sale; the District Administrative Authority shall determine termination by means of an order.

Section 33f. Any party who violates the provisions of Sections 33b, Paras 1 through 3 of 33d and Paras 1, 3 and 4 of 33e shall be deemed to commit an administrative offence and shall be punished by a fine of up to €2,900 imposed by the District Administrative Authority. Violation of Para 3 of Section 33d shall carry the additional punishment of confiscation of the goods supplied subsequently.

5. General Provisions to Sections 27 through 33f

Section 34. (1) The punishments threatened to offenders in this Chapter shall also be imposed on any party who instigates another party to commit the offence or who aids and abets another party in committing the offence. Section 19 shall be applicable accordingly.

(2) No administrative offence shall have been committed if any action referred to in Para 2 of Section 29, Para 2 of Section 30, Para 3 of Section 31, Para 1 of Section 33 and Section 33f is an element of a punishable offence which falls within the competence of the courts.

(3) Any party who violates the regulations of this Chapter may be sued for a cease-and-desist order and, if guilty, for payment of damages, notwithstanding criminal prosecution. Any such claim may be asserted only by due process of law. Sections 14 through 18 and 20 through 26 shall be applied accordingly.

6. Retention of Goods by Customs Offices

Section 35. Customs offices may, subject to more detailed regulations to be issued by an ordinance, retain goods which do not meet an ordinance passed under Section 32 upon their import or export until receiving any dispositional instructions therefor from the District Administrative Authority. (Federal Law Gazette no. 74/1971, Article I Sub-para 9)

Section 36. (1) Customs offices may, subject to more detailed regulations to be issued by an ordinance, retain goods which on themselves or on their packaging or envelope carry designations or inscriptions which constitute wrongful declarations of the geographical origin or characteristics of the goods, even if the goods are not subject to any marking rule issued under Section 32, upon their import or export for the purpose of removing the wrongful designation or inscription until receiving any dispositional instructions therefor from the District Administrative Authority. (Federal Law Gazette no. 74/1971, Article I Sub-para 9)

(2) The removal of the designation or inscription shall be ordered and executed by the District Administration Authority competent for the district in which the goods have been retained. Paras 3 through 6 of Section 33 shall be applicable accordingly. More detailed regulations concerning the procedure to be observed by the District Administration Authority shall be passed by an ordinance. (Federal Law Gazette no. 74/1971, Article I Sub-para 9)

Section 37. (1) The customs office shall allow the party having the disposal of the goods an opportunity to repair the fault which is the cause for the retention under Sections 35 and 36. (Federal Law Gazette no. 120/1980, Article I Sub-para 16)

(2) If the fault is repaired in good time the goods shall be released. If not, the District Administration Authority competent for the district in which the goods have been retained shall be promptly notified of the retention and the facts of the case. (Federal Law Gazette no. 120/1980, Article I Sub-para 16)

(3) The District Administration Authority shall promptly inform the customs office which has retained the goods of any dispositions made with regard to the notification. (Federal Law Gazette no. 74/1971, Article I Sub-para 9; Federal Law Gazette no. 120/1980, Article I Sub-para 17)

(4) These regulations shall be without prejudice to application of the provisions concerning punishment for customs offences. (Federal Law Gazette no. 120/1980, Article I Sub-para 17)

CHAPTER III JOINT PROVISIONS AND FINAL PROVISIONS

Application of the Act to Farming and Forestry Produce and Services

Section 38. Goods within the meaning of this Act shall also include farming and forestry produce, and services and economic interests shall also include farming and forestry services and interests.

Illustrations and Other Activities

Section 39. (1) Allegations and representations within the meaning of this Act shall also include illustrations and other activities which are designed and suitable to substitute verbal representations.

(2) Any addition, omission, restriction, change or other activity of such kind or form as to escape observation or notice if no special attention is observed shall not preclude application of this Act in the event of any action prohibited under this Act.

Protection of Foreigners

Section 40. Nationals of foreign countries who have no principal place of business in Austria shall, unless international agreements are in existence, be entitled to the protection awarded by this Act only to such extent as, according to a notice in the Federal Law Gazette, the state in which they have their principal place of business awards similar protection to Austrian citizens. (Federal Law Gazette no. 74/1971, Article I Sub-para 12)

Right of Retaliation

Section 41. If a foreign country treats goods originating from the territory in which this Act is applicable less favourably upon their import or transit than goods of other countries, the Federal Government may pass an ordinance to apply the right of retaliation.

Transitional Provisions

Section 42. (1) With regard to any suits filed under Section 9 prior to the entry into force of the Federal Act of Federal Law Gazette I no. 111/1999, this Federal Act shall continue to be applied in the version effective prior to the entry into force of the Federal Act of Federal Law Gazette I no. 111/1999.

(2) The five-year period regulated, in connection with Section 9 (5), in Section 58 of the 1970 Brand Protection Act (Markenschutzgesetz) of Federal Law Gazette no. 260 as amended shall, with regard to any claims existing against the owner of a brand registered prior to the entry into force of this Federal Act of Federal Law Gazette I no. 111/1999 or labelling right acquired prior to this date, commence upon the entry into force of this Federal Act of Federal Law Gazette I no. 111/1999. Any limitation shall be unaffected by this provision.

Section 43. (1) This Act shall be executed by the Federal Ministers of Economic Affairs, of Finances, of Agriculture and Forestry and of Justice; with regard to the passage of ordinances under Section 32, to the extent that foodstuffs, products designed for human consumption and food additives are concerned, in agreement with the Federal Chancellor.

(2) Passage of any ordinance under the second Chapter of this Act shall be preceded by a hearing of such bodies which are legally charged with representing the relevant interests.

Entry into Force

Section 44. (1) Sections 2 (1) through 6, 28a, 29 (2) and 43 (1) as amended in the Federal Act of Federal Law Gazette I no. 1985/1999 shall enter into force on 1 April 2000.

(2) Section 14 as amended in the Federal Act of Federal Law Gazette I no. 185/1999 shall enter into force on 1 January 2001.

(3) Section 8 as amended in the Federal Act of Federal Law Gazette I no. 111/1999 shall retroactively enter into force on 1 January 1996, provided that in this respect Section 4 shall not be applied until the Federal Act of Federal Law Gazette I no. 55/2000 has entered into force.

(4) Section 32 (1) as amended in the Federal Act of Federal Law Gazette I no. 55/2000 shall enter into force on 1 September 2000.

(5) Sections 9a (2) 8, 29 (2), 30 (2), 31 (3), 33 (1) and 33f as amended in the Federal Act of Federal Law Gazette I no. 136/2001 shall enter into force on 1 January 2002.

**Article {sic} IV
Implementation**

(Note: ad Federal Law Gazette no. 448/1984)

This Federal Act shall implement into national law Directive 97/7/EC on the protection of consumers in respect of distance contracts, OJ L 144 of 4 June 1997, p. 19; Directive 97/55/EC amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, OJ L 290 of 23 October 1997, p. 18, Directive 98/27/EC on injunctions for the protection of consumers' interests, OJ L 166 of 11 June 1998, p. 51; and Directive 99/34/EC amending Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.