

LAW No. 11 of 29 January 1991
on fighting against unfair competition
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Text in force beginning with 10 December 2003
Text translated by COMPANIA DE INFORMATICA NEAMȚ for the legislative software
LEX EXPERT

It must be specified that the only text which shall produce legal effects is the text in the Romanian language.

The text was updated by the legislative software LEX EXPERT on the basis of the modifying statutory instruments, published in the Official Gazette of Romania, Part I, until 10 December 2003:

- the Law No. 21/1996*, as subsequently amended;
- the Law No. 298/2001;
- the Government Emergency Ordinance No. 121/2003, as subsequently amended.

The statutory instruments marked with an asterisk (*) are currently amended, repealed or rejected and the amendments brought by these statutory instruments on the Law No. 11/1991 are no longer of present interest.

NOTE:

In the updated version all amounts previously expressed in old ROL have been conveyed into new ROL (RON).

ART. 1

Traders shall pursue their activity in good faith and in compliance with fair practices, by respecting the consumers' interests and the requirements of fair competition.

ART. 1¹

For the purposes of this law:

- a) the unfair use of the commercial secrets of a trader through practices of the nature of unilateral non-performance of contract or use of an unfair practice, breach of trust, instigation to commit offences and purchase of commercial secrets through third parties which are aware that such purchase involves such practices, likely to affect the position of competing traders on the market shall be considered contrary to the commercial practices;
- b) the information that, in full or in the precise connection of its elements, is not of common knowledge or is not easily accessible to the persons pertaining to the environment usually dealing with this sort of information and to which its secret nature confers a commercial value, and the person holding the information has taken reasonable measures, having regard to the circumstances, to be preserved as secret shall be a commercial secret; the protection of the commercial secret shall operate as long as the previously stated conditions are met;
- c) the aggregate movables and immovables, both tangible and intangible (marks, signs, emblems, patents, good custom) used by a trader in order to pursue his activity shall be considered goodwill.

ART. 2

Any act or fact contrary to fair practices in the industrial or commercial activities involving the sale of goods, performance of works, as well as provision of services shall be deemed to constitute acts of unfair competition under the present law.

ART. 3

Infringement of the obligation stipulated in Article 1 shall entail the civil, contravening or criminal liability under the present law.

ART. 4

The following acts shall be deemed to constitute contraventions, unless they have been committed under such circumstances as to be considered offences according to criminal law:

- a) offering services by a trader's exclusive employee to a competitor or acceptance of such an offer;
- b) disclosure, purchase or use of a commercial secret by a trader or the trader's employee, without the legal consent of the legitimate holder of such commercial secret and in a manner contrary to fair commercial practices;
- c) conclusion of contracts by which a trader undertakes to deliver goods or provide services under favourable conditions, provided that the client supplies further buyers with whom the trader would conclude similar contracts;
- d) public communication or dissemination by a trader of allegations regarding his enterprise or his business, intended to mislead and put him in a favourable position to the detriment of his competitors;
- e) communication, even the strictly secret one, or dissemination by a trader of false allegations regarding a competitor or his goods/services, allegations which are liable to prejudice the normal course of the rival's business.
- f) offering, promising or giving, gifts or other advantages - either directly or indirectly - to a trader's employees or representatives so that by unfair conduct one may get information about the trader's industrial processes, get know of, or use the trader's clients, or obtain any other advantages for oneself or for another person to the detriment of a competitor;
- g) attracting a trader's clients availing oneself of the relationships established with such clients within the duties previously performed for the trader in question;
- h) dismissing or attracting a trader's employees in order to set up a competing company intended to attract the rival's clients or hiring a trader's employees for the purpose of disorganizing that trader's business.

The contraventions stipulated under letters a) - c) shall be sanctioned by fines from ROL 1.000 to 10.000, those under letters d) - h) by fines from ROL 1.500 to 15.000. The value of fines shall be updated by Government Decision, according to the rate of inflation.

The sanctions may be applied to legal persons as well.

Contraventions shall be ascertained, upon receipt of the injured party's notice, by chambers of commerce and industry or ex officio, by the control personnel specially authorised for this purpose by the Competition Office, which imposes the fine as well.

In the cases of unfair competition significantly affecting the competition on the relevant market affected by the Competition Office shall inform the Competition Council to solve the case in compliance with the provisions of the Competition Law No. 21/1996.

The Competition Office shall send to the territorial chambers of commerce and industry the decision acts adopted for the cases of unfair competition which constitute contraventions, according to the provisions of this law.

The provisions of paragraph (1) shall be supplemented by the provisions of the Law No. 32/1968*) on establishing and sanctioning contraventions, as subsequently amended and supplemented, except for Articles 13 and 25 - 27. The prescriptive term shall be 3 years.

*) Starting with 25 August 2001, the reference to the Law No. 32/1968 shall be deemed as made to the correspondent provisions of the Government Ordinance No. 2/2001 on the legal regime of contraventions, in compliance with the provisions of Article 48 of the same statutory instrument.

ART. 5

The following shall be deemed to constitute offences and are punishable by imprisonment from 6 months to 2 years or by fines from ROL 2.500 to 5.000:

- a) making use of a sign, invention, mark, geographical indication, a design or industrial pattern, certain topographic representations of an integrated circuit, an emblem or packaging likely to cause confusion with those legally employed by another trader;

- b) putting into circulation of counterfeited and/or pirated merchandise, whose trading prejudices the holder of the trade mark and misleads the consumer on the quality of product/service;
- c) use for commercial purposes of the results of certain experiments whose obtaining required a considerable effort or of other secret information related thereto, transmitted to the competent authorities for the purpose of obtaining the authorisations for selling pharmaceutical products and chemical products meant for agricultural purposes, which contain new chemical products;
- d) disclosure of certain information provided in letter c), except for the situations where the disclosure of such information is necessary to protect the public or except where measures were taken to ensure protection of information against the unfair commercial exploitation, if such information come from the competent authorities;
- e) disclosure, purchase and use of the commercial secret by third parties, without the consent of the legitimate holder, as a result of a commercial or industrial espionage action;
- f) disclosure or use of commercial secrets by persons pertaining to public authorities, as well as by persons empowered by the legitimate holders of such secrets to represent them before public authorities;
- g) manufacturing in any manner, importation, exportation, storage, offering for sale or selling goods/services bearing deceptive indications regarding patents of inventions, marks, geographical indications, industrial designs and patterns, topographical representations of integrated circuits, other types of industrial property such as appearance of the sign, the design of windows or the design of clothing of personnel, advertising means or other similar, origin and characteristics of the goods, as well as the name of the producer or trader, for the purpose of misleading other traders and consumers.

Any mention liable to induce people to believe that the goods have been manufactured in a certain locality, on a certain territory or in a certain country shall be deemed deceptive indications of source. It shall not be deemed to constitute a deceptive indication of source on goods the denomination of a product that has become a generic name and only indicates its nature within the trading business, except where the denomination is accompanied by a mention which could induce people to believe it has that origin.

ART. 6

The trader who has committed an act of unfair competition shall be obliged to discontinue committing the wrong or to remove it and, as the case may be, to return the confidential documents unlawfully appropriated from their legitimate owner and, as applicable, to pay damages for the prejudice caused, according to the legislation in force.

ART. 7

Legal actions arising in connection with unfair competition acts shall fall under the competence of the local court where the act has been committed or under whose jurisdiction comes the place of business of the respondent or defendant; in the absence of a place of business the competence shall belong to the court under whose jurisdiction comes the domicile of the respondent or defendant.

At the request of the legitimate holder of the commercial secret the court may order measures of prohibition of industrial and/or commercial exploitation of products resulted from the unlawful appropriation of the commercial secret or destruction of such products. The interdiction shall cease when the protected information is of public knowledge.

ART. 8

In the cases provided for in Article 5 the criminal action shall be initiated upon receipt of the injured party's complaint or upon notification by the territorial Chamber of Commerce and Industry or by another professional organisation or upon notification by the persons authorised by the Competition Office.

For the application of this law the Competition Office shall have the investigation powers provided in Article 39 - 46 of the Competition Law No. 21/1996.

ART. 9

Should any of the facts provided for in Articles 4 or 5 cause patrimonial or moral damage, the injured party shall be entitled to address to the competent court an appropriate civil action.

If the facts stipulated by this law have been committed by an employee in the course of exercising his job duties the trader shall be liable jointly and severally with the employee for the damage caused, except for the cases where he is able to prove that, in accordance with practices, he was not in a position to prevent the perpetration of the fact.

The persons who caused the prejudice together shall be jointly and severally held responsible for the unfair competition acts or facts committed.

In order to take measures that cannot be delayed the provisions of Article 581 and 582 in the Code of civil procedure may be applied.

ART. 10

Through the decision on the merits of the case the court may order the goods, put under distraint, be sold after the deceptive indications have been destroyed.

Part of the amount resulted from the sale shall first cover the damages awarded.

ART. 11

Concurrently with the pronouncement of the conviction or the obligation to discontinue committing the wrong or to carry out remedies for damage, the court may order the decision to be published in the media at the expense of the perpetrator.

ART. 12

The right to start an action as provided for in Article 9 shall be lost by prescription within one year as of the date on which the injured party learnt or should have learnt of the damage and of the person who caused it, but no later than three years as of the date on which the fact was committed.

ART. 13

The provisions of the present law shall be completed by the provisions of the Code of civil procedure or, as the case may be, the Code of criminal procedure.

ART. 14

The provisions of the present law shall also apply to foreign natural or legal persons who commit acts of unfair competition on the territory of Romania.

ART. 15

This law shall enter into force on the date of its publication in the Official Gazette of Romania.