



Unfair Trade Practices: A Global Comparative Law Survey



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The goals of the IP&IT Group are to establish strong working relationships among members and to help them keep abreast of related legal issues and developments in all World Law Group jurisdictions for the benefit of members' clients. The group also works collectively on international information resources and similar projects such as this comparative law survey and the *WLG Quick Guide to Private-Copy Levy Systems* (2013), which is available on www.theworldlawgroup.com.

Introduction

In every competition, there has to be a referee. In competitive markets for goods and services, this role is fulfilled by one or more laws against unfair competition/unfair trade practices. Other than antitrust and cartel laws (sometimes also referred to as “competition laws”, which aim to protect the structure of markets and therefore set the framework for competition), the law governing unfair trade practices regulates the market behaviour of the competitors. The subject of this recent comparative survey is the law against unfair competition in the sense of unfair trade practices.

For global companies in particular, knowing the market rules of the countries they are doing business in is crucial to conduct their business in compliance with those laws. At first glance, this seems to be a difficult task considering that the only international law with regard to unfair competition law (leaving aside the protection of geographical indications and undisclosed know-how) is Article 10^{bis} of the Paris Convention for the Protection of Industrial Property. According to this rule, it is mandatory for all states party to the Convention to grant protection against unfair competition. However, the definition given in Article 10^{bis} is very broad, since unfair competition is defined as any act of competition contrary to honest practices in industrial or commercial matters. Moreover, only three kinds of unfair trade practices are specifically defined.

Considering these facts, it is no surprise that no consensus exists on what actions should be regarded as unfair, how fairness in the market should be enforced, and who should be protected by the laws against unfair competition: Only consumers? Only competitors? Or consumers, competitors and the general public?

However, this comparative survey shows that – despite the differences – there are also some strong similarities among national laws, and that some unfair trade practices, like discrediting competitors, are subject to sanctions all over the globe.

The first edition of this survey provides an overview of the relevant law in 37 countries, as analysed by experts in World Law Group member firms. It addresses, among other things, questions as to which law governs against unfair competitive behaviour, which practices are deemed unfair in the individual countries covered, and how fairness is enforced in the markets.

Notice to Readers

Please note that this work provides general information only. Its purpose is to provide a brief overview of law and regulation covering unfair competition/trade practices and related information in each jurisdiction covered.

This information is not comprehensive and is not intended as professional or legal advice, generally or in a given situation. Local legal counsel and advice should routinely be obtained.

For additional information or advice in a particular jurisdiction, please contact the relevant contributor(s) in the list provided on Page 65.

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We hope to add to the scope of this survey and number of jurisdictions covered in future editions. If you have questions or comments on this survey, please contact:

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Does your legal system include prohibitions against unfair trade practices? If yes, in which way are unfair trade practices approached in your country (a special Act against Unfair Trade Practices, Unfair Competition Act/different laws/general tort law/case law)? Please describe the most important relevant legislation.

Argentina

The Argentine legal framework contains neither a concept of unfair competition nor a standardized regulation on the matter. However, there is a general understanding that “unfair competition” comprises punishable competition practices involving the use of means that are illegal or contrary to honest customary practices in industry or business.

The main provisions encompassing the regulation of unfair competition under the Argentine legal framework are:

- Section 159 of the Criminal Code stipulates that “any person who by fraudulent contrivances or malicious suspicions, or by any kind of unfair propaganda, tries to divert to his benefit the clientele of a commercial or industrial establishment, shall be punished with a fine from Pesos 2,500 to Pesos 30,000.”
- Section 10bis of the Convention of the Paris Union (an international treaty that has been ratified by Argentina). It contemplates a general provision defining that any competitive action contrary to the honest customary practices in industry or business shall constitute unfair competition. It also contemplates specific prohibitions of enumerated actions. Experts consider Section 10bis of the Convention of the Paris Union may be held as the main Argentine regulation addressing the matter of unfair competition.

One example of law aimed at protecting different interests than unfair competition, but containing incidental specific protections against unfair competition is:

- Law 22,802 (“Fair Trade Law”). Section 5 relates to actions of deceit in the presentation or offering of products, Section 7 relates to use of origin denominations, and Section 9 relates to advertising and promotion.

Belgium

Yes. Unfair competition is governed by Book VI of the Code of Economic Law of 28 February 2013. Most of its provisions came into effect on 31 May 2014. Book IV incorporates the provisions of several EU directives, such as Directive 2005/29/EC on unfair commercial practices, Directive 2006/114/EC on misleading and comparative advertising, and Directive 2011/83/EC on consumer rights.

Specific provisions exist for advertising regarding motor vehicles, medicines, tobacco, foodstuffs, etc.

Brazil

Yes. The most important legal provision regarding such aspects is Article 195 of Federal Law 9,279/96, the Industrial Property Law (LPI), consisting of a criminal provision listing acts that can be considered as criminal offences of unfair competition.

In addition, Article 4, IV of Federal Law 8,078/90, the Consumers Defence Code (CDC), expressly provides that compliance with the practice of fair competition is a principle of the national policy of consumer relationship.

Furthermore, Federal Law 12,965/2014, the Brazilian Internet Act, expressly provides that fair competition is essential for the performance of business through the internet.

Canada

Yes. There are federal, provincial and territorial laws in Canada that address the concept of unfair competition.

The federal Competition Act is Canada’s principal legislation prohibiting anti-competitive practices such as deceptive marketing and misleading advertising.

The federal Trade-marks Act addresses the law related to trademarks and unfair competition.

The Ontario Consumer Protection Act is an example of provincial legislation that addresses unfair practices.

Chile

Yes, the concept of unfair competition has long been recognized in Chile. Currently, the concept of unfair competition is regulated mainly by Law 20.169, enacted in 2007, which is a special unfair competition law (“Unfair Competition Act”).

Other statutes, such as Law 19.496 on Protection of Consumer Rights (“Consumer Rights Act”), Law 17.336 on Intellectual Property (“Intellectual Property Act”) and Law 19.039 on Industrial Property (“Industrial Property Act”), also regulate acts, conducts or behaviours related to unfair competition.

Colombia

The concept of unfair competition was first governed by the Commercial Code and by Law 155 of 1959. However, in 1996, the Colombian legislature enacted Law 256 of 1996 (“Unfair Competition Law”), which abrogated the Articles from the Commercial Code and the provisions included in Law 155 of 1959 that used to govern unfair competition.

Costa Rica

The promotion of competition is a concept that has long been recognized in Costa Rica.

Law 7472 on the Promotion of Competition and Effective Consumer Defence and its regulations (hereinafter, “Law 7472”) is the primary law which promotes competition, the interests of consumers, and commerce in general. Article 17 in particular, defines the concept of unfair competition and delineates acts that constitute unfair competition.

Article 28 of Law No. 8039 of the Law on the Procedures for Observance of Intellectual Property Rights (hereinafter, “Law 8039”) highlights acts that are considered unfair competition in intellectual property law and focuses on the unauthorized use of a third party’s intellectual property by an individual.

Denmark

Yes. Unfair competition is recognized by Section 1 (1) of the Danish Marketing Practices Act which reads as follows:

“Traders subject to this Act shall exercise good marketing practice with reference to consumers, other traders and public interests.”

Finland

In Finland, the concept of unfair competition has been recognized by statute since 1930. Currently, unfair competition is regulated under the Unfair Business Practices Act (1061/1978). In addition, Chapter 2 of the Consumer Protection Act contains provisions regarding unfair commercial practices associated with consumers.

France

The concept of unfair competition has long been recognized in France.

There is no specific “Unfair Competition Act” in France. French actions for unfair competition are mainly based on general tort law. Article 1382 of the French Civil Code is the current legal basis against unfair competition in France. According to Article 1382 “any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate for it.”

The French Consumer Code protects the general public as well as competitors and other market participants against misleading commercial practices (e.g. misleading advertising, comparative advertising, etc.).

Germany

Yes. The concept of unfair competition has long been recognized in Germany. German legislators enacted a first “Law Against Unfair Competition” in 1886.

Incorporating the European Directive 2005/29/EC on unfair commercial practices, the German Act against Unfair Competition (UWG) is the current legal basis against unfair competition in Germany.

In addition, for special products and industry sectors, the German legal system contains specific rules against unfair commercial practices in other regulations (e.g., for medical products or foodstuffs).

Greece

The Greek legal system acknowledges the concept of unfair competition. The same is regulated by Law 146/1914 on Unfair Competition (“UCL”).

Furthermore, European Directive 2005/29/EC on ‘Unfair Commercial Practices has been incorporated into Greek law. More specifically, respective provisions were introduced to Law 2251/1994 on Consumer Protection upon its amendment by Law 3587/2007.

Finally, general tort provisions of the Greek Civil Code are also applicable, and more specifically Article 914 of the same, which establishes liability arising from tort.

India

Yes, the Indian legal system does include prohibitions against unfair trade practices. Presently, the concept is mainly covered under section 2(1)(r) of the Consumer Protection Act, 1986 (“CPA”) and partially under the Competition Act, 2002.

Indonesia

Yes, Indonesian law recognizes the concept of unfair competition under the consumer protection regime. The current primary legal basis in this respect is Law No 8 of 1999 on Consumer Protection (Law 8), and its various implementing regulations. This law is based on the principle of benefit, justice, balance, security and safety on the part of consumers, and legal certainty.

Israel

Although there is no explicit law regarding unfair competition, the concept, as usually understood, is covered in various laws, cases and regulations.

One of the most important legal bases for unfair competition is set out in the Commercial Torts Law, 1999.

Italy

The Italian legal system recognizes two legal concepts that may be traced back to the general concept of “unfair competition” (broadly construed), i.e.:

- (i) “unfair competition” (narrowly construed), deriving from Article 10 bis of the Paris Convention 1883, whose current main relevant legislation is Article 2598 of the Italian Civil Code;
- (ii) “unfair commercial practices”, deriving from the European Directive 2005/29/EC, whose current main relevant legislation is the Consumer Protection Code 2005, as amended.

Besides the aforementioned provisions, several special Acts address particular industries (e.g., journalism, foodstuffs, medicinal products, tobacco products) or marketing practices (e.g., misleading and comparative advertising, prize contests, pyramidal schemes, franchising).

Japan

The concept of unfair competition has long been recognized in Japan. The Unfair Competition Prohibition Act and the Act against Unjustifiable Premiums and Misleading Representations are Japan's main laws prohibiting unfair practices. The Act on Prohibition of Private Monopolization and Maintenance of Fair Trade, and statutes concerning various intellectual property rights also cover certain aspects of unfair competition.

Luxembourg

The concept of unfair competition is recognized in Luxembourg and governed by different laws.

The applicable law with regard to unfair commercial practices between competitors (business-to-business) is the law of 30 July 2002 regulating certain commercial practices, sanctioning unfair competition and implementing Directive 97/55/EC of the European Parliament, and the Council modifying Directive 84/450/EEC concerning misleading advertising in order to insert comparative advertising, as amended (hereafter the "Unfair Competition Law").

The provisions regarding unfair commercial practices, implementing Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices, are contained in the Consumer Code.

Netherlands

(a) Laws:

Under Dutch law, the protection against unfair competition is primarily provided for under the general tort clause embodied in Article 6:162 of the Dutch Civil Code and Articles 6:194 to 6:196 of the Dutch Civil Code (*Burgerlijk Wetboek*). In the Netherlands, unfair competition law is mainly based on and developed by case law.

The European Directive 2005/29/EC on unfair commercial practices has been implemented in Articles 6:193a to 6:163j of the Dutch Civil Code. Apart from these Articles, some regulations under administrative law can partially be categorized as belonging to unfair competition law. In addition, unfair trading practices are punishable under Article 328bis of the Dutch Criminal Code. However, this Article has proven to be of very little practical significance.

(b) Self-regulation:

In Dutch advertising practice, self-regulation plays a very important role. The Dutch Advertising Code (the so-called "NRC") contains general rules on advertising, including rules on misleading and comparative advertising. All advertisements should comply with these rules, which apply to advertising in various media. A special section of the NRC contains specific advertising codes for – amongst others – advertisements for alcoholic beverages, tobacco products, cosmetic products and self-care medical products as well as advertisements directed at children and young people. The rules also contain a specific code for advertisements via social media.

The NRC was drafted by a partnership of trade associations of media, advertisers and advertising agencies in conjunction with consumer organizations. The organization responsible for the NRC is the Advertising Standards Organization ("SRC").

Norway

Yes. The current legal basis against unfair competition is the Marketing Act (Act no. 2 2009). The Marketing Act is divided into several chapters where Chapters 2-5 apply to the business-to-consumer relationship and Chapter 6 applies to the business-to-business relationship.

The Marketing Act implements European Union Directive 2005/29/EC.

In addition, specific prohibitions against unfair competition can be found in certain specific areas such as the marketing of medical products, marketing of alternative methods of treating illness, and credit purchases.

People's Republic of China

Yes. The concept of unfair competition is primarily regulated by the Anti-Unfair Competition Law of the People's Republic of China (PRC) which was enacted in 1993 ("Anti-Unfair Competition Law").

Peru

Yes, unfair competition is regulated as an independent matter under Peruvian legislation. Legislative Decree No. 1044 – Law for Repression of Unfair Competition (the "Unfair Competition Law"), lays down the rules intended to promote fair competition in the market, which are applicable to undertakings in all sectors of economic activities.

Philippines

The Philippine Constitution mandates the State to protect Filipino enterprises against unfair foreign competition and trade practices. Combinations in restraint of trade or unfair competition are expressly prohibited. The Constitution also provides for specific prohibitions against unfair competition in commercial mass media as well as public utilities.

This constitutional mandate is implemented in various pieces of legislation such as the Civil Code of the Philippines, the Revised Penal Code, and the Intellectual Property Code of the Philippines (IP Code), among others. The most significant of these laws is the IP Code.

Poland

Yes. The concept of unfair competition has been recognized in Poland for a long time. The first Unfair Competition Act was dated 1926. Modern Polish competition law is based on two basic Acts: the Act on Combatting Unfair Competition of 1993 (unfair business-to-business commercial practices) and the Unfair Commercial Practices Act of 2007 (unfair business-to-consumer commercial practices).

Moreover, there are several acts containing specific rules against unfair competition, pertaining to different industrial fields.

Portugal

Unfair competition (*concorrência desleal*) has been recognised in Portuguese law since 1896, in the Law of 21 May, as a criminal offence. Today, acts of unfair competition (“UC”) are considered administrative offences and are currently defined under Article 317 of the Industrial Property Code (*Código da Propriedade Industrial or CPI*), with Article 318 establishing protective measures for trade secrets and other confidential information (equating acts violating these measures with acts of UC).

Singapore

As Singapore is a signatory to the Paris Convention according to its Article 10bis, Singapore has to provide effective protection against unfair competition. However, at present, the laws of Singapore do not have a distinct general unfair competition cause of action or law.

Although there is a lack of a statute or cause of action prohibiting unfair competition, the concept of prohibiting unfair competition is usually embedded in statutes, tortious actions and industry codes. For example, a number of different statutes, such as the Trade Marks Act, Patents Act, Copyright Act, Registered Designs Act, Consumer Protection (Fair Trading) Act and the Consumer Protection (Trade Description and Safety Requirements) Act, contain provisions prohibiting unfair competition. Moreover, certain provisions in industry codes such as the Singapore Code of Advertising Practice and Telecom Competition Code, and common law tortious actions of passing off, defamation and malicious falsehood have incorporated the prohibition against unfair competition.

South Korea

Unfair competition is a legal concept that has long been recognized under Korean law and is regulated by special legislation, the Unfair Competition Prevention and Trade Secret Protection Act (the “Act”). Originally enacted in 1961 as the Unfair Competition Prevention Act to protect against unlawful uses of or unlawful acts involving trademarks and trade names, the law was amended in 1996 to also provide for trade secret protection and came to be known by its current name.

Spain

Unfair competition practices are mainly governed by the amended Unfair Competition Law of 1991.

Sweden

Unfair competition has been recognized in Sweden for many years – both in legislation and in industry’s self-regulatory measures.

Currently unfair competition is regulated in the Market Act which implements the European directive 2005/29/EC on unfair commercial practices. Further to the Directive’s limitation to protection for consumers, the Market Act also encompasses protection for business operators.

The Act on the Protection of Trade Secrets should also be mentioned here.

Switzerland

The Swiss Act against Unfair Competition (UCA; SR 241) is the legal basis against unfair competition in Switzerland.

Furthermore, for special products and industry sectors, the Swiss legal system contains other rules against unfair commercial practices in specific areas (e.g., regulations on medical products, foodstuffs and price disclosure in general).

Taiwan

The unfair competition concept has been recognized by statute since 1991. Certain sections relating to unfair competition in Taiwan’s Fair Trade Act (“FTA”), mainly Articles 20 to 22 and 24, form the major legal basis.

Thailand

In Thailand, the law concerning unfair competition is the Trade Competition Act, B.E. 2542 (1999) (the “Trade Competition Act”) which came into force in 1999. The Trade Competition Act restricts freedom of contract in relation to certain trade practices. The overseeing and enforcing authority under this Trade Competition Act is the Trade Competition Commission (“TCC”) which is administered by the Department of Internal Trade (“DIT”) within the Ministry of Commerce.

In addition, there is the Consumer Protection Act B.E. 2522 (A.D. 1979) (the “Consumer Protection Act”) which established a government agency, the Consumer Protection Board, to directly protect the consumer’s rights. Since other laws only give indirect protection to the consumer, the Board was created to control/prohibit operations of business operators when the consumer is unable to exercise his/her right to sue a business operator because of the expenses involved.

Turkey

Unfair competition is principally regulated under Articles 54-63 of the Turkish Commercial Code No. 6102 (the “TCC”), entered into force on 1 July 2012.

Also, the Turkish Code of Obligation (“TCO”) brings regulations addressing unfair competition.

There are also specific laws regarding unfair competition in relation to intellectual property rights such as the Decree Law Concerning the Protection of Trademarks, the Decree Law Concerning the Protection of Industrial Designs and the Decree Law Concerning the Protection of Patent Rights.

United Kingdom[†]

There is no general ‘unfair competition’ Act under English law. Prohibitions against specific unfair trade practices are dealt with in a variety of different ways, including through numerous pieces of legislation. Key elements include:

- The common law tort of “passing off” (non-statutory), which exists to prevent a person from misrepresenting (or passing off) their goods or services as being those of another party (e.g., through “look-alike” packaging);
- Consumer protection legislation such as the Consumer Protection from Unfair Trading Regulations 2008, which controls e.g., misleading and aggressive trading practices directed at consumers;
- The Business Protection from Misleading Marketing Regulations 2008, which control misleading advertising directed at businesses and set out the rules on comparative advertising;
- Competition and antitrust legislation such as the Competition Act 1988, which deals with restrictive business practices that would distort, restrict or prevent competition, and practices that amount to abuse of a dominant market position. Compliance with such legislation is a topic in and of itself, and is not addressed further in this response.

United States of America (Federal Law)

Yes. The United States as well as nearly all, if not all, of the individual states have unfair competition protection statutes. In addition, common law torts often cover certain aspects of unfair competition law.

In the federal system, the primary protections against unfair competition are afforded by the Lanham Trademark Act. In addition, several administrative rules and regulations protect against false advertising and similar acts of unfair competition in certain industries.

United States of America (State Law - Overview)

State unfair competition law is typically a blend of state statutes and common law, as developed by the state courts through case law. Every state in the United States has a consumer protection law that prohibits deceptive acts and practices, and most states have laws that additionally prohibit unfair or unconscionable business practices. Generically, these laws are known as “Unfair and Deceptive Acts and Practices” statutes.

State statutes prohibiting unfair competition are by no means consistent, though they have similar aspects. As a result, some states have stronger protection for competition than others. Michigan and Rhode Island, for example, have developed case law that excludes from enforcement transactions made in industries that are subject to regulation or licensing – effectively all industries – thereby making it extremely difficult for private parties to state a claim for unfair competition.

United States of America (California)

Yes, California has unfair competition statutes. Business and Professional Code Sections 17200 et seq. (“UCL”) and 17500 et seq. (The Deceptive, False, or Misleading Advertising Statute) provide the primary protection from unfair competition. Additionally, the Consumers Legal Remedies Act (“CLRA”) set forth in California Civil Code Section 1750 et seq. provides additional remedies for wronged consumers.

Uruguay

No, in the Uruguayan legal system there is no special Unfair Competition Act that regulates unfair competition issues nor defines the concept of unfair competition.

The only legal definition of unfair competition is given by the Paris Convention for the Protection of Industrial Property, which was ratified in Uruguay by Law Number 14.910 in 1979 (the “Paris Convention”).

Further, there are other legal provisions that may be applicable in case of unfair competition acts. In that sense, the Uruguayan Trademark Law Number 17.011 (the “Trademark Law”) regulates cases in which the use or registration of a registered trademark owned by a third party may be considered as an unfair competition act.

Moreover, a case of unfair competition may be approached by general tort regulation, specifically by Section 1319 of the Uruguayan Civil Code, provided that the unfair competition act is understood as an illegal act and the remaining elements of the tort responsibility are met.

Finally, Uruguayan scholars have construed that unfair competition can also be addressed through the concept of “abuse of right” regulated in Section 1321 of the Uruguayan Civil Code. According to this doctrine, the damage caused by a competitor who commits an abuse in exercising its right of free competence is considered as unfair competition.

Vietnam

Yes. Unfair competition is defined under the Law on Competition 2004. Unfair competitive practices means competitive practices by an enterprise during the business process that are contrary to general standards of business ethics and that cause or may cause damage to the interests of the State and/or to the legitimate rights and interests of other enterprises or of consumers.

The Law on Competition 2004 is the most important legal basis dealing with unfair competition.

[†] Note that this response is provided on the basis of the law applicable in England and Wales. To some extent, the law and practice is different in Scotland and Northern Ireland; this document does not address those differences.

To which kind of law is the protection against unfair competition assigned in your civil law system – civil, criminal, administrative or a mix?

Argentina

The non-organized bundle of applicable statutes comprises protections of a criminal law nature, civil law nature and administrative law nature. However, there are not many precedents of application of Argentina's criminal law to unfair competition cases.

Belgium

Unfair competition is mostly assigned to civil law. Certain specific practices are, however, subject to criminal sanctions and the Economic Inspectorate can take administrative sanctions (e.g., impose fines, attach products).

Brazil

Unfair competition is mainly assigned to criminal and civil law.

Canada

Protection against unfair competition is primarily assigned to civil law. However, certain deceptive marketing practices can constitute criminal offences.

The Trade-marks Act and Ontario's Consumer Protection Act both provide protection against unfair competition in the civil regime.

Chile

Unfair competition is mainly assigned to civil law. If some additional requirements are met, certain conducts may also be subject to administrative and criminal provisions.

Colombia

The protection against unfair competition in Colombia is assigned to a mixed system. Although, as a general rule, unfair competition is governed by civil law, when the public interest is affected, the Colombian competition authority may take administrative actions against the offender.

Additionally, there are certain specific behaviours, where criminal penalties may be applied.

Costa Rica

Usually, processes dealing with unfair competition against consumers are considered administrative procedures. Therefore, according to Article 21 of Law 7472, one has to exhaust all available administrative remedies before going to court. The administrative body, the Commission to Promote Competition (COPROCOM) has the power to refer certain acts to criminal courts.

In the case of unfair competition between economic agents, according to Article 17 of Law 7472, a civil procedure is mandatory.

Denmark

For the most part, protection against unfair competition is assigned to civil law. However, specific provisions are subject to criminal sanctions.

Finland

Unfair competition is mainly assigned to civil law. Some practices are, however, subject to criminal sanctions.

France

Unfair competition is mainly assigned to civil law, apart from specific practices that are dealt with as criminal actions and are subject to criminal law provisions.

Germany

Unfair competition is mainly assigned to civil law. Only a very few practices are dealt with by criminal provisions.

Greece

Unfair competition is mainly assigned to the civil law system, with the exception of actions that are considered criminal and are therefore regulated by criminal law.

India

The CPA is a mixed legislation. It deals with civil, criminal and administrative aspects of law. The CPA provides for the establishment of District Forums, State Commissions and a National Commission, and also enumerates their respective powers and functions, which will include powers of the Civil Court under the Code of Civil Procedure, 1908, while trying a suit in respect of certain matters. Every proceeding before these forums shall be deemed to be a judicial proceeding. The CPA also provides penal actions in case of non-compliance of the orders passed by the different forums.

Indonesia

Violations of Law 8's provisions may be subject to criminal or administrative penalties. Administrative penalties may be imposed by the consumer dispute settlement body. On the other hand, the criminal penalties can only be imposed by the court.

Israel

The nature of this protection is a mix of civil, criminal and administrative law.

The Commercial Torts Law belongs to the body of civil law in Israel (as opposed to criminal law). However, the same set of circumstances may give rise to a claim under the Commercial Torts Law and also constitute a criminal act, if the legal requirements for each are met.

Italy

Italian unfair competition law may be described as a mixed system, since (i) rules on "unfair competition" (narrowly construed) set forth by the Italian Civil Code are mainly assigned to civil law, and (ii) rules on "unfair commercial practices" are mainly assigned to administrative law, and subject to administrative sanctions (up to EUR five million) which may be levied by the Italian Antitrust Authority ("AGCM"), notwithstanding the fact that all damaged parties may, in principle, claim damages in tort before a competent civil court.

Moreover, certain kinds of practices are subject to criminal law provisions, and therefore dealt with as criminal actions.

Japan

Protection against unfair competition is primarily assigned to civil law. However, some practices are subject to criminal and administrative sanctions.

Luxembourg

Unfair competition is mainly assigned to civil law. However, some practices are subject to criminal sanctions.

Netherlands

The protection against unfair competition is mainly a matter of Dutch civil law.

Norway

Unfair competition is mainly assigned to civil law. The Norwegian Consumer Ombudsman and the Market Council are responsible for the administrative enforcement of the provisions regarding consumer protection in the Marketing Act. However, there are also practices that are dealt with as criminal actions and are subject to penal law provisions.

People's Republic of China

Depending on the nature of the case and the specific proceeding concerned, the protection of unfair competition is mainly assigned to a single or a mixture of civil, administrative or even criminal law. For example, (1) private action may be initiated under the Anti-Unfair Competition Law by any undertaking whose legitimate rights and interests are harmed by the unfair competition behaviours of another undertaking and civil liability shall be assumed by such infringing undertaking; (2) the competent administrative enforcement authority can investigate any unfair competition behaviours and the undertaking concerned may need to assume corresponding administrative liability; (3) for certain unfair competition behaviours, such as commercial bribery, sale of fake or inferior commodities, criminal liability shall be assumed to the extent it constitutes a crime.

Note that throughout the answers relating to the People's Republic of China in this guide, "undertaking" refers to a legal person or any other economic organization or individual engaged in commodity operation or profit-making services.

Peru

The enforcement of the Unfair Competition Law is carried out by the Peruvian Institute for the Defense of Competition and the Protection of Intellectual Property Rights ("INDECOPI" for its Spanish acronym).

INDECOPI is an independent administrative agency that acts as a multiple registry of intellectual property rights and as an administrative court that enforces intellectual property, competition and trade legislation.

Philippines

The remedy against unfair competition may be civil, criminal or administrative in nature.

Poland

Committing an act of unfair competition may give rise to both civil and criminal law liability. In most cases, only civil actions are brought. In case the so-called collective consumers' interests are breached, the Anti-monopoly Office is competent to institute administrative proceedings.

Portugal

Unfair commercial practices are generally treated as administrative offences ("*contra-ordenações*"), subject to fines ranging from EUR 750 to EUR 30,000. As such, they are subject to specific criminal law provisions, such as the General Framework of Administrative Offences ("*Regime Geral das Contra-Ordenações*"), in Decree-Law no. 433/82, of 27 October.

However, acts of unfair competition may also be considered civil offences if the conditions found in Article 338-L of the Industrial Property Code ("*Código da Propriedade Industrial*" or "CPI") and Article 483 of the Civil Code ("*Código Civil*") are met.

Singapore

The protection against unfair competition is mainly enforced by civil claims, apart from a few acts which will be dealt with as an administrative action.

The Advertising Standards Authority of Singapore (“ASAS”, an advisory council under the Consumers Association of Singapore) has the power to order the withdrawal of an advertisement that contravenes any provisions, including the principles of fair competition, in the Singapore Code of Advertising Practice.

South Korea

While the Act is mainly assigned to civil law, violation of the Act carries civil, criminal and administrative legal consequences as further explained in the responses for South Korea to Questions 10 and 11.

Spain

For the most part, protection against unfair competition is assigned to civil law. However, specific provisions, e.g. concerning trade secrets and willfully misleading statements, are subject to criminal sanctions.

Unfair competition practices towards consumers are not only dealt with by the Unfair Competition Law, but as they are also deemed infringing consumer laws, they are punishable by the administrative consumer protection authorities.

Sweden

The Market Act – mixed: civil and administrative. The Act on Protection of Trade Secrets – also mixed: civil and criminal.

Switzerland

The protection against unfair competition is assigned to civil and criminal law.

Taiwan

It is a mix of civil, criminal, and administrative law.

Thailand

Both the Trade Competition Act and Consumer Protection Act are mainly assigned to the criminal law system, with penalty provisions being imprisonment or a fine, or both.

Turkey

In Turkey, protection against unfair competition is primarily a subject of civil law. However, there are several provisions in the Turkish Commercial Code as to crimes of unfair competition that are subject to the criminal law system.

United Kingdom[†]

The law concerning passing off is civil.

The Consumer Protection from Unfair Trading Regulations are enforced by administrative bodies (local authority Trading Standards Officers or “TSOs” or the Competition and Markets Authority or “CMA”). Breach of the Consumer Protection from Unfair Trading Regulations can amount to a criminal offence. Certain private rights of redress before the civil courts were introduced in 2014 for consumers (but not e.g., for competitor businesses).

The Business Protection from Misleading Marketing Regulations are enforced by the same administrative bodies i.e., TSOs or the CMA. There are no rights for businesses to enforce the Business Protection from Misleading Marketing Regulations directly but, in certain circumstances (where a trademark is used), non-compliance with the comparative advertising rules included in the Regulations could amount to trademark infringement (for which direct rights of action would be available).

Misleading advertising and other issues of advertising standards are also dealt with by the Advertising Standards Authority (“ASA”), a self-regulatory body that administers the broadcast and non-broadcast codes of advertising standards in the U.K. The bodies responsible for enforcing the Consumer Protection from Unfair Trading Regulations and the Business Protection from Misleading Marketing Regulations are required to have regard to “established means” of resolving issues – the ASA system is one such “established means”.

United States of America (Federal Law)

Unfair competition is generally governed by civil law.

However, several regulatory agencies have established administrative rules protecting against unfair competition in specific industries. In addition, some criminal laws may apply to certain types of unfair competition such as counterfeiting.

United States of America (State Law - Overview)

At the state level, parties, whether public or private, enforce unfair competition laws through civil litigation primarily. Nearly all states allow for private rights of action by citizens, albeit with varying degrees of enforcement capacity. Notably, Mississippi and Texas do not allow private parties to sue for enforcement of their statutes’ broad prohibition against deceptive practices. Likewise, New York does not allow private parties to enforce its prohibition on unfair or unconscionable practices, but it does permit suit for deceptive practices. As something of a counterbalance to this limitation, New York has state and city level agencies that regulate and mediate consumer complaints.

[†] Note that this response is provided on the basis of the law applicable in England and Wales. To some extent, the law and practice is different in Scotland and Northern Ireland; this document does not address those differences.

Roughly half of the states incorporate some level of criminal penalty into their unfair competition statutes. Typically, the criminal penalties remain at the misdemeanor level, but in practice, most business disputes are resolved through civil suit. At all levels, federal and state, criminal enforcement is possible only through government enforcement.

In terms of creating unfair competition rules, 29 states give authority for such a function to a state agency, with the remaining states forming their unfair competition law through their state legislatures and case law.

United States of America (California)

The protection against unfair competition is mostly assigned to civil courts but some violations also carry criminal penalties. The UCL and CLRA provide exclusively civil remedies while the Deceptive, False, or Misleading Advertising Statute provides for both civil and criminal remedies.

Uruguay

Broadly speaking, the protection against unfair competition is mostly assigned to civil law (as opposed to criminal law), including intellectual property law. However, in case the acts of unfair competition also involve infringement of intellectual property (trademarks, patents or copyrights), criminal actions may also be exercised, according to those statutes.

Vietnam

Unfair competition is regulated by different statutes, such as the Law on Competition, the Law on Intellectual Property, and the Civil Code. Unfair competition is mostly subject to administrative penalties and civil compensation.

Please explain the relation between your law systems' unfair competition law and intellectual property law (e.g., trademark or copyright law – together named IP laws).

Argentina

In Argentina, there is no conflict on whether unfair competition laws and regulations prevail over IP laws or vice versa. The Argentine scenario encompasses a bundle of (i) general protections against unfair competition that are not specifically related to IP but that may be applied in cases of unfair competition involving IP law-related rights, and (ii) IP laws and regulations incidentally providing protection against unfair competition that may be applied in cases of unfair competition involving IP law-related rights.

Belgium

As a general principle, the Code of Economic Law provides that free trade is the cornerstone of the Belgian economy. The freedom to copy is part of the freedom to undertake: if information or creations are not protected by imperative laws, they are free to be used or copied by all. The most important imperative laws that do protect information or creations are IP laws.

But even if in a particular case where there is no protection by IP law, it can still be that the law of unfair competition steps in to prevent a defendant from using or copying the unprotected creation or information. This will, however, only be the case if there are “particular circumstances” which lead to the conclusion that it is an unfair commercial practice and not an act of lawful copying. Such particular circumstances include, for instance, selling a slavish copy of a product, via the same trade channels, in packaging that creates confusion about the origin of the product. Most judges seldom accept the existence of such “particular circumstances”.

Brazil

Unfair competition is intrinsically connected to intellectual property and the most relevant legal provisions about it are, in fact, included in the Industrial Property Law (LPI). Although included in the LPI, an act of unfair competition is not restricted to industrial property matters and can be applied for any kind of dispute.

Canada

The federal Trade-marks Act codifies much of the common law with respect to trademarks.

The Trade-marks Act relates to the protection of trademarks and unfair competition. Section 7 of the Trademarks Act is an example of an IP law provision that prohibits unfair competition. According to Section 7, no person shall:

- Make a false or misleading statement that discredits the business, wares or services of a competitor;

- Direct public attention to his wares, services or business in such a way as to cause or be likely to cause confusion between his wares, services or business and the wares, services or business of another;
- Pass off other wares or services as and for those ordered or requested;
- Make use, in association with wares or services, of any description that is false in a material respect and likely to mislead the public; and
- Do any other act or adopt any other business practice contrary to honest industrial or commercial usage in Canada.

Chile

Although the scope and ultimate purpose of protection is different, both law systems partially overlap. Article 2 of the Unfair Competition Act establishes that a conduct may be considered an unfair competition action under said law, even when the same conduct may be the object of claims under the Intellectual Property Act and the Industrial Property Act.

Notwithstanding the foregoing, damages may not be awarded in accordance with the Unfair Competition Act if a ruling concerning the same damages has been granted against the defendant in accordance with a different legal statute, including the Intellectual Property and Industrial Property Acts.

Colombia

Under the Colombian legal system, unfair competition and IP laws are different legal regimes, as the first protects competitors, consumers and the market itself against unlawful and unfair behaviours, while IP laws grant exclusive rights to the owners of intellectual property.

Nevertheless, there is a very close relation between the two statutes stemming from the fact that certain specific unfair competition acts typically involve IP infringements, e.g., acts of confusion, imitation of goods and services, and exploitation of a third party's reputation. Additionally, certain IP statutory provisions set forth a non-exhaustive list of acts that may constitute unfair competition linked to intellectual property:

- Any act capable of causing confusion with respect to the business, goods, or industrial activity of a competitor;
- False statements capable of discrediting a competitor's business, goods, or industrial or commercial activity; or,
- Indications or affirmations that may mislead the public with regard to the nature, method of manufacture, characteristics, usefulness, or quantity of the goods in question.

Costa Rica

Acts of unfair competition related to intellectual property are explicitly recognized in Law 7472 and Law 8039, and thus, both regimes are linked. For example, one of the acts prohibited by Article 17 of Law 7472 on unfair competition is clause (d) which states: "Acts of competition will be prohibited when they contradict the standards of conduct and good business practices generally accepted in the marketplace, causing effective harm or a proven threat of harm. Specific acts prohibited include:

- d) Using, imitating, reproducing, substituting, or inappropriately alienating trademarks, commercial names, designation of origin, propaganda, recordings, wrappings, labels, containers, or any other means of identification, in relation to goods or services that belong to third parties."

In addition, unfair competition prohibitions apply within intellectual property laws, in particular within Article 28 of Law No. 8039 of the Law on Procedures for Observance of Intellectual Property Rights. This law clearly states that any conduct intended to mislead with regard to the origin, nature, manufacturing method, the suitability for use or consumption, quantity, or other characteristics of the goods or services, to take advantage of the rights of a holder of the right is prohibited. Also, this law forbids any conduct intended to reproduce on a commercial scale without permission of the holder of the right, trademarks, commercial names and other protected rights for any illegal benefit in order to take advantage of the rightful owner. There are also enumerated felonies within this law.

Denmark

The Marketing Practices Act and the IP laws complement and often even overlap each other providing parallel protection. For example, Section 18 of the Marketing Practices Act prohibits the use of distinctive signs belonging to other traders, which is akin to trademark protection.

Finland

IP laws grant protection to certain exclusive rights defined by such laws. The unfair competition law may, however, provide a wider and parallel protection compared to IP laws due to its general clause with a wide scope, which may also result in a slightly more indefinite protection scope.

France

Article 1382 of the French Civil Code and IP laws are different kinds of law: while Article 1382 is specific tort law, which protects against unlawful behaviour, IP law grants exclusive rights to the owners of intellectual property. Moreover, infringement of IP rights is criminally prohibited under French law.

Nevertheless, overlaps exist between the two law systems. This refers especially to the imitation of products, advertising, trade names, etc.

When a product or a trade name is protected under IP laws, legal action for unfair competition is admitted only if the behaviour is based on acts that are distinct from those that legal actions for infringement of IP rights are based on.

Germany

Unfair competition law and intellectual property law are basically different kinds of law: while the German Act against Unfair Competition is specific tort law, which protects third parties against unlawful behaviour, IP law grants exclusive rights to the owners of intellectual property. Nevertheless, overlaps exist between the two law systems. This refers especially to the imitation of products as well as misleading and comparative advertising.

In Germany, IP laws generally take priority over unfair competition law in the event a product imitation affects an IP right. If there is no infringement of the IP right according to the IP law, (either because the requirements for protection are not met or a limitation to the IP right applies), the principle of freedom of copying applies. But the demarcation is not clear as some exceptions from this principle are recognized by the prevailing view in German literature and jurisdiction.

Greece

The Greek Unfair Competition law (UCL) constitutes part of the Greek Industrial Property Law, which also includes L. 2239/1994 on "Trademarks", Presidential Decree 259/1997 on "Industrial designs and models" and L. 1733/1987 on "Patents". The Greek Industrial Property Law and the Greek Copy Right Law (Law 2121/1993) form the overall Greek IP law system.

The relationship between IP Laws and the UCL is that the latter supplements the former.

India

There is no relation between unfair competition law and intellectual property law.

Indonesia

Law 8 does not explicitly regulate the relation between the consumer protection law and IP Laws. However, the IP-related legislation (e.g., Law on Copyrights, Law on Patents, and Law on Trademarks) also provide some prohibitions to trade goods and/or services that violate IP rights.

Israel

The most salient example of this is the Unjust Enrichment Law and its application in the "ASHIR" case (LCA 5768/94 *ASHIR Import, Manufacture and Distribution v. Forum Accessories and Consumables Ltd* [1998], 52(4) 289.)

Following ASHIR, the court will grant protection to a right for which protection might also have been sought under the IP laws, such as registered designs; the Unjust Enrichment Law has been applied due to the presumed impracticability of securing multiple design registrations for each product season. In this sense, the protection is viewed as "IP-like" when circumstances warrant.

We are not aware of any case where a claim for infringement of an IP right was rejected but the court found unjust enrichment, bad faith or the like on the basis of the same set of facts. However, such a result cannot be ruled out.

Italy

Generally speaking, unfair competition law and IP laws are different fields of law, the former regulating business conducts in the marketplace and the latter granting exclusive rights to holders of certain immaterial assets; however, there may be some overlap. In fact, several unfair competition practices may involve imitation and/or unauthorized use of materials and/or works protected by IP rights (e.g., misleading imitation of trademarks and distinctive signs, appropriation of trade secrets, unlawful comparative advertising).

Under Italian law, unfair competition law and IP laws may apply cumulatively. In particular, legal provisions on "unfair competition" (narrowly construed) specifically state that "unfair competition" applies without prejudice to IP laws. Therefore, it is common practice in Italy for IP holders, while enforcing their IP rights against a competitor, to base the claim on both IP laws (e.g., trademark infringement) and "unfair competition" (narrowly construed). It is worth noticing that "unfair competition" law may, in concrete terms, be more far-reaching than IP laws. For instance, should the defendant's actions be deemed "contrary to honest business customs", unfair competition may be found also when there is no IP deserving protection (e.g., appropriation of confidential business information or know-how that does not fall within the definition of "trade secret" under IP laws may, in certain circumstances, be deemed to be an act of unfair competition).

Japan

Laws concerning unfair competition and laws concerning intellectual property complement and sometimes overlap each other and provide parallel protection because both are in part aimed to provide protection against misappropriation of the fruits of effort of another party (e.g., business reputation in the former and intellectual property in the latter).

Luxembourg

The laws dealing with unfair competition aim at protecting consumers and competitors against unfair behaviours, whereas IP laws are designed to grant exclusive rights to the owners of intellectual property and accordingly protect such owners against infringements of third parties.

There is no overlap between the two law systems under Luxembourg law.

Besides, it is settled case law that a claim of unfair competition law cannot be coupled with a claim of trademark infringement.

Netherlands

As far as trademark protection is concerned, Article 2.20(1) of the Benelux Convention on Intellectual Property ("BCIP") explicitly leaves room for ancillary protection based on tort law. Furthermore, Article 34 of the Neighbouring Rights Act states that protection under unfair competition law is not precluded for acts that are covered by this act. In addition, Article 2(2) of the Database Act states that the act shall be without prejudice to the copyright or other rights to the database or works, data or other materials included in the database.

Some intellectual property regulations do not contain any specific rules on the so-called "reflex effect" but are assumed to allow for ancillary protection based on tort law, for example, the Trade Names Act and the Copyright Act. Finally, various intellectual property acts that protect the technical features of a product, such as the Patent Act 1995 and the Seeds and Planting Materials Act, leave little room for ancillary protection under tort law.

Norway

The provision regarding unfair competition in the Marketing Act and intellectual property are assigned to two different kinds of law and do not, in theory, overlap. The difference can be found in the scope of the two provisions; the provision regarding unfair competition is directed at protecting consumers against certain commercial practices while IP laws generally grant exclusive rights to owners of intellectual property. At the same time, they are both directed at regulating specific actions and their purposes can, to some extent, overlap.

However, the Marketing Act also contains specific provisions that aim at ensuring good business practice between businesses. These are Section 25, a general clause which states that a business must not carry out actions that are in contradiction to "good business practice" between businesses. Furthermore, Section 30 prohibits imitation of another business's mark, products, catalogues, marketing material or other types of products in a manner that must be regarded as an unreasonable exploitation of another business's effort or results and leads to a risk of confusion. These provisions supplement the IP laws and will, in many cases, lead to the same result.

People's Republic of China

There are some overlaps between the Anti-Unfair Competition Law and the IP Laws in China. For example, the Anti-Unfair Competition Law expressly provides that any undertaking that engaged in unfair competition behaviours (including counterfeiting trademarks, using trademarks without authorization and forging authentication trademarks) shall be punished in accordance with the provisions of the Trademark Law.

In practice, we also observe cases where an undertaking may leverage IP rights to engage in unfair competition, showing the potential conflict between fair competition protection and IP protection.

Peru

The enforcement of Peruvian IP Laws is also charged to INDECOPI (see response for Question 2 for Peru). The Unfair Competition Law establishes that INDECOPI's IP Commissions will be the competent authorities to sanction unfair competition acts that qualify as confusion and misappropriation of another party's reputation and that involve the violation of protected intellectual property rights. In turn, the Repression of Unfair Competition Commission will be the competent authority to sanction all other forms of unfair competition.

Philippines

The relevant provisions on unfair competition may be found in the IP Code under the chapter on Trademarks.

They provide that a person who has identified, in the mind of the public, the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the good-will of the said goods, business or services so identified, which will be protected in the same manner as other property rights. Accordingly, any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such good-will, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

Poland

IP laws grant exclusive subjective rights to owners of intellectual property and protect such rights. Unfair competition rules are generally based on tort concept, with an exception of trade secrets which are protected by the Unfair Competition Act, but usually considered as subjective rights. The two legal systems overlap.

A commercial designation can be protected both under IP laws (e.g., trademark) and under the Unfair Competition Act because of misleading character and/or use of the designation. Similarly, a misleading slavish imitation of a product or packaging is a tort under the Unfair Competition Act and, at the same time, designs can be protected as IP rights.

In case of conflict between the two legal systems, contradicting final court decisions can be found. For instance, there were cases where a "prior use right" based on the Unfair Competition Act successfully blocked the use of a registered trademark. At the same time, some courts came to the exact opposite conclusion.

Portugal

The rules on unfair competition are found in the Industrial Property Code, which also deals with several areas of IP Law (such as trademarks, patents and geographical indications). Additionally, unfair-competition disputes must be brought before specialised IP tribunals, if they entail infringement of IP rights. Thus, unfair competition is considered within the Portuguese IP legal framework, and serves as a complement to other forms of IP protection.

Singapore

Singapore's Intellectual Property laws contain provisions that prohibit acts amounting to unfair competition such as infringement, counterfeiting, imitation of goods, and falsely applying registered trade marks to goods. They also prevent the registration of trade marks, patents and designs that are considered to be similar or identical to an earlier registered right. Moreover, under the Trade Marks Act, a mark will not be registered if its use is prohibited by the tort of passing off. On the other hand, the use of a trade mark in a comparative advertisement does not constitute an infringement of the trade mark under the Trade Marks Act as long as the trade mark has been fairly used. Non-registered marks and trade dress may also be protected under the common law tort of passing off.

South Korea

The Act has evolved in tandem with Korean IP laws and is particularly intended to complement the Korean Trademark Act by promoting fair competition through the regulation of unlawful acts likely to give rise to consumer confusion (i.e., passing off). The Act, however, is distinguishable from the IP laws in the sense that the Act regulates certain specified acts while the IP laws set the parameters of the protected rights.

In recognition of such distinction between the Act and the IP laws, Article 15 of the Act expressly provides for the pre-emption of the IP laws over the Act in the event of any conflict between any of the IP laws and the Act.

Spain

Unfair competition law and IP law are seen as different kinds of laws. The jurisdiction follows the so-called principle of "relative complementarity". This means that there is no double protection against the same behaviour.

IP laws protect exclusive rights while the unfair competition laws protect the proper functioning of the market.

Sweden

Technically, violation of both (for copyright with the reservation if the violation is made in marketing) is in violation of the Market Act. The Trade Mark Act contains a provision concerning exploitation of a trademark's reputation. Such exploitation can also be addressed using the Market Act.

It should be noted that the assessment of the situation according to the Market Act is slightly different. It has been stated in the case law that the Court does not apply IP law. With regard to copyright abuse of copyright-protected material, this can be addressed (although it is unusual,) as imitation (provided it is misleading) or exploitation of goodwill, provided the copyright-protected matter enjoys goodwill.

Switzerland

While the purpose of the Act against Unfair Competition (UCA) is to ensure fair and undistorted competition, IP laws grant exclusive rights to the owners of intellectual property.

In principle, the UCA and IP laws are applicable in parallel. As a matter of fact, the UCA is often invoked for the protection of trade names and trade dresses that have not been registered as IP rights.

Taiwan

Taiwan's Fair Trade Act states in Article 45 that no provision of the FTA shall apply to any proper exercise of rights pursuant to the provisions of the Copyright Act, Trademark Act, or Patent Act.

Thailand

Those laws are different laws with different specific governing law and regulations.

Both the Trade Competition Act and Consumer Protection Act protect third parties and the general public against any prohibited actions under each Act, while the IP law generally grants rights to the owner or assignor, provided that certain required procedures must first be complied with.

Turkey

The Intellectual Property Law ("IPL") contains several provisions regarding unfair competition. As per Articles 83, and 84 of the IPL, name and signs of an intellectual or artistic work, symbols, pictures, sounds, non- artistic photographs, cinematography works shall be protected by regulations regarding unfair competition. If an intellectual property right is not registered in the relevant register, unfair competition provisions will be applied for the protection of these rights. However, the IPL provides a stronger protection for these rights.

United Kingdom[†]

IP laws exist for a different purpose (granting exclusive rights to the owners of intellectual property) but there are some overlaps.

The tort of passing off overlaps significantly with trademark infringement and they are often pleaded together.

The Consumer Protection from Unfair Trading Regulations include the following as a trading practice that is always considered unfair: "Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not." This can overlap with trademark, copyright and/or design infringement but is potentially broader (and brand owners in the U.K. have lobbied for private rights to enforce the provision, in order to help combat 'look-alike' packaging that avoids IP infringement).

The use of a competitor's trademark is permitted in comparative advertising where the advertiser complies with the rules on comparative advertising as set out in the Business Protection from Misleading Marketing Regulations. Conversely, failure to comply with those rules may, where a registered trademark is used in the comparison, result in a claim for trademark infringement.

A registered trademark can amount to a misleading trade practice under the Consumer Protection from Unfair Trading Regulations (or misleading advertising under the Business Protection from Misleading Marketing Regulations or the relevant U.K. codes) if, for example, it also amounts to a false claim about a product or service.

United States of America (Federal Law)

There is a significant overlap as the Lanham Act is the primary federal statutory scheme regarding the protection and enforcement of trademarks in the United States.

Claims of trademark infringement and theft of trade secrets or right of publicity are part of the law of unfair competition. By virtue of federal pre-emption and the policies underlying patent and copyright law, broad claims of unfair competition within those subject areas are generally not cognizable.

In "construing the Lanham Act," the Supreme Court has explicitly been "careful to caution against misuse or over-extension of trademark and related protections into areas traditionally occupied by patent or copyright." *Dastar Corp. v. Twentieth Century Fox Film Corp.* 123 S.Ct. 2041, 2045 (2003).

United States of America (State Law - Overview)

Most state laws regarding unfair or deceptive business practices include elements to enforce intellectual property rights. Patents and copyrights remain the exclusive purview of federal law, but state laws can be used to enforce trademark rights and trade secrets. All state unfair competition statutes contain a prohibition against passing off goods or services as those of another or causing "likelihood of confusion or of misunderstanding as to the source," as well as other similar prohibitions, which can be used to enforce trademark rights. All states have laws that prohibit abuse of another's trademark rights.

State law often governs rights of publicity, which can likewise be protected by aspects of unfair competition laws. Most state unfair competition laws prohibit statements or representations that goods or services have sponsorship or endorsement – possibly from celebrities – that they do not have.

[†] Note that this response is provided on the basis of the law applicable in England and Wales. To some extent, the law and practice is different in Scotland and Northern Ireland; this document does not address those differences.

United States of America (California)

Though California's unfair competition laws operate independently of IP laws, there is significant overlap between unfair competition laws, The Model State Trademark law, codified in Section 14200 of the Business and Professions Code, and the federal Lanham Act. Given the breadth of the UCL's protections from unfair competition, a plaintiff alleging trademark infringement usually sues under all three statutes.

Uruguay

Technically speaking, there is no conflict over whether unfair competition laws prevail over IP laws or vice versa. In fact, unfair competition and IP Laws claims may be brought together regarding certain scenarios of unfair competition (e.g., in case of trademark imitation). In fact, according to Sections 5 and 20 of the Trademark Law, the holder of a registered or previously used trademark (in this case, when it is a notorious trademark) may oppose or request the annulment of the registration of another trademark made by a third party, when it may be presumed that such registration is made with the purpose of committing an unfair competition act.

Vietnam

The Law on Competition dealing with unfair competition aims at regulating the functioning of the market and competition against unfair behaviours for the State, enterprises or consumers. In addition, the Law on Intellectual Property also has provisions relating to unfair competition, which list detailed unfair competitive practices e.g., unlawful acts relating to the use of commercial indications, domain names, marks, trade names, and geographical indication.

The Law on Intellectual Property is designed to grant exclusive rights to the owners of intellectual property and accordingly protects such owners against infringements by third parties.

What is the purpose of the protection? Who is protected against unfair competition: consumers, business operators or both?

Argentina

The different statutes provide differentiated protections:

Section 10bis of the Convention of the Paris Union provides protection to all market stakeholders, including, but not limited to, competitors, suppliers, clients, and end-consumers.

Section 159 of the Criminal Code provides protection only to competitors.

Belgium

The provisions regarding unfair competition protect both consumers and businesses.

However, Book IV of the Code of Economic Law contains a specific set of rules that are applicable only to the relations between businesses.

Brazil

The protection is for both business owners/operators and consumers. The Industrial Property Law does not restrict the possibility of an act of unfair competition being performed by any person (businesses and consumers). The party who could be damaged by such an act could also be anyone who becomes disadvantaged by it.

The Consumers Defense Act also serves the purpose of protecting competitors and consumers who could be misled by acts of unfair competition.

Canada

Both consumers and businesses are protected against unfair competition. The laws seek to protect individual consumers and promote fair competition in trade and commerce.

Part III, Unfair Practices, of the Ontario Consumer Protection Act also protects individual consumers from certain unfair competition practices.

Chile

Article 1 of the Unfair Competition Act establishes that the purpose of said law is to protect competitors, consumers and, in general, any person whose legitimate interests are affected by an act of unfair competition.

Colombia

The Unfair Competition Law serves the purpose of protecting competitors, any market participant, consumers and the general public interest from any unfair actions that may disrupt the market.

Costa Rica

Both consumers and business operators are protected according to Article 17 of Law 7472.

The general purpose of Law 7472 is to: i) protect consumers and ii) promote and safeguard the competition process.

Denmark

The Marketing Practices Act protects other traders, consumers and the public interest.

Finland

The unfair competition law protects the interests of business operators in business-to-business relations and the consumer protection law provides protection for consumers' interests.

France

Legal action for unfair competition brought under Article 1382 of the French Civil Code serves the purpose of protecting competitors and other market participants against unfair commercial practices.

The French Consumer Code, especially its Article L120-1 and L121-1, serves the purpose of protecting the interests of the public against misleading commercial practices.

However, the French Consumer Code aims to protect competitors and other market participants as well.

Germany

According to Section 1 of the German Unfair Competition Act (UWG), it serves the purpose of protecting competitors, consumers and other market participants against unfair commercial practices. Moreover, it shall protect the interests of the public in undistorted competition. Thus the UWG follows a general approach. Most of its rules apply also to business-to-business-relations.

Greece

The overall purpose of the protection is to obstruct obstruct actions amounting to acts of unfair competition. The Unfair Competition Law is, in principle, applied to business-to-business relations.

India

The CPA is based on two legal principles: “Caveat emptor (Let the buyer beware)” and “Justice, equity and good conscience”. The CPA is a “Beneficial” statute meaning that it is a social welfare law providing protection to the rights of consumers from the unscrupulous practices of sellers, retailers, manufacturers, etc. The CPA provides for better protection of the interest of consumers and makes provision for the establishment of consumer councils and other authorities for the settlement of consumers’ disputes and for matters connected therewith.

Indonesia

Law 8 regulates that the protection of consumers shall be based on the principle of benefit, justice, balance, security and safety on the part of consumers, and legal certainty.

Although Law 8 mainly protects the consumer’s interest, it also protects the rights of business owners/operators. It recognizes some rights of the business, e.g., the right to obtain legal protection from a consumer’s act performed without good faith, and if relevant, ask for reputation rehabilitation. There are also rules about unfair competition amongst businesses in other regulatory areas, such as the advertising regulatory regime.

Israel

Depending on the source of the protection, all of the above parties are protected.

Specifically, the Commercial Torts Law protects the competitors of the entity that perpetrated the commercial tort.

Italy

The purpose of protection varies depending on the legal concept of “unfair competition” concerned.

In fact, the legal concept of “unfair competition” (narrowly construed), as set forth by the Italian Civil Code, is designed to protect business operators against “practices contrary to the honest business customs” carried out by their actual or prospective competitors. Thus, only business operators can sue each other for “unfair competition”. The original idea behind this construction was that the consumers – deemed to be “passive arbiters of competition” – should be protected only in an indirect way, by ensuring a “fair and loyal competition” among business operators.

In the last decades, by virtue of the implementation of European directives on consumer protection, Italian law has introduced the separate legal concept of “unfair commercial practices” and has designed it to protect consumers and micro-enterprises against “unfair commercial practices aimed at distorting their economic choices”. The definition of “micro-enterprises” echoes the European Recommendation 2003/361/EC (the main eligibility criteria being a staff numbering fewer than 10 people and an annual turnover of less than EUR two million). Furthermore, please note that special provisions on misleading and comparative advertising are designed to apply also in business-to-business relationships.

Japan

Each specific statute has a defined purpose of protection. For example, the Unfair Competition Prohibition Act is aimed to protect the interests of business operators while the Act against Unjustifiable Premiums and Misleading Representations is targeted to protect consumers.

Luxembourg

The purpose of protection is to protect both (i) businesses against acts of unfair competition committed by competitors, which would deprive such businesses or undermine their competitive capacity and (ii) consumers against unfair commercial practices which, when adopted by professionals, would undermine their economic interests.

Netherlands

While originally tuned towards protecting the interests of the competitor, Dutch unfair competition law now aims to protect the interests of the consumer as well.

Norway

The Marketing Act is directed at protecting different kinds of interests: consumers’ interests, businesses’ interests and general public/social interests.

Chapter 2-5 of the Marketing Act is directed at protecting consumers.

Chapter 6 of the Marketing Act is directed at ensuring good business practice between businesses, (Section 25), and also prohibits unreasonable exploitation of another business’s product, (Section 30).

People’s Republic of China

Pursuant to Article 1 of the Anti-Unfair Competition Law, it is formulated with a view to safeguarding the healthy development of a socialist market economy, encouraging and protecting fair competition, curbing unfair competition behaviours, and protecting the lawful rights and interests of undertakings and consumers.

Peru

The Peruvian Unfair Competition Law follows a “social model” framework. Accordingly, it aims to protect competition in general, considering the interest of competitors, consumers and the general public.

Poland

The Unfair Competition Act protects the interests of both business operators and consumers.

The Unfair Commercial Practices Act protects the interests of consumers only.

Portugal

The main focus of the Portuguese unfair competition rules is on protecting business owners/operators (competitors) from distortive acts of competition. Consumers are not the main subjects of UC law – they are protected under Consumer Protection Law.

Philippines

The existing unfair competition laws are aimed at protecting businesses (especially the owners of intellectual property rights) and consumers alike.

Singapore

Consumers, competitors and owners and licensees of intellectual property rights, whether registered or unregistered, are protected against unfair competition.

South Korea

Article 1 of the Act states that the purpose of the Act is to maintain orderly trade through the prevention of unfair competition practices. The Act is aimed at protecting business owners' goodwill and preventing consumer confusion as to the source or origin of the goods.

Spain

The Unfair Competition Law aims to protect and ensure fair competition in the interests of all concerned and involved market participants, i.e., that the interests of consumers, traders and other persons are protected.

Sweden

The unfair competition law is aimed at protecting businesses and consumers alike.

Switzerland

The purpose of the Unfair Competition Act is to ensure fair and undistorted competition in the interest of all parties concerned. The UCA protects consumers as well as businesses.

Taiwan

According to Article 1 of the Fair Trade Act, its purposes are maintaining trading order, protecting consumers' interests, ensuring fair competition, and promoting economic stability and prosperity. Therefore, the FTA protects not only the consumers, but also businesses.

Thailand

Both consumers and business operators are protected under the Trade Competition Act.

As to the Consumer Protection Act, this law protects consumers' rights since products and services are increasingly offered to consumers, while the business operators have applied their advertising and marketing knowledge to sales promotion of these products and services. This disadvantages consumers since they are unable to know the market situation and the accuracy and currency of the information provided about a product's or service's quality and price.

Thus, this Act has been drafted to protect the consumer's right in general by stipulating the duties of trade business operators and advertising business operators for fairness to the consumers. The Act also addresses the establishment of the governmental organization to supervise, monitor, and coordinate among government authorities for the purpose of consumer protection.

Turkey

The TCC states in Article 54 that acts or commercial practices between competitors, providers and customers that are misleading or that violate the rules of ethics or the bona fide principles are unfair and contrary to the law. The same provision also formulates the purpose of the unfair competition provisions, as the formation of the context of fair and uncorrupted competition for the interest of all participants, including competitors and customers. This requires, without any doubt, that the interest of the general public be taken into consideration and duly protected, as well.

United Kingdom[†]

Depending on the particular law, it may exist to protect business operators and/or consumers. Consumer protection laws provide protection for consumers (though, in the case of unfair trading, a business could seek to raise a complaint with the relevant regulators).

United States of America (Federal Law)

Generally, courts have interpreted the Lanham Act as well as federal regulatory schemes as primarily intended to protect consumers. Certain common law torts, however, are primarily intended to protect competitors harmed by unfair conduct.

United States of America (State Law - Overview)

State unfair competition and practices statutes serve a multitude of purposes. They are often designed to protect consumers from false advertising claims, or claims that falsify a product's origin (i.e., passing off).

[†] Note that this response is provided on the basis of the law applicable in England and Wales. To some extent, the law and practice is different in Scotland and Northern Ireland; this document does not address those differences.

Some states, like New York, require plaintiffs to allege a harm to the public as a result of the unfair competition claim, even if the primary complaint is a private one.

Finally, provisions in state statutes that prohibit trademark infringement are designed to protect businesses, whether newly founded or well established.

United States of America (California)

The protection's purpose is the preservation of fair business competition for the benefit of all consumers and businesses. This includes protection for both consumers and competitors. The California Supreme Court describes the primary purpose of the unfair competition laws as "to extend to the entire consuming public the protection once afforded only to business competitors." *Bank of the West v. Super. Ct.*, 2 Cal. 4th 1254, 1264 (1992).

Uruguay

It has been understood that our unfair competition regulation strives for the protection of free and fair competition and protects business operators directly and consumers indirectly.

It is worth mentioning that the protection of consumers is governed under the Consumer Protection Law Number 17.250, which provides them with actions against misleading advertising among similar issues. It is feasible that a competitor could file an action against other competitors before the Consumer Protection public competent authorities ("*Area de Defensa del Consumidor*") claiming that the defendant has infringed the consumer protection law regarding misleading or disloyal advertising.

Vietnam

The Law on Competition aims to protect the interests of the State and/or the legitimate rights and interests of other enterprises or of consumers.

What is the material scope of the regulation?

Argentina

Consistent with Section 10^{bis} of the Convention of the Paris Union, it may be generally asserted that any competition action contrary to the honest customary practices in industry or business shall constitute unfair competition.

In most cases, the unfair competition restrictions shall not be applicable to actions of the public administration in fulfillment of its public tasks.

Belgium

Article VI.1, Section 1 of Book IV of the Code of Economic Law provides: "This book aims primarily at the regulation of market practices and consumer protection, without prejudice to specific provisions which have been established in some sectors."

Brazil

The material scope is to any act that is listed as an act of unfair competition, not necessarily limited to any kind of practice. The list of unfair competition acts include mainly any kind of unauthorized use of information and/or intellectual property rights without the authorization of its titleholder, which could lead to an advantage.

Canada

The Competition Act is a federal statute of general application and it applies to the regulation of trade and commerce.

The Ontario Consumer Protection Act applies in respect of all consumer transactions if the consumer or the person engaging in the transaction with the consumer is located in the respective province when the transaction takes place.

Chile

The material scope is given by the broad definition of unfair competition included in Article 3 of the Unfair Competition Act, which establishes that, in general, an act of unfair competition is any conduct contrary to good faith or good customs which, executed by unlawful means, aims to divert clients from another agent in the market.

Colombia

The Unfair Competition Law sets forth the following scopes of application:

- Objective scope of application: any act or practice shall be deemed as an unfair competition act when carried out within the market and with competitive purposes. The competitive purpose of the act is assumed when it is objectively appropriate to maintain or increase the market share of the party that performs the unfair act.
- Subjective scope of application: the law shall be applicable to merchants or any other participant in the market.
- Territorial scope of application: the law is only applicable to unfair competition acts that mainly take place in/affect the Colombian market.

Costa Rica

Chapter III (Promotion of Competition) of Law 7472 applies to all economic agents, with the exception of: i) concessionaires of public services under a special law, ii) legal or natural persons that perform acts duly authorized by a special law and iii) state monopolies.

Consumers are also entitled to claim unfair competition under this Act.

Denmark

All commercial actions are subject to the Danish Marketing Practices Act. While all actions of traders are automatically assumed to be commercial in nature, the actions of non-traders (including e.g., public authorities) may also, depending on the circumstances and context, be considered a commercial activity covered by the Act.

Finland

The material scope of regulations related to unfair competition is very broad; it covers all unfair business practices. The material scope of the Unfair Business Practices Act does not require a competitive situation between business operators or any profit-oriented or intentional practices.

France

The material scope of Article 1382 of the French Civil Code is very broad. It prohibits the use of practices that are contrary to fair trading practices in terms of harming a competitor in order to divert its customers. The party engaged in such practices must have committed a wrongful act, the victim must have suffered damage and there must be a causal link between the wrongful act and the damage.

Germany

The material scope is defined by the term “commercial practice”. It means any conduct by any legal or natural person for the benefit of their own business or a third party’s business before, during, or after the conclusion of a business transaction related to the promotion and the sale of goods and services (products).

The Unfair Competition Act does not apply to actions of the public administration in fulfilment of its public tasks.

Greece

The material scope of the Unfair Competition Law is defined in Article 1 of the same. It covers any and all business transactions in all their manifestations.

India

The material scope of the legislation is the protection of the interests of the consumers whether it is in relation to any deficiency in the goods or services that may be purchased by the consumer. Under the Act “consumer” means any person who –

- (i) Buys any goods for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (ii) Hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment, and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person;

It also covers public utility services.

Indonesia

Law 8 mainly governs the rights and obligations of consumers, businesses, businesses’ responsibilities and prohibited acts. It covers matters such as deceptive and misleading conduct, unconscionable practices such as unfair boilerplate clauses, and specific rules about trading and advertising practices. It sets out the related institutional regime including the national consumer protection body, consumer dispute settlement body, dispute resolution mechanisms, and applicable sanctions.

Israel

The material scope of the regulation is behaviour and conduct, mainly but not exclusively in the commercial sphere, which is viewed as either unfair or unjust, depending on the specific relevant source of law.

Italy

The material scope of the regulation varies depending on the legal concept of “unfair competition” concerned.

As per “unfair competition” (narrowly construed) as set forth by the Italian Civil Code, the scope is very broad since it includes, in very general terms, “all acts contrary to honest business practices” carried out by a business operator against its actual or perspective competitors.

As per the rules of “unfair commercial practices”, as set forth mainly by the Consumer Protection Code, the scope follows the approach of the EU law, covering all unfair commercial practices between businesses and consumers (or micro-enterprises) carried out before, during and after a business transaction related to a good or a service, as well as misleading advertising.

Japan

The material scope of the Unfair Competition Prohibition Act is “acts of unfair competition”, which is defined in Article 2, Paragraph 1 of the Act by listing 15 acts that are deemed unfair. The Act against Unjustifiable Premiums and Misleading Representations is applied to “indications”, which is defined as advertisement and any other expression employed by a business in order to solicit customers concerning contents of the goods or services and terms of transactions. Certain indications that are further defined in Article 4, Paragraph 1 of the Act are prohibited.

Luxembourg

Luxembourg unfair competition law covers unfair business-to-business commercial practices and unfair business-to-consumer practices.

Netherlands

Because of a clear distinction in the scope of the protection between unfair competition law and public competition law (or antitrust law), the protection offered by unfair competition law is mainly geared towards the protection of the individual against unfair behaviour instead of protection of the general interest of the public.

Norway

In the business-to-consumer relationship: the material scope of the Marketing Act is the control of marketing, trade practices and contract terms “in consumer relations”. Marketing must not be contrary to good marketing practice and any marketing is deemed as unfair if it contravenes “good business practice towards consumers” in a way that influences the consumer to make decisions he or she would not otherwise have made.

The term "good marketing practice" is very broad. It covers the acts of all businesspeople in all businesses. However, there may be different requirements in different trade sectors.

In the business to business relationship: the material scope of the Marketing Act is the requirement for "good business practice" between businesses.

People's Republic of China

The material scope of the regulation is indicated in Article 2 of the Anti-Unfair Competition Law, which provides that unfair competition primarily refers to an undertaking's behaviour, infringing upon the lawful rights and interests of another undertaking and disturbing the social economic order. "Undertaking" refers to a legal person or any other economic organization or individual engaged in commodity operation or profit-making services.

Peru

The Unfair Competition Law is applicable to all fields of economic activity, without exceptions. The statute defines the addressees of the unfair competition rules contained therein as all natural persons and all public or private legal entities that undertake economic activities, including state-owned enterprises and any other public entity, even non-profit in nature, that offer or demand goods and services in the market.

In turn, the Unfair Competition Law adopts the "effects doctrine" to define its territorial scope. Accordingly, the statute is applicable to all conduct that produces or may produce effects within the national territory, including effects originating in acts carried out abroad.

The Unfair Competition Law defines unfair competition as any act that is objectively contrary to good faith principles that should guide entrepreneurial activities in a social market economy. Acts deemed as unfair competition by this statute include conduct that may deceive consumers, denigrate competitors, violate trade secrets, or take an undue advantage of the reputation of competitors, inter alia, including acts carried out through commercial advertising.

Philippines

As discussed earlier, the concept of unfair competition is quite broad and embraces various acts that pertain to anti-trust and monopoly activities as well as combinations in restraint of trade. Among others:

Under the Civil Code, "[u]nfair competition in agricultural, commercial or industrial enterprises or in labour through the use of force, intimidation, deceit, machination or any other unjust, oppressive or high-handed method shall give rise to a right of action by the person who thereby suffers damage".

The IP Code punishes any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such good-will, or who shall commit any acts calculated to produce said result.

Poland

The Unfair Competition Act protects against any illegal or unfair activity, if it infringes or at least threatens the (justified) interests of another business or client.

The Unfair Commercial Practice Act contains a general clause, pursuant to which unfair commercial practice is a market practice used by traders vis a vis consumers contrary to good morals which materially distorts or is likely to distort the market behaviour of the average consumer before the conclusion of a contract for the product during its formation or after its conclusion.

Portugal

The material scope of the Portuguese Unfair Competition rules is defined by the term "act of unfair competition". For an act to be considered to constitute unfair competition, it must first be considered an act of competition. This covers all acts aimed at acquiring a competitor's clientele, while simultaneously reducing, or even eliminating, the clientele of its competitors. There must be a close relationship between the commercial activities of the infringer and those of the parties affected by an infringing act. This relationship may exist not only between competitors with identical, substitutable or complementary market activity, but also between competitors targeting similar types of clientele.

The said acts must also be considered "unfair", which implies that they must go against social norms and honest commercial practices established within any economic sector or market (as seen in the response to Question 4 for Portugal).

Singapore

Given that Singapore does not have a specific law or general cause of action for unfair competition, a brief description of the provisions prohibiting unfair competition contained within statutes and industry codes, and the common law tortious actions is provided below.

CONSUMER PROTECTION (FAIR TRADING) ACT

The Consumer Protection (Fair Trading) Act allows consumers to sue a trader for making false or misleading claims about goods, provided that the amount claimed does not exceed SGD \$30,000. It also allows for court orders to be obtained restraining an unscrupulous trader from further committing objectionable trade practices.

TORTS

- Tort of Passing Off
- Tort of Defamation
- Tort of Malicious Falsehood

SINGAPORE CODE OF ADVERTISING PRACTICE

The Singapore Code of Advertising Practice is a set of guidelines laid down by the ASAS to regulate the advertising industry. Notably, it states that all advertisements should conform to the principles of fair competition. It also sets out guidelines that the contents of an advertisement must conform with.

South Korea

As discussed under the responses for South Korea to Q1 and Q4, the scope of the Act is rather broad and the Act is intended to prevent unfair competition practices involving trademarks and trade names and the prevention of infringement of trade secrets.

Spain

Any behaviour that takes place in the market and that has commercial purposes is subject to the Unfair Competition Law. The Unfair Competition Law does not require a competitive relationship.

Sweden

See the response for Sweden to Question 1.

Switzerland

The material scope of the Unfair Competition Act is very broad: any behaviour or business practice may constitute an act of unfair competition that affects the relationship between competitors or between suppliers and consumers.

Taiwan

Unfair competition as stipulated in the Fair Trade Act covers deceptive or obviously unfair conduct.

Thailand

The Trade Competition Act stipulates the establishment and the powers of the Trade Competition Commission and covers both anti-competitive practices and some forms of restrictive/unfair trade commercial practices.

The following consumer protection rights shall be protected under the Consumer Protection Act:

- The right to receive correct and sufficient information as well as quality description concerning the commodity or service;
- The right to have the freedom of choosing a commodity or service;
- The right to safety in using the commodity or service;
- The right to receive fairness in executing a contract; and
- The right to receive consideration of and compensation for damages.

Turkey

Article 55 of the Turkish Commercial Code (“TCC”) defines “unfair competition” as (i) any misleading act or commercial practice that has an impact on competitors or on relations between customers and suppliers and (ii) any act or commercial practice that violates the bona fide principles.

Under Article 57 of the Turkish Code of Obligation, a person, who has lost or is likely to lose clients because of the diffusion of false publications, or other behaviour contrary to good faith, may claim an injunction to restrain the continuation of such acts, and in case of fault, claim compensation for damage.

The TCC provides a non-exhaustive list of major unfair competition cases that are frequently seen in commercial practice.

United Kingdom[†]

The tort of passing off exists to prevent businesses from misrepresenting that they, or their goods or services, are those of another business, where such misrepresentation would cause damage. Most obviously, this could include imitation of another business's product or services but it has also been extended to include, for example, a misrepresentation of celebrity endorsement.

The Consumer Protection from Unfair Trading Regulations are designed to protect consumers from unfair commercial practices, such as misleading acts or omissions and aggressive business practices. The Business Protection from Misleading Marketing Regulations cover misleading advertising that affects traders or injures competitors, and set out the rules on comparative advertising.

The U.K. codes of advertising standards (CAP and BCAP codes), which form part of the U.K.'s self-regulatory system, govern misleading and irresponsible advertising. They are founded on the principle that all advertising should be legal, decent, honest and truthful. They also include many product-specific rules.

United States of America (Federal Law)

The federal Lanham Act protects against unlawful activity as used in commerce.

United States of America (State Law - Overview)

Like the federal law, state unfair competition laws extend to virtually every sale or transaction involving goods or services. This means the laws reach into virtually all economic activity.

[†] Note that this response is provided on the basis of the law applicable in England and Wales. To some extent, the law and practice is different in Scotland and Northern Ireland; this document does not address those differences.

United States of America (California)

The UCL is intentionally written broadly to encompass as many unfair business practices as possible. The UCL broadly defines five prongs of unfair competition: (1) unlawful conduct, (2) unfair conduct (3) fraudulent conduct (4) deceptive advertising and (5) violations of Section 17500 (regarding false advertising). The Deceptive, False, or Misleading Advertising Statute provides additional remedies for unfair business practices in advertising. The CLRA articulates

24 specific unlawful activities as unfair business practices including: passing off of goods or services as those of another, misrepresenting the geographic origin in connection with goods or services, making false or misleading statements regarding price reductions, and inserting an unconscionable provision in a contract.

Uruguay

With the basis of the concept of unfair competition contained in Section 10^{bis} of the Paris Convention, Uruguayan scholars have described the material scope of the regulation as comprising three main elements, which must simultaneously occur:

1. Effective competition: for an act of unfair competition to exist, there must be at least two competitors in dispute over a market sector (direct competition);
2. An incorrect conduct: the competitive act under analysis must be contrary to honest practices in industrial or commercial matters. In this regard, the existence of an act of unfair competition depends not on the specific actions performed by the infringing competitor in order to catch customers, but rather on the means employed for such purpose;
3. Damage: given that the protection against unfair competition is mainly through the application of general tort regulation, the existence of damage is a necessary requirement for a conduct to be qualified as an act of unfair competition.

Vietnam

The Law on Competition 2004 sets forth the material scope of the unfair competition covering business relationships between enterprises and enterprises, consumers and the State.

If a special Unfair Competition Act exists, how is it structured (only general clause(s)/enumeration of forbidden unfair trade practices/mixed system)?

Argentina

There is no specific Unfair Competition Act.

Belgium

Book IV of the Code of Economic Law contains a mixed system.

On one hand, it contains a “catch-all” provision (general clause in Article VI. 104) that gives broad powers to the judge to prohibit certain practices for which there is no special rule. On the other hand, Book VI lists several unfair trade practices.

Brazil

There is no Unfair Competition Act but there are practices that are categorized as acts of unfair competition as expressly listed in the Industrial Property Law, in the Section titled “Crimes of Unfair Competition”.

Canada

The Competition Act, under both the criminal regime and civil regime, has a general provision that prohibits all materially false or misleading representations, and has enumerated forbidden practices.

The Ontario Consumer Protection Act provides a general provision that makes it unfair practice to make a false, misleading or deceptive representation, and then provides examples of false, misleading or deceptive representations.

Chile

The Unfair Competition Act is structured as a mixed system. Article 3 establishes a broad concept of unfair competition, while Article 4 includes a non-exhaustive set of conducts that shall be deemed as unfair competition acts.

Colombia

The Unfair Competition Law sets forth a mixed system. The statute includes a general clause that serves as a guiding principle for the market participant’s behaviour, whereby any act or practice carried out in the course of industrial or commercial activities contrary to honest practices constitutes an act of unfair competition. Additionally, the Unfair Competition Law includes a list of forbidden unfair practices.

Costa Rica

Article 17 of Law 7472 both enumerates forbidden practices and also contains a general clause, thus it is a mixed system.

Denmark

The general clause of the Marketing Practices Act is supplemented by several specific provisions.

Finland

It is a mixed system. Both the Unfair Business Practices Act and the relevant parts of the Consumer Protection Act contain general clauses, as well as several specific provisions.

France

There is no special Unfair Competition Act under French law.

Germany

The Unfair Competition Act combines a broad general clause with four groups of unfair commercial practices, three of them containing a “small” general clause as well, and with a so-called “black list” of specific commercial practices towards consumers that are always deemed to be illegal. These groups are not exhaustive.

Greece

The Unfair Competition Law is systematically structured as follows:

- A general clause that prohibits practices undertaken for competition purposes that are contrary to business morals and ethics in all commercial, industrial and agricultural transactions.
- Provisions identifying various types of infringements that fall under the meaning of unfair competition such as business defamation, announcement of industrial secrets, infringement of distinctive features, misleading advertising etc.

India

The legislature intentionally made the CPA to be a mixed system, as it provides for both general clause(s), such as Section 2, and enumeration of forbidden unfair practices, as given in Section 2(r).

Indonesia

Law 8 is structured as a mixed system. For example, on one hand, it provides a general list of obligations towards the consumer, and on the other hand, a quite detailed list of prohibited acts.

Israel

There is no specific Unfair Competition Act. The Commercial Torts Law had originally been proposed to be an unfair competition law, but this initial intention was rejected, and in fact a provision expressly prohibiting the engagement in unfair competition practices was deleted from the bill. However the Commercial Torts Law is divided into four chapters, among others:

- Chapter 1: Unfair Competition – in which the definition and scope of commercial torts, such as passing off, false description, and unfair interference, are set out, and
- Chapter 2: Misappropriation of Trade Secrets.

Italy

The provisions of the Italian Civil Code on “unfair competition” (narrowly construed) are structured as a mixed system, including a general clause (all acts contrary to honest business customs) and a series of practices that are considered to be unfair in all cases.

The provisions of the Consumer Protection Code on “unfair commercial practices” are structured as a mixed system too, combining a very general clause with two sub-general clauses (i.e., misleading practices and aggressive practices) and two black lists of specific conducts (one for each sub-general clause) which are deemed to be illegal in any case.

Japan

The Unfair Competition Prohibition Act enumerates specific “acts of unfair competition”. The Act against Unjustifiable Premiums and Misleading Representations has a general clause in addition to a list of certain specific prohibited unjustifiable “indications”.

Luxembourg

The Unfair Competition Law contains a general definition of an act of unfair competition committed by an economic agent against a competitor but also enumerates examples of forbidden unfair practices.

The Consumer Code contains a general definition of the unfair commercial practice and also enumerates examples of specific practices covered by such unfair commercial practice.

Netherlands

No specific Unfair Competition Act exists in the Netherlands.

Norway

The Marketing Act contains both general clauses and a listing of particular forbidden practices. The general clauses are directed at unfair marketing and the protection of good business practice between businesses while other practices, such as certain forms of marketing towards children, are automatically regarded as unlawful.

The general clause against unfair competition towards consumers in the Marketing Act is supplemented by a Regulation on Unfair Marketing (Regulation of 1 June 2009 no. 565), which lists certain practices that will always be regarded as unlawful (the “Black List” as stipulated in Annex 1 to the Directive 2005/29/EU). The same also applies for imitation of products.

People’s Republic of China

It is a mixed system:

- Chapter One provides a general overview of the legislative purpose, definition of unfair competition as well as the respective roles of government and citizens in law enforcement;
- Chapter Two includes 11 articles stipulating an array of instances that should be deemed as unfair competition conducts.

Peru

The Unfair Competition Law is structured as a mixed system, containing both a general clause that broadly defines unfair competition acts, as well as an open-ended list of conducts that are typically deemed as forbidden unfair practices (e.g., misleading consumers, confusion, exploitation of reputation, denigration, etc.).

Philippines

Not applicable.

Poland

The Polish Unfair Competition Act contains both a general clause defining the act of unfair competition under Polish law (see answer to Q5) and names specific torts. Similarly, the Unfair Commercial Practices Act contains a general clause as well as quite detailed examples of such unfair practices.

Portugal

There is no special Unfair Competition Act in Portuguese law. As mentioned in the response to Q3, the rules on unfair competition are found in the Industrial Property Code.

Singapore

There is no specific Unfair Competition Act in Singapore.

South Korea

As further explained in the South Korea response to Question 7, the Act is structured as a mixed system.

Spain

The Unfair Competition Law contains a general clause that establishes that any behaviour objectively contrary to the requirements of good faith will be deemed unfair.

The general clause is supplemented by several specific provisions. It can only come into use in the absence of a typified specific unfair practice.

Sweden

The Market Act is structured as mixed system, containing a general provision in Section 5 as well as several specific provisions.

Switzerland

The Unfair Competition Act provides for a mixed system: it enumerates certain forbidden unfair practices but also includes a general clause to cover other unfair practices.

Furthermore, the Act provides for rules regarding the civil law remedies and for criminal law provisions.

Taiwan

It is a mixed system. In addition to enumerated forbidden unfair practices, the Fair Trade Act also has a general clause (Article 24).

Thailand

It is a mixed system whereby the Trade Competition Act and the Consumer Protection Act both provide the general protective wordings, and also describe the specific activities that are restricted. Furthermore, details of each restriction or threshold shall be issued (as regulations) for implementation under each Act.

Turkey

In the Turkish law system, a special Unfair Competition Act does not exist. However the Turkish Commercial Code regulates all aspects of unfair competition. In terms of the structure of unfair competition regulations, there is a mixed system in Turkey. Provided lists of unfair competition practices are non-restrictive and other practices that deteriorate the competitive business environment, which are deemed to be against the principle of goodwill, can also lead to the application of the aforesaid provisions.

United Kingdom[†]

Not applicable – there is no specific Unfair Competition Act in the U.K.

United States of America (Federal Law)

The federal Lanham Act states forbidden practices in general terms, whereas several state statutes go into much more detail enumerating specific unlawful practices.

United States of America (State Law - Overview)

State statutes addressing unfair competition vary in their precise wording, but most state statutes can be traced to three model laws: the Uniform Deceptive Trade Practices Act, the Uniform Consumer Sales Practices Act, and the Unfair Trade Practices and Consumer Protection Act. For all three, many of the states adopting them have modified them before they are enacted into law, so state statutes based on the same original model will differ in their scope and strength. The Uniform Deceptive Trade Practices Act, for example, has been adopted by Colorado, Delaware, Georgia, Hawaii, Illinois, Maine, Minnesota, Nebraska, New Mexico, Ohio, Oklahoma, and Oregon, but with each state modifying the statute to varying degrees of significance.

All three of the model statutes, and their derivative state statute analogues, enumerate the predicate offenses under the act, as well as the remedies the state and aggrieved private parties can pursue. The statutes cover a multitude of unfair or deceptive business practices.

United States of America (California)

The UCL and The Deceptive, False, or Misleading Advertising Statute contain general clauses that cover unfair competition. In contrast, the CLRA does not contain a general proscription but rather sets forth a list of 24 specific unlawful activities.

Uruguay

There is no specific Unfair Competition Act in Uruguay.

Vietnam

The Law on Competition is designed to govern unfair competitive practices and practices in restraint of competition, the order and procedures for resolution of competition cases, and measures for dealing with breaches of the laws on competition.

Please note practices in restraint of competition means practices of enterprises that reduce, distort or hinder competition in the market, including practices involving agreements in restraint of competition, abuse of dominant market position, abuse of monopoly position and economic concentration.

[†] Note that this response is provided on the basis of the law applicable in England and Wales. To some extent, the law and practice is different in Scotland and Northern Ireland; this document does not address those differences.

What are the main examples of unfair competition practices that are subject matter of your country's law system (e.g., misleading advertising, advertising towards minors, attacks on business reputation, imitation of goods and services, systematic obstruction of competitors, "pestering" direct marketing)?

Argentina

The main examples are use of confusing trademarks or business names, comparative advertising, imitation of advertising, deceitful advertising, imitation of goods and services, deceit in respect to the features of a product and violation of industrial or business secrecy. The broadest case law comprises cases of unfair competition relate to comparative advertising.

Belgium

The main examples are insufficient consumer information, comparative advertising, unlawful price reductions, clearance sales, free offers of vouchers, distance selling, public auctions, combined offers, and sales at a loss.

Brazil

The main examples of unfair competition practices are: misleading advertising, including use of similar trademarks and labelling that could confuse consumers; unauthorized use of commercial secrets; misleading performance with fraud that could confuse consumers, such as trade dress infringement and/or patent infringement.

Canada

The main examples of deceptive marketing practices are misleading advertising, deceptive telemarketing, deceptive notice of winning a prize, double ticketing, multi-level marketing, pyramid selling, misleading or false representations, misleading ordinary price claims, "bait and switch" selling, and selling a product above its advertised price.

Chile

The main examples included in Article 4 of the Unfair Competition Act are: wrongfully benefiting from a third party's reputation; misleading advertising; wrongful discreditation; any offensive reference to the nationality, beliefs, ideologies, private life or any other personal circumstance of the offended party that has no direct connection with the quality of the good or service offered; comparative advertising; inducing parties to breach contractual duties; and the manifestly abusive use of litigation with the objective of hindering the operations of an agent in the market.

Colombia

The main examples of unfair competition practices are acts of clientele deviation, acts of market disruption, acts of confusion, deceiving acts, acts of discredit, acts of comparison, acts of imitation, exploitation of a third party's reputation, misappropriation of trade secrets, and inducing breach of contract.

Costa Rica

The main examples of unfair competition are acts, that produce confusion regarding the commercial establishment, products, or the economic activity of competitors; false statements to discredit a competitor; misleading or false advertising; imitation/reproduction of trademarks, commercial names or any other means of identification of third parties.

Denmark

The main examples are misleading, hidden and comparative advertising, advertising directed towards minors, imitation of products, unfair exploitation of the investments of others (free-riding), exploitation of or attacks on the goodwill of others.

Finland

The main examples of unfair competition practices under the Unfair Business Practices Act are false or misleading expression (i.e., attack on business reputation), comparative advertising in certain situations, and use of others' business secrets. It is also forbidden to give untruthful or misleading information and use aggressive actions in one's marketing. It is also possible to intervene in and prevent the imitation of competitors' goods and services under the unfair competition law.

France

The main examples of unfair competition practices that could be prohibited under Article 1382 of the French Civil Code, based on former case law are: attacks on business reputation; imitation of goods and services; imitation of advertising and misleading advertising; wrongful large-scale poaching of employees; parasitic behaviour/free riding (i.e., all behaviours by which an economic operator rides on the coat-tails of another operator to derive profits, without spending money, from the latter's efforts and know-how); diversion of know-how; wrongful diversion of customers; and wrongful non-compliance with the regulation.

Germany

The main examples are misleading advertising, comparative advertising, unconscionable pestering and specific examples of unfair commercial practices. The list of examples is based on former case law and includes practices like unreasonable manipulation or exploitation, surreptitious advertising and sales promotions, attacks on business reputation and imitation of a competitor's product while causing avoidable deception about its origin or while exploiting its reputation.

Greece

The main examples are unfair use of distinctive features, misleading advertising, falsification of products and/or distinctive features, boycott and abusive exploitation of financial dependence – all are prohibited under the Unfair Competition Law.

India

Several unfair practices are dealt with under the Act, including misleading advertising/comparative advertising/advertising towards minors, imitation of goods and pestering direct marketing. Whereas, practices such as (attacks on business reputation/systematic obstruction of competitors) could fall under the provisions of the Competition Act, 2002.

Indonesia

The most common examples of unfair competition are unfair boilerplate clauses and misleading advertising.

Israel

The main examples of unfair competition under the Commercial Torts Law are passing-off, false description, unfair interference, and misappropriation of trade secrets.

Italy

As per the provisions on “unfair competition” (narrowly construed) set forth by the Italian Civil Code, main examples of black-listed practices include misleading imitation of trademarks, names or other distinctive signs, attacks to business reputation and appropriation of merits.

As per the provisions on “unfair commercial practices” set forth in the Consumer Protection Code, examples of black-listed practices include (i) as per misleading practices, false commercial communications or statements, pyramid schemes, self-attribution of quality marks or certificates, and (ii) as per aggressive practices, carrying out unsolicited and repeated commercial communications via telephone, e-mails or other media.

Japan

The term “acts of unfair competition” includes, among other things, passing-off, imitation of goods or services, use of misappropriated trade secrets, misleading advertisement and false statements defaming the reputation of others.

Luxembourg

Misleading and comparative advertising, sales at loss, chain sales, lotteries competition games and advertising tombolas are the main unfair competition practices regulated by the Unfair Competition Law.

Misleading commercial practices (including misleading actions and misleading omissions) and aggressive commercial practices are the main unfair competition practices regulated by the Consumer Code.

Netherlands

The main examples of unfair competition practices that are subject matter of the Dutch Unfair Competition Act are misleading and comparative advertising and imitation of goods and services (slavish imitation).

Norway

All of the areas mentioned in Question 7 are dealt with in the Act. Other examples are misleading actions and omissions, aggressive marketing and claims for payment for items or services without prior agreement.

People's Republic of China

The Anti-Unfair Competition Law expressly prohibits the following behaviours in market transactions: trademark infringement, commercial bribery, false advertising, trade secret infringement, predatory pricing, forcibly tying or imposing unreasonable trade terms, deceptive lottery-attached sales, commercial defamation, and bid rigging.

Peru

The Unfair Competition Law lists the following examples of unfair practices:

- Acts that affect the transparency of the market:
 - Misleading practices in general (including misleading advertising)
 - Confusion
- Acts related to the reputation of other parties:
 - Misappropriation of reputation
 - Denigration of business reputation
 - Improper comparisons (including subjective comparative advertisement)
- Acts that alter one's or third parties' competitive position;
 - Trade secrets violation
 - Undue advantages obtained through the violation of regulations
 - Sabotage (including unlawful interference in contractual relations)
- Acts of unfair competition through advertising;
 - Infringement of the principle of authenticity
 - Infringement of the principle of legality
 - Infringement of the principle of social adequacy.

Philippines

The main examples of unfair competition practices are imitation of goods and services and attacks on business reputation.

Poland

Misleading advertising, unfair comparative advertising, misleading company designation, incorrect or fraudulent indication of the geographical origin of goods or services, misleading labelling of goods or services, infringement of business secrets, inducement to breach of contract, misleading slavish imitation, defamation or dishonest praise, impediment of market access, bribery of the holders of public offices. As of today, case law has developed additional forms of unfair market behaviour, such as: exploitation of goodwill; unauthorized use of program formats/concepts; the use in the course of business of signs or symbols to which only individuals from specific professions are entitled; advertising of unavailable goods or available only in insufficient quantities.

Portugal

The main examples of unfair competitive acts in Portuguese law can be found in Article 317 of the Industrial Property Code, and include practices such as: advertising capable of misleading customers about a competitor's business, products or services; advertising aimed at discrediting a competitor or any attack on its business reputation; any claim amounting to a false representation of the nature of a business itself or of the amount or quality of its clientele; and finally, any attempt to suppress, hide or modify the original naming or geographic reference of products or brands.

Singapore

The main examples of prohibited unfair competition practices are: misleading advertising; switch selling; spreading malicious false statements about goods or business; counterfeiting goods and services; selling counterfeited goods and acts amounting to an infringement of intellectual property rights. Moreover, the Singapore Code of Advertising Practice states that care must be taken when the target audience of the advertisement are children. For example, advertisements addressed to or featuring children should not contain anything that is likely to result in their physical, mental or moral harm, and it should not exploit their credulity, loyalty, vulnerability or lack of experience.

South Korea

The main examples are passing-off, trademark dilution, misrepresentation as to the source or the origin of the goods, domain squatting, and "dead copy". In addition to the enumerated practices above, the Act also contains the following catch-all provision, which came into effect on January 31, 2014:

"all other acts infringing another person's right to profit by using that person's outcome/product wherein such outcome/product is the result of considerable effort and investment of that person, without the authorization from the person and through a method that contravenes fair commercial trade practice or competition order."

Spain

The main unfair competition practices are deceiving, misleading and aggressive practices, denigration, comparative and illegal advertising, imitation of goods and services, exploitation of other parties' reputation, violation of trade secrets, violation of regulations that provide an unfair advantage in the market, discrimination and economic dependence or loss-making sales.

Sweden

Misleading advertising, comparative advertising, advertising towards minors, attacks on business reputation, imitation of goods and services, lack of clear information concerning the advertiser, and violations of the requirement that advertising should be easily recognizable as advertising.

Switzerland

According to the general provision of the Unfair Competition Act, any behaviour or business practice that is deceptive or that in any other way infringes the principle of good faith and that affects the relationship between competitors or between suppliers and customers shall be deemed unfair and unlawful.

The main examples of unfair competition practices are: (1) unfair advertising and sales methods, (2) inducement to breach or terminate a contract, (3) active and passive private-sector bribery, (4) unfair exploitation of the achievements of others (5) violation of manufacturing or trade secrets and (6) use of unfair general terms and conditions.

Taiwan

The main examples under the FTA are imitation of goods and services, false or misleading advertising/comparative advertising, attacks on business reputation, and other deceptive or obviously unfair conducts.

Thailand

The main examples are: misleading or false advertising, statements that incite others to violate the law or good morals; statements that adversely affect the national culture or unity among the public; advertising on goods and services referring to facts regarding His Majesty the King, Her Majesty the Queen or the Regent; and advertising of goods or services when it is indicated or announced that the enterprise will provide a promotion to exchange, give extra, take or reward by gambling.

In addition, advertising shall not be made in a way that could cause physical or mental irritation to the consumer as provided by the ministerial regulation.

Turkey

The most common examples of unfair competition are listed in the Turkish Commercial Code: unfair advertisement and unfair sale methods; soliciting customers/employees/attorneys/other associates to breach or terminate agreements; unlawfully benefiting from products of third parties; disclosure of production and trade secrets; violation of business codes and ethics; use of general contract terms that substantially diverge from applicable legislation or that impose materially unfair contractual obligations; or generally violating the concept of good faith.

United Kingdom[†]

Misleading acts and omissions, aggressive trade practices, comparative advertising, the need for advertising to be readily identifiable as advertising, advertising to children, imitation of goods and services, etc., are all matters dealt with by the relevant laws and codes. Attacks on business reputation may amount to unlawful comparative advertising, defamation or malicious falsehood. Business practices that restrict competition and the abuse of a dominant market position are the key matters covered by competition and antitrust laws.

United States of America (Federal Law)

The main examples are misleading or false advertising, advertising towards minors, counterfeiting/imitation of goods and tortious interference with business.

Pestering direct marketing is not subject matter for a claim.

Theft of trade secret claims are common in both federal and state jurisdictions.

United States of America (State Law - Overview)

The main acts the state consumer protection statutes prohibit are deceptive acts and practices, and any behaviour likely to cause confusion among consumers when purchasing goods and services. This includes passing off goods as those of another, mischaracterizing the nature or quality of the goods or services sold, making misleading statements regarding the origin of certain products, or advertising goods for sale in a manner the seller does not intend to honour. Some state unfair competition statutes also include prohibitions on disparaging the goods, services, or business of others through false or misleading statements.

United States of America (California)

The main examples for unfair competition practices are: misleading or false advertising, misrepresentation of quality of goods, theft of trade secrets, counterfeiting/imitation of goods, and insurance bad faith.

Uruguay

The list provided in Section 10bis of the Paris Convention constitutes a valuable guide to identifying unfair competition practices. In that sense, our scholars generally accept as the main examples of unfair competition practices the following:

- (i) Misleading advertising regarding the nature, way of production, characteristics, etc. of the products traded, which leads the customer to errors with respect to such aspects of the products.
- (ii) False allegations regarding the competitor's establishment, goods or activities, which may discredit the name and image of the competitor.
- (iii) Those that can create confusion regarding the establishment, goods or activities of competitors.

In addition, there are other practices that may be considered as unfair competition, e.g., the exploitation of the competitor's reputation, which implies to assign the competitor's effort, work or achievement for its own benefit, and the disclosure of trade secrets of a competitor.

Vietnam

According to Article 39 of the Law on Competition 2004, unfair competitive practices comprise:

- Misleading instructions;
- Infringement of business secrets;
- Coercion in business;
- Defamation of another enterprise;
- Causing disruption to the business activities of another enterprise;
- Advertisements aimed at unfair competition;
- Promotion aimed at unfair competition;
- Discrimination by an association;
- Illegal multi-level selling of goods;
- Other unfair competitive practices stipulated by the Government.

[†] Note that this response is provided on the basis of the law applicable in England and Wales. To some extent, the law and practice is different in Scotland and Northern Ireland; this document does not address those differences.

Does your law system know “linking clauses”, i.e., clauses that refer to statutory provisions of other areas (like medical products, data protection or information towards consumers in e-commerce) according to which the infringement of one of these provisions constitutes an infringement of the regulations against unfair competition?

Argentina

No, even though Argentine case law admits such linking when the grounds of an unfair competition case relate to certain statutory provisions of other areas.

Belgium

No. However, it is generally admitted that the violation by a business of any imperative law (for instance the Privacy Act) constitutes an unfair commercial practice.

Brazil

No. There is no express provision indicating the link between the unfair competition section included in the Industrial Property Law and other rules.

Canada

There is no specific linking clause. However, an unfair business practice may run afoul of more than one statute or provision and different types of claims may be induced in one action.

Chile

The Unfair Competition Act does not include “linking clauses” like the ones mentioned above. However, Article 2 of the Unfair Competition Act establishes that a conduct may be considered an unfair competition action under said law, even when the same conduct may be the object of claims under the Competition, Consumer Rights, Intellectual Property and Industrial Property Acts.

Colombia

Pursuant to Article 18 of the Unfair Competition Law, realizing a competitive advantage achieved by the infringement of any other legal provision can constitute an act of unfair competition, when the infringed legal rule governs the specific market where the parties compete, and the competitor obtains a significant advantage.

Costa Rica

No.

Denmark

No. However, it is assumed in legal literature that infringement of other statutory provisions is indicative of unfair competition.

Finland

No special linking clauses exist.

France

Under French case law, the infringement of statutory provisions (like medical products, data protection or information toward consumers in e-commerce) could constitute an unfair competition practice under Article 1382 of the French Civil code.

As a general rule, a legal action for unfair competition is justified wherever non-compliance with applicable rules entails a breach of the principle of “equality of arms” between competitors and has the effect of placing the infringing party in an abnormally favourable situation with respect to its competitors.

Germany

Yes. Regulations on the information for consumers (e.g., the duty to provide general information on the provider of a website pursuant to Section 5 of the German Telemedia Act or “TMG”); on the incorporation and reasonableness of standard terms and conditions (Sections 305 et seq. German Civil Code or “BGB”); and on the protection of personal data (e.g., Section 28 Federal Data Protection Act or “BDSG”) are seen as statutory provisions relating to market behaviour. A breach of those provisions will therefore constitute a violation of the UWG.

Greece

The Greek law system has no “linking clauses”.

India

The law system in India does not have any “linking clauses”: however, in case of infringements in areas like medical products, data protection or information toward consumers in e-commerce, the aggrieved party can approach the civil courts to seek relief in addition to filing for a claim under the Act.

Indonesia

There are no known linking clauses in this area of law. However, please note that according to the general elucidation of Law 8, we understand that the protection recognized under Law 8 may not be exhaustive: some consumer protection principles are also recognized under different laws.

Israel

No.

Italy

Due to the fact that rules on unfair competition and unfair commercial practices are construed as general clauses, “linking clauses” are rather rare in Italian law, and often they refer to very specific industries and/or practices (e.g., particular unfair competition conducts in journalism, unfair commercial practices in sale of olive oils or in food labelling). More often, rules applicable to specific industries and/or practices are enforced by means of ad hoc administrative sanctions (e.g., provisions on medical products, tobacco products, prize contests, data protection), levied by other competent authorities (e.g., Ministry of Economic Development as per prize contests).

Please note moreover that non-compliance with regulatory provisions of mandatory application (e.g., violation of labelling regulation), besides being a violation of law usually subject to administrative sanctions, has also been deemed, by Italian case law, to constitute an act contrary to honest business customs (since non-compliant businesses have lower costs than compliant competitors) and, therefore, an act of “unfair competition” pursuant to the Italian Civil Code.

Japan

The Unfair Competition Prohibition Act and the Act against Unjustifiable Premiums and Misleading Representations do not provide for such linking clauses.

Luxembourg

The law does not provide for such linking clauses.

Netherlands

As a result of the implementation of Directive 2011/83/EU on Consumer Rights, Article 6:193f, Section b, of the Dutch Civil Code states that the seller commits an unfair commercial practice (or a misleading omission) if the seller fails to fulfill his information obligations towards a consumer.

Norway

There are various types of legislation in Norway that contain provisions on marketing behaviour, according to which an infringement is also likely to constitute an infringement of the regulation against unfair competition. These are, inter alia, marketing provisions in the Norwegian E-commerce Act, the Medical Products Act and the Food Act.

People’s Republic of China

The Anti-Unfair Competition Law does include such “linking clauses”. For example, Article 21 provides that an undertaking that has committed prohibited behaviours involving trademarks and product quality shall be sanctioned respectively in accordance with the provisions of the Trademark Law of PRC and Product Quality Law of PRC.

In addition, there are also “linking clauses” towards the Anti-Unfair Competition Law under statutory provisions in other areas. For example, it is provided in Article 58 of the Trademark Law of PRC that whoever commits unfair competition by using a registered trademark or an unregistered well-known trademark of another party as the trade name in its enterprise name in order to mislead the public shall be dealt with in accordance with the Anti-Unfair Competition Law.

Peru

Yes, the Unfair Competition Law includes two sections that contain “linking clauses”:

- Article 14 forbids acts aimed at obtaining undue competitive advantages through the violation of mandatory regulations; and
- Article 17 forbids commercial advertisements that do not abide by applicable specific sectoral regulation.

Philippines

As discussed above, the constitutional mandate against unfair competition is implemented (and thus penalized/punished) in various pieces of legislation. We are not aware of any “linking clauses” based on these various legislations.

Poland

There are no specific linking clauses provided in pertinent acts, except for the general clauses provided for in the Unfair Competition Act (see Q5) and the Unfair Commercial Practice Act (see Q6). In other words, if, for example, rules of advertising of medical or other specific products are breached, then such activity is in breach of law which in turn, – if it infringes interests of another business – allows a claim under the Unfair Competition Act.

Portugal

In Portugal, the Unfair Competition framework is based on a general clause to be enforced in each specific case. Any infringement of statutory provisions of other legal areas (e.g., commercial law, data protection law, consumer law) may be considered a violation of unfair competition rules. Even though these provisions do not explicitly state that their breach will result in enforcement of these rules, they will be applicable if the agent’s behaviour does not comply with the requirements of the general unfair competition clause.

Singapore

There is an absence of linking clauses as described by this question in the Singapore legal system.

South Korea

No.

Spain

Yes. According to Article 15 of the Unfair Competition Law, it is deemed unfair to obtain a competitive advantage in the market gained through the violation of any law, or the mere infringement of a regulation that regulates a market activity.

Furthermore, the Unfair Competition Act also links to other commercial laws, such as the Spanish General Advertising Act and the Spanish Consumers' Act.

Sweden

As stated above, marketing in violation of, for instance, the medical products legislation or the Food Act is also in violation of the Market Act and can be addressed accordingly. In a few cases (for instance, the Alcohol Act), the provisions link to the Market Act's sanctions.

Switzerland

No.

Taiwan

No, there is no linking clause that refers to the infringement of one of the provisions of other areas constituting an infringement of the regulations against unfair competition.

Thailand

There are no linking clauses in the Trade Competition Act and the Consumer Protection Act.

Turkey

The Industrial Property Law, the Decree Law Concerning the Protection of Trademarks, the Decree Law Concerning the Protection of Industrial Designs and the Decree Law Concerning the Protection of Patent Rights all give reference to unfair competition provisions. Accordingly, infringement of these provisions will constitute an infringement of the regulations against unfair competition.

United Kingdom[†]

The various statutory provisions would be regarded as distinct, though breach of one may result in a breach of another. It is not, however, automatic.

United States of America (Federal Law)

No. Generally, the Lanham Act is independent of other statutory and common law protections against unfair competition.

United States of America (State Law - Overview)

For the most part, state laws do not have linking clauses. Often claims for unfair competition are based on unfair or deceptive practices that have repercussions in other areas of law (e.g., health and safety law violations for advertising products as safe that have dangerous defects), but a plaintiff would typically base a claim for unfair or deceptive acts and practices on the predicate facts directly, rather than link to it by a violation of another law.

United States of America (California)

Generally, the statutes governing unfair competition in California operate independently of other statutory and common law protections and do not include linking clauses. The one key exception is the UCL's reference to The Deceptive, False, or Misleading Advertising Statute allowing for recovery under the UCL for a violation of that statute.

Uruguay

There are no "linking clauses" in the Uruguayan law system.

Vietnam

No. We have no "linking clauses" under Vietnam law.

[†] Note that this response is provided on the basis of the law applicable in England and Wales. To some extent, the law and practice is different in Scotland and Northern Ireland; this document does not address those differences.

Who is entitled to take legal actions against unfair competition practices (competitors, consumers, public agencies, trade associations, consumer associations, self-regulating bodies)?

Argentina

Due to the lack of a systemized treatment of unfair competition in Argentina, some remedies are available only to competitors, while other remedies are available only to end consumers and consumer associations, while other remedies are available to all market stakeholders, as applicable in each case.

Belgium

Injunctive relief proceedings may be initiated by competitors, the competent minister or the director-general of the ministry, a regulation authority or a professional association with legal personality, or by an authorized consumer association.

Consumers who suffered damages as a result of a violation by an undertaking of Book VI of the Code of Economic Law, may introduce a class action (Article XVII.38 of the Code of Economic Law). Only an authorized consumer association, certain authorized non-profit organizations or autonomous public agencies may act as a representative for the consumers.

Brazil

Anyone who is harmed by an act of unfair competition is entitled to take legal action. Regarding advertising, the National Council of Advertising Self-Regulation (CONAR) is entitled to analyze the situation and apply administrative penalties.

Canada

The Competition Act creates a statutory cause of action which permits a private party to claim damages for losses caused by a breach of the criminal provisions of the Competition Act; less serious forms of deceptive marketing are reviewable practices subject to civil review and sanction under Section 74.1 of the Competition Act.

The Competition Bureau – an independent law enforcement agency – is responsible for the administration and enforcement of the Competition Act and related legislation. The Competition Bureau investigates complaints and decides whether to proceed with the filing of an application to the Competition Tribunal, a specialized adjudicative tribunal.

Under Part III of the Ontario Consumer Protection Act, a consumer may take action against the person with whom the consumer entered into an agreement after or while that person has engaged in the unfair practice.

Chile

With respect to the Unfair Competition Act, according to its Article 6, anyone who is directly and personally threatened or harmed in their legitimate interests may file a claim based on one of the legal actions set forth in Article 5 of the same Act.

In addition, trade associations that actually have the function of defending the interest of agents of the market, may, for the benefit of its members harmed by an unfair competition practice, file claims based on one of the legal actions set forth in Article 5 of the Unfair Competition Act, except the one referring to recovering damages.

Lastly, in accordance with Article 10 of the Unfair Competition Act, if the existence of one or more unfair competition acts has been declared by a relevant Civil Court, the latter is required to remit the records of the trial to the National Economic Prosecutor, who, based on the severity of the infringement or the extension of the damages, may request the Competition Court to impose a fine for fiscal benefit, which can range between two and 1,000 Chilean Monthly Tax Units (i.e., approximately between USD 140 and USD 70,700, as of September, 2015).

Colombia

Any person who participates in or is able to prove their intention to enter into the specific market and whose economic interests are adversely affected or threatened by unfair practices may take legal actions. Competitors, trade associations and consumer associations are included among those entitled to take legal actions.

Costa Rica

Economic agents, consumers, the National Consumer Commission and the Antitrust Authority are entitled to take action. According to Article 2 of Law 7472, economic agents are all physical entities of fact or law, public or private, who participate in any form of economic activity, as buyers, sellers, suppliers or claimants of goods or services on their own or on behalf of others.

Denmark

Actions that are considered harmful to consumers and/or the public interest are typically handled by the Danish Consumer Ombudsman rather than the affected consumers. Legal actions against other unfair competition practices are mainly dealt with by affected competitors.

Finland

Under the Unfair Business Practices Act, an affected business operator and associations authorized to defend the interests of business operators, may take legal actions. When unfair practices are related to consumers, the Finnish Consumer Ombudsman may also take legal actions.

France

Legal actions against unfair competition practices based on Article 1382 of the French Civil Code are usually brought by the competitor(s) who is/are the victim(s) of the unfair competition practice.

French courts have also ruled that the following entities have standing to bring a legal action for an unfair competition practice:

- Trade associations;
- Professional organizations;
- Economic interest groups responsible for the commercial promotion of their members;
- Associations governed by the 1901 Law.

Civil legal actions against misleading commercial practices prohibited by the French Consumer Code (e.g., misleading advertising, unlawful comparative advertising, etc.) can be brought by a competitor, a consumer and consumer protection associations.

Criminal actions are brought by French public prosecutors.

Germany

The Act Against Unfair Competition is almost exclusively enforced through private-party complaints (except for the criminal law regulations). The law entitles every competitor, consumer protection association, (but not the consumer him or herself), trade associations, business self-regulatory bodies (e.g., *Zentrale zur Bekämpfung des unlauteren Wettbewerbs aka Wettbewerbszentrale*) and Chambers of Industry and Commerce to sue persons (i.e., natural persons and legal entities) using unfair commercial practices.

Greece

The Greek legal system (Unfair Competition Law and Consumer Law) entitles business competitors, consumers and/or consumer associations, to take legal action against unfair competition and unfair commercial practices. Of course, complaints against criminal offences can be filed both by the above-mentioned parties as well as the public prosecutor.

India

The Act provides for who can take legal actions against unfair competition practices, and it includes (i) one or more consumers; (ii) an association of consumers; (iii) the Central or any State Government; or, (iv) in case of death of a consumer, his/her legal heir or representative. It is clarified that all these different agencies can only file a complaint if a consumer within the meaning of the Act is involved.

Indonesia

Consumers, groups of consumers, non-government consumer protection bodies and the relevant governmental authorities have standing to take legal action and submit claims to the relevant (district) court (or consumer dispute settlement body, for the consumer) for violations conducted by business actors.

Israel

Depending on the circumstances, any of the entities listed in Question 9 could take legal action claiming unfair competition.

Under the Commercial Torts Law, the right to take legal action against a tortious action is reserved to a business that is harmed or suffers damage as a result of such tortious action.

Italy

As per the provisions of the Italian Civil Code on “unfair competition” (narrowly construed), only competitor businesses (and, should the relevant practices jeopardize the interests of a category of businesses, associations of businesses representing the relevant category) are entitled to take legal actions.

As per the provisions of the Consumer Protection Code on “unfair commercial practices”, as a general rule, AGCM may start an investigation both ex officio and upon notice by any interested party (e.g. consumers, consumer associations, competitors). Furthermore, any damaged person may in principle file a claim before a competent civil court against the alleged wrongdoer.

Japan

Actions under the Unfair Competition Prohibition Act can be initiated by the relevant competitors and actions under the consumer protection legislations can be initiated by public agencies and qualified consumer associations.

Luxembourg

The Unfair Competition Law provides that any person, any professional group or any consumer protection association is legally entitled to bring cease-and-desist proceedings.

The Consumer Code provides that any person, any professional group or any consumer protection association legally entitled to bring cease-and-desist proceedings, as well as the Minister in charge of consumer protection, the Financial Sector Supervisory Commission and the Luxembourg Insurance Commission are entitled to file a cease-and-desist order.

Netherlands

(a) Laws:

- Competitors
- Consumers
- Consumer organizations that, according to their charters, look after the interests of consumers can bring an action against misleading advertising in the form of a type of class action under Article 3:305, Section a and b, of the Dutch Civil Code.
- The (Dutch) Authority of Consumers & Markets ("ACM") is a public agency that has the authority to enforce provisions dealing with unfair commercial practices in cases where collective consumer interests are involved, such as misleading advertising and e-commerce. The ACM is not authorized to take action in the financial sector. The (Dutch) Authority for the Financial Market ("AFM") has exclusive jurisdiction in the financial sector.

(b) Self-regulation:

- Competitors
- Consumers
- Every entity with or without legal personality that has the opinion that advertising does not comply with the advertising rules.
- The ACM and the SRC have drafted a cooperation protocol under which the ACM will leave it to the SRC to handle any violations regarding misleading advertising that falls within the latter's jurisdiction.

Norway

The range of persons who are entitled to take legal actions against unfair competition practices is not limited. Consumers, competitors and various agencies and associations are entitled to take legal action against unfair competition towards consumers by filing a complaint to the Consumer Ombudsman.

The Consumer Ombudsman may also investigate cases on its own initiative.

Businesses that pursue a claim according to Chapter 6 (business-to-business) may choose to bring the case before the Norwegian Committee for the Control of Unfair Competition (*Næringslivets konkurranseutvalg*), which gives advisory statements. The Committee is composed of 10 representatives from various Norwegian enterprises. The Committee is not a court and is not authorized to give binding decisions. However, its advisory statements regarding a business's marketing acts are often complied with by the relevant enterprises.

People's Republic of China

Under the Anti-Unfair Competition Law:

- The competent government authority shall exercise supervision over and inspection of unfair competition behaviours ex officio or upon complaint of any organizations or individuals;
- Any organization or individuals, including competitors, consumers, public agencies, trade associations, consumer associations, self-regulation bodies, may report to the competent government authority for unfair competition behaviours;
- An undertaking whose lawful rights and interests are infringed upon by unfair competition behaviours may file a lawsuit before a people's court.

Peru

Administrative fining procedures may be initiated ex-officio by the authority or as a result of a claim by a third party (e.g., competitors, consumers and consumer associations, among others).

Philippines

An action for unfair competition may be initiated by any aggrieved party (natural or juridical).

Poland

Under the Unfair Competition Act, legal actions against unfair competition practices can be taken by business entities (especially competitors), and under specific circumstances, also national or regional business organizations. Under the Unfair Commercial Practices Act, the right of action when consumers' interests are threatened or infringed as a result of an unfair commercial practice committed by a business belongs to consumers, the National Ombudsman, the Insurance Ombudsman, consumers' ombudsmen and consumer protection organizations.

Portugal

As mentioned in our response to Question 2 above, acts of unfair competition can be regarded as administrative offences or civil wrongs. In the first case, legal action can be initiated by the competent authorities, or following a complaint filed by an affected party. The Authority of Food and Economic Security ("ASAE") is responsible for investigating each particular case.

In the second case, any competitor(s) harmed by the unfair conduct can bring a claim for damages, or ask for an injunction against the infringer.

Singapore

a) Unfair competition practices arising as a civil claim under the statutes or tortious actions:

Anyone whose rights are affected by these unfair competition practices can commence a civil claim.

b) Unfair competition practices arising under the Singapore Code of Advertising Practice:

When the advertisement is contrary to the principle of fair competition, any individual (or indeed a competitor) may lodge a complaint with the ASAS.

South Korea

Under the Act, any person or entity whose business profit has been infringed or is likely to be infringed as a result of the unfair competition practice has standing to bring a claim. See Article 4 of the Act.

Spain

Any individual or legal entity participating in the market and whose economic interests are directly harmed or threatened has standing to bring the actions listed in the Unfair Competition Law. Furthermore, the public prosecutor and some associations are entitled to exercise certain actions against unfair competition practices in defense of general, collective or diffused consumers' interests.

Sweden

All of the above-listed parties are entitled to take legal actions against unfair competition practices provided they are affected by the practice. Most matters are brought by competitors and public agencies, e.g., the Consumer Ombudsman.

Switzerland

The following persons and groups may take legal actions against unfair competition practices:

- Whoever suffers or is likely to suffer, through an act of unfair competition, impairment in his/her economic interests;
- Customers whose interests are threatened or infringed;
- Professional and trade associations whose Articles of association authorize them to defend the economic interests of their members;
- Organizations of national or regional significance devoted, by their Articles of association, to consumer protection;
- The Swiss Federal Government if it considers it necessary in order to protect interests of a collective character.

Taiwan

It depends on what kind of claims will be made. Legal action could be taken by competitors, consumers, the Taiwan Fair Trade Commission ("TFTC") or a public prosecutor.

Thailand

The Trade Competition Commission is entitled to take legal actions against unfair competition practices under the Trade Competition Act as well as the suffering party, or the Consumer Protection Board, an association created under the Consumer Protection Act.

Turkey

Pursuant to Article 56 of the Turkish Commercial Code, parties who are entitled to take legal action are as follows:

- Persons who have suffered or may suffer damages due to unfair competition;
- Customers;
- Chamber of Commerce;
- Chamber of Industry;
- Labour associations;
- Commodity exchanges;
- Other professional organizations that are entitled to protect the economic interests of their members;
- Non-governmental organizations that are entitled to protect the economic interests of their members;
- Public institutions.

United Kingdom[†]

A competitor may commence legal action for passing off.

The Consumer Protection from Unfair Trading Regulations are primarily enforced by administrative bodies (Trading Standards, and the Competition and Markets Authority), although consumers have, since 2014, also had some private rights of action. There are no rights for competitors to take legal action on the basis of the Regulations although they may make a complaint to the relevant administrative body.

The Business Protection from Misleading Marketing Regulations are enforced by the same administrative bodies. A competitor may be able to take legal action for trademark infringement in the case of a comparative advertisement, using that competitor's trademark, which does not comply with the rules on comparative advertising. In certain circumstances, a competitor may be able to take legal action for defamation or malicious falsehood.

Either consumers or competitors (or indeed any other interested party) may put in a complaint to the Advertising Standards Authority. Competitors are, however, expected to seek to resolve their concerns directly with the advertiser before making a complaint.

[†] Note that this response is provided on the basis of the law applicable in England and Wales. To some extent, the law and practice is different in Scotland and Northern Ireland; this document does not address those differences.

United States of America (Federal Law)

The Lanham Act is almost exclusively enforced through private-party claims, including complaints by competitors. However, not any consumer has standing to bring a claim. The individual states differ as to whether unfair competition/unlawful trade practices claims can be brought solely by consumers (or by the state on behalf of consumers) or by competitors.

United States of America (State Law - Overview)

The three model unfair competition statutes all allow for private rights of action that can be used by competitors, consumers, trade associations, and consumer associations. All states, to one degree or another, have maintained these rights in their individually-adopted versions of the statutes. For those states that include prohibitions for disparagement or for passing off goods or services as those of another in their unfair trade practices statutes, the private right of action is often drafted to include persons “likely to be damaged by a deceptive trade practice,” which would include persons maligned in their business, as well as trademark owners whose mark has been infringed. Some states specifically prohibit a private plaintiff’s right to bring suit in the form of a class action, whereas others allow it.

All states give the power to a state agency – typically the state’s Attorney General’s office – to enforce unfair competition laws. The state government can choose to bring suit even if there is no private plaintiff to allege that it has been harmed.

United States of America (California)

The UCL and The Deceptive, False, or Misleading Advertising Statute encompass many causes of action and allow legal remedies for a variety of plaintiffs. Private parties and public prosecutors both have standing to sue under the UCL and The Deceptive, False, or Misleading Advertising Statute. Private parties must show that they have suffered injury in fact and lost money or property as a result of unfair competition. The CLRA does not allow for public prosecutors to bring suit; only aggrieved consumers may sue.

Uruguay

Any competitor who suffers damage due to an act of unfair competition is entitled to take legal action against the infringing competitor. If the unfair competition practice also constitutes a consumer law violation, the consumer protection public agency may initiate investigations and eventually impose economic and other sanctions.

Vietnam

Any individuals and/or organizations such as competitors, consumers, public agencies, trade associations, and consumer associations that have related rights and obligations are entitled to take legal action against unfair competition practices.

How are the regulations against unfair competition enforced in your jurisdiction? What kind of remedies against unfair competition are provided (claim to forbearance, damages, etc.)?

Argentina

Certain actions (e.g., arising from the Fair Trade Law or the Consumers' Protection Law) require filing of a complaint with enforcement agencies, which may lead to application of penalties by those authorities. The judgment of those authorities may be appealed to the courts.

As an alternative, when the unfair competition practice falls under the provisions of Section 159 of the Criminal Code, then it is possible to directly file a legal action at the Courts of Law on Criminal Matters.

Belgium

The regulations regarding unfair competition are generally enforced through injunctive relief proceedings. Such proceedings may lead to a cease-and-desist order and sometimes to the publication of the court's decision. If the claimant wants to obtain damages, he/she will have to file separate legal proceedings on the merits.

Brazil

Harmed parties may enforce rights through the courts. The rights include the possibility to claim for injunctive relief and cessation of the illegal practices. Moreover, harmed parties can claim for compensation of damages, including damages to their image and honour. Furthermore, depending on the specific case, alternative compensation may be enforced, such as a public statement issued through the media.

For advertising matters, the Council of Advertising Self-Regulation (CONAR) may enforce penalties on infringers, including the removal of the relevant infringing advertising material.

Canada

The Competition Act is enforced by the Commissioner of Competition, who is the head of the Competition Bureau. The Commissioner has broad powers to commence a formal inquiry.

Under the criminal regime of the Competition Act, certain practices may be brought before the criminal courts. On summary conviction, the person is liable to a fine of up to CAD 200,000 and/or imprisonment for up to one year. If convicted on indictment, the person is liable to a fine at the discretion of the court and/or imprisonment for up to 14 years.

Under the civil regime of the Competition Act, certain practices may be brought before the Competition Tribunal, the Federal Court or the superior court of a province. The court may order a person to cease the activity, publish a notice and/or pay an administrative monetary penalty. For occurrences, individuals are liable to penalties of up to CAD one million and corporations are liable to penalties of up to CAD 15 million.

Actions under the Ontario Consumer Act may be commenced by a consumer in the Superior Court of Justice. Consumers may be able to rescind the agreement, recover damages, or both. A court may award exemplary or punitive damages in addition to any other remedy awarded.

Chile

In accordance with Article 5 of the Unfair Competition Act, the claimant may file a claim before the relevant civil court based on one or more of the following legal actions, seeking the corresponding remedies:

- An action seeking for the conduct to cease or for the same to be prohibited, if it has not yet been executed;
- An action seeking the existence of an unfair competition conduct to be declared, if the disruption created by the same still survives;
- An action seeking to remove the effects produced by the conduct, by means of the publication of the ruling against the infringer, a rectification by the latter, or through other suitable mechanisms; and
- An action for the indemnification of the damages caused by the conduct.

Colombia

The person affected by an act of unfair competition may take action to judicially declare the illegality of such acts and, as a consequence, the defendant will be ordered to remove the effect of the unfair act and compensate for the damage caused to the plaintiff. Furthermore, preliminary injunctions are available to prevent or prohibit the realization of unfair competition acts, even if no damages have been caused by such acts.

Costa Rica

- a. In the case of enforcement of unfair competition by consumers, the Antitrust Authority (COPROCOM) and the National Consumer Commission have the power to investigate and sanction acts of unfair competition. Those sanctions range from withdrawal, suspension or correction of the practice, to the imposition of a fine. When there are crimes that are prejudicial to the consumer, both authorities have legal capacity to transfer the case to a criminal court, and proceed under criminal law in cases such as usury, buying and selling of commodities in order to profit from market fluctuations, and unfair propaganda.

b. Economic agents may only enforce their rights through judicial means, in particular, via Article 432 and the following of the Civil Procedural Code which explicitly outlines the summary judgment procedure. There are several remedies that may be solicited, including damages, an injunction, financial penalties and other remedies.

Denmark

Normal remedies include injunctive relief, claims for “reasonable compensation” and/or damages, destruction of infringing goods or materials, publication of verdicts and fines.

Finland

Remedies provided under the Unfair Business Practices Act include:

- Prohibition from continuing or repeating practices violating the law; the prohibition may also be enforced through a conditional fine;
- A temporary ban, which shall remain in force until the case is finally decided;
- Remedial actions;
- The publication of a prohibition decision;
- Compensation for damages;
- Fines;
- Imprisonment for a maximum of two years.

France

The entities named in the response for France to Question 9 may claim for injunctive relief and request the immediate discontinuation of the illegal practices. Moreover, an infringed competitor can claim for compensation of damages.

Germany

The entities named in the German response to Question 9 may claim for injunctive relief and removal of the illegal practices, whether or not the defendant acted culpably. Moreover, an infringed competitor can claim for compensation of damages provided that the defendant used the unfair commercial practice with intent or negligence.

Trade associations, self-regulatory bodies and Chambers of Industry and Commerce may also claim for the confiscation of profits gained by the infringer. The claimed profits have to be transferred to the federal budget.

Greece

Remedies provided under the Unfair Competition Law include claims for removing the infringement, not committing similar actions in the future, and compensation for damages. Furthermore, the UCL also provides for the possibility of seeking injunctive relief.

India

The Act provides for the regulations to be enforced through District Forum/State Commission/National Commission, as the case may be. The remedies to the aggrieved consumer are in the form of one or more of the following orders:

- (a) To remove the defect pointed out by the appropriate laboratory from the goods;
- (b) To replace the goods with new goods of similar description, which are free from similar defects;
- (c) To return the price or the charges paid by the complainant;
- (d) To pay such amount as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;
- (e) To remove the defects or deficiencies in the services in question;
- (f) To discontinue the unfair trade practice or the restrictive trade practice or not to repeat, i.e., cease-and-desist orders;
- (g) Directions to withdraw the hazardous goods from being offered for sale;
- (h) To provide for adequate costs to parties.

Indonesia

The following sanctions may be imposed for the violation of Law 8 provision.

ADMINISTRATIVE SANCTIONS:

Compensation in the amount of a maximum of IDR 200 million.

CRIMINAL SANCTIONS:

Imprisonment for a maximum of two or five years, or a fine in lieu of imprisonment in the amounts of maximum IDR 500 million or IDR 2 billion respectively (applicable for different kind of violations).

Israel

Depending on the circumstances, one or more of the following remedies are available: injunctive relief (temporary and permanent), monetary compensation and statutory damages. Under the Unjust Enrichment Law, the main remedy is restitution.

Under the Commercial Torts Law, the business harmed by a tortious action of another business is entitled to damages, injunctive relief, review of accounts provided by the injuring party, appointment of a receiver, and destruction of goods.

Italy

As per the provisions of the Italian Civil Code on “unfair competition” (narrowly construed), remedies that may be sought before the competent courts include (i) injunctive remedies, (ii) damages, (iii) order to publish the decision in newspapers. The remedies under (ii) and (iii) may be granted only in cases where the unfair practices have occurred with intention or negligence by the wrongdoer (negligence is presumed once the unfair practices are ascertained).

As per the provisions of the Consumer Protection Code on “unfair commercial practices”, the competent Authority (i.e., AGCM) may issue, inter alia, (i) interim and/or final injunctions and (ii) pecuniary sanctions up to EUR 5 million. Please note moreover that it is always possible for any damaged parties to file an action before any competent court seeking, when applicable, damages and/or injunctive remedies against the alleged wrongdoer.

Japan

The Unfair Competition Prohibition Act provides for injunctive relief and recovery of damages, and, in limited circumstances, the affected competitors are entitled to certain corrective measures (e.g., an advertised apology in order to restore the defamed business reputation). The public agency may order infringers to take corrective measures under the Act against Unjustifiable Premiums and Misleading Representations. Qualified consumer associations can seek injunctive relief and damages.

Luxembourg

The entities mentioned in the response for Luxembourg to Question 9 may claim for the discontinuance of the acts of unfair competition in the context of cease-and-desist proceedings.

Damages may also be allocated by the judge in the context of a civil action. In such cases, the claimant must prove that the defendant has committed a fault causing damage and a causal link between the fault and the damage. Besides, criminal fines may apply.

Netherlands

The following kinds of remedies are provided against unfair competition:

(a) Private enforcement

A plaintiff that brings an unfair competition action before a civil court has the standard (civil law) remedies available for tortious liability under Article 6:162 of the Dutch Civil Code. He/she/it can therefore file for an injunction, if necessary in conjunction with a daily default fine, can claim damages or ask for a declaratory judgement. In certain cases, specific remedies will be available like a rectification, compulsory publication of the judgement, the declaration of a new legal status, a product recall or a claim for submission of exhibits.

According to Article 6:193j(3) of the Dutch Civil Code, a consumer can annul an agreement that was reached as a result of an unfair trade practice.

(b) Administrative enforcement

The ACM can ask a trader for an undertaking to cease an infringement. When it comes to unfair trade practices, a fine up to EUR 450,000 may be imposed per violation to companies as well as the directors of those companies. As a matter of principle, the ACM will always publish its decision on the imposition of an administrative order or fine. The ACM can also publish a public warning before it has discovered an infringement if it is necessary to inform consumers quickly and effectively of an alleged unfair trade practice to prevent further damage.

(c) Self-regulation

A committee of the SRC, the Advertising Code Committee, is authorized to determine whether or not advertisements comply with the rules of the Dutch Advertising Code. If the Advertising Code Committee decides that an advertisement is in violation of the NRC, the committee can make a ‘recommendation’ which means that the committee recommends to discontinue this way of advertising. In certain cases, the committee can decide to distribute a decision as an alert, which means that the decision will be made public via a press release in the media and the internet.

Norway

In addition to the remedies explained under Questions 12 and 13, there are a variety of remedies that are applicable, such as:

- Injunctive relief;
- Compensation for damages according to general rules on liability;
- Remuneration for the unlawful misuse irrespective of the economic loss of the other party according to the non-statutory rules regarding enrichment (however, the legal bases for such claims are somewhat uncertain);
- Relinquishment of gain.

People’s Republic of China

Depending on the nature of conduct and proceeding concerned:

- Civil liability. An infringed undertaking may claim damages and reasonable associated expenses against the undertaking that commits unfair competition behaviours in violation of the Anti-Unfair Competition Law;
- Administrative liability. A competent authority, upon investigation, may order the infringing undertaking to cease the prohibited unfair competition behaviours, confiscate the illegal income and impose a fine;
- Criminal liability. An undertaking may need to bear criminal liability if its unfair competition behaviour constitutes a crime.

Peru

INDECOPI is empowered to sanction infractions of the Unfair Competition Law by imposing pecuniary fines on each individual defendant. Maximum fines are capped at 700 Tax Reference Units (approximately USD 900,000), so long as they do not exceed 10% percent of the gross income earned by the defendant in the fiscal year prior to the decision.

In addition, INDECOPI may impose behavioral remedies (e.g., injunctions) to suppress the effects of conducts deemed unlawful, including cease-and-desist orders, confiscation or destruction of the products, labels, packages, infringing material and any false identification elements; rectification of advertisement or other misleading communications, etc. INDECOPI, however, may not award damages to parties affected by unfair practices. Notwithstanding, the latter may seek indemnification through general tort claims before the judiciary, upon the conclusion of administrative fining procedures.

Philippines

In general, an aggrieved party may ask for the recovery of damages and injunctive relief.

Poland

If the activity is recognized as an act of unfair competition, the following claims can be sought by a competitor or consumer in court proceedings:

- Cessation of the prohibited activity;
- Removal of the effects of the prohibited activity;
- Making one or several statements with the appropriate wording and in the appropriate form;
- Remedying inflicted damage and surrendering unjust benefits according to general rules of civil law;
- Payment of a specified amount to a social cause for the support of Polish culture or national heritage. The court, upon request, may also decide on the products, packaging, advertising materials and other objects directly related with the committed tort of unfair competition. In particular, the court may decide to destroy the above materials/objects or account for them in the damages.

Portugal

Competitors claiming they have been harmed by an act of unfair competition may ask for compensatory damages. Further options exist: Article 338-I of the Industrial Property Code allows for affected parties to obtain injunctions, in order to prevent imminent acts of unfair competition or to stop ongoing violations. Article 338-J allows courts to order the seizure of the alleged infringer's assets to guarantee payment of damages. Furthermore, Article 319 allows the customs authorities to impound any imported or exported merchandise and products if there are any indications that an act of unfair competition has taken place.

When their actions constitute administrative offences, infringers are subject to fines, as seen in the response to Question 2 above.

Singapore

The remedies available to an individual pursuing a civil claim are injunction, damages, account of profits, statutory damages, order for the delivery of any infringing copy or any article used to make infringing copies, and order for disposal of infringing copies.

If the statutes permit (e.g., for counterfeiting of goods), fines and/or imprisonment may be imposed by the Courts.

South Korea

The Act provides for remedies that are civil (injunctive relief and compensatory damages), criminal (imprisonment or criminal fines), and/or administrative (corrective actions or administrative fines) in nature.

Spain

Remedies include an action to declare the practice concerned unfair, an action of cessation or prohibition of reiteration, an action of removal of the effects caused by the unfair practice, an action of rectification of information that is misleading, false or erroneous, action for damages, action of unfair enrichment and (in certain cases) publication of the judgment or a rectifying statement.

Sweden

The most important remedy is claims for injunctions which are subject to a fine. Violations of the injunction incur a fine of approximately SEK 1 million), a "market disturbance fee" (ranging from SEK 5,000 up to SEK 5 million) and damages.

Switzerland

1. By civil actions, the following remedies may be sought:

- A cease-and-desist order;
- Declaratory relief;
- Publication of the judgement;
- Compensation for damage or surrender of profits.

2. Criminal complaint

3. Consumers may also file a complaint to the State Secretariat for Economic Affairs (SECO) which may take further steps, in particular the filing of a criminal complaint.

Taiwan

CIVIL LIABILITIES:

Article 30 of the Fair Trade Act states that if any enterprise violates any of the provisions of the Act and thereby infringes upon the rights and interests of another, the injured party may demand the removal of such infringement, or if there is a likelihood of infringement, prevention may also be claimed. In addition, Article 31 of the FTA states that any enterprise that violates any of the provisions of the FTA, and thereby infringes upon the rights and interests of another, shall be liable for damages resulting therefrom.

CRIMINAL LIABILITIES:

Imitation of goods and services and attacks on business reputation may be punished by imprisonment for not more than two/three years or detention or by a fine of not more than Taiwan Dollars (TWD) 150 million, or by both.

ADMINISTRATIVE LIABILITIES:

Paragraph 1, Article 41 of the FTA states that the Taiwan Fair Trade Commission (TFTC) may order any enterprise that violates any of the provisions of the FTA to cease the violation, rectify its conduct or take necessary corrective action within the time prescribed in the order. In addition, it may assess upon such enterprise an administrative fine of not less than TWD 50,000 or more than TWD 25 million. If the enterprise fails to cease the violation, rectify the conduct or take any necessary corrective action after the lapse of the prescribed period, TFTC may continue to order the enterprise to cease the violation, rectify the conduct or take any necessary corrective action within the time prescribed in the order, and each time may successively assess thereupon an administrative fine of not less than TWD 100,000 and not more than TWD 50 million until it has ceased the violation, rectified its conduct or taken the necessary corrective action.

Thailand

The Trade Competition Commission (TCC) and the Consumer Protection Board will enforce against unfair practices. There are different types of remedies. The breaching party may be subject to several measures, from ceasing such unfair practices to being criminally liable for such actions, with possible jail terms and fines. The breaching party may also be compelled to make compensation to a person who suffers damage from the infringing activities.

With regard to the Consumer Protection Act, if the Committee on Advertising considers any advertising to be in violation of this Act, it shall have the power to:

- Order a change of the statement or method of advertising;
- Prohibit the use of certain statements appearing in the advertising;
- Prohibit the advertising or the use of the advertising method;
- Order changes in the advertising to be made so as to correct the understanding of the consumer who might have already been misled, in accordance with the principles and procedures established by the Committee on Advertising.

In addition, both the Trade Competition Act and the Consumer Protection Act also impose sanctions on those who violate the provisions, including criminal prosecution.

Turkey

In the event of an unfair competition act, the potential legal actions that may be taken are basically as follows: (i) Declaratory action regarding the examination and declaration of acts that constitute unfair competition; (ii) Action for prevention of the act of unfair competition; (iii) Action for restitution; (iv) Action for compensation of the damages that result from the act of unfair competition; and (v) Action for moral compensation.

As a result of actions for damages, the court may judge that the infringer has to pay a specific amount of money to the claimant. In addition, the court may condemn the unlawful act and make the judgement available to the public.

United Kingdom[†]

A legal action for passing off may lead to damages, an account of profits and/or an injunction.

Trading Standards and the Competition Markets Authority have the power to pursue criminal remedies (fines, imprisonment) but can also seek injunctions, demand undertakings or simply seek to provide education and guidance.

The Advertising Standards Authority requires that offending advertising be discontinued, and publicizes its investigations (the main sanction is therefore essentially “naming and shaming”).

United States of America (Federal Law)

The Lanham Act provides for injunctive relief, damages, a disgorgement of profits wrongfully gained by the unlawful activity, as well as payment of attorneys’ fees in certain cases. The remedies of the state statutes are largely, at least in part, identical to the federal remedies.

United States of America (State Law - Overview)

Unfair competition regulations in most states are enforced through government lawsuits, often headed by the Attorney General’s office, as well as private litigation by aggrieved individuals or companies. The remedies available for unfair or deceptive trade practices vary across states, but nearly all states allow the state agency to pursue three main forms of remedies: (1) equitable relief, including injunctions or other orders requiring a business to cease engaging in an unfair or deceptive practice; (2) restitution, including orders requiring the business to return to consumers money it took wrongfully; and (3) civil penalties.

Typical restitution will include compensatory damages, which are available in all states. Approximately half of the states also allow for punitive damages. In addition, Rhode Island is unique in not allowing its state agency to seek civil penalties. Five states, Colorado, Indiana, Nevada, North Dakota, and Wyoming, require proof of intent or knowledge when violating unfair competition statutes in order to impose civil penalties.

[†] Note that this response is provided on the basis of the law applicable in England and Wales. To some extent, the law and practice is different in Scotland and Northern Ireland; this document does not address those differences.

United States of America (California)

There are two remedies available under the UCL: injunction and restitution. The UCL does not provide for punitive damages. The Deceptive, False, or Misleading Advertising Statute provides for criminal remedies under section 17534 (misdemeanour carrying a maximum six-month sentence) and civil remedies under Section 17536 (monetary damages). Under the CLRA an aggrieved consumer may receive a broad variety of civil remedies including: actual damages, restitution, punitive damages, and any other relief the court deems proper.

Uruguay

In general terms, the mechanisms to enforce unfair competition regulations consist in requesting a cessation order prohibiting any repetition of the act and seeking compensatory damages on the basis of either Section 1319 of the Uruguayan Civil Code or the Trademark Law, as the case may be. In cases where Section 1319 of the Uruguayan Civil Code applies, the claimant shall have to prove the elements of the tort responsibility, i.e., the illegal act, the damage and the link between the illegal act and the damage, as well as the negligence or willful misconduct.

Further, the person who suffered any damage as a consequence of an unfair competition act shall also request an injunction, in order to compel the infringer to stop committing the illegal act. However, in this case, the claimant shall have to prove a good arguable case on the merits and urgency and provide a guarantee in order to compensate the defendant in the event the plaintiff loses the case.

In addition, an Action of Protection (*Amparo*) could be filed in situations in which there is an actual or imminent damage to a right or liberty either expressly or impliedly protected by the Constitution, which may not be otherwise remedied (Law Number 16.011).

Finally, when the unfair competition act consists of a misleading advertising, then the competitor may request the National Council of Advertising Self-Regulation (or CONARP, which is a non-profit entity whose aim is to act as an arbitrator in the dispute with its infringing competitor, and to order the correction or withdrawal of the misleading advertisement). However, the decision of CONARP is neither binding upon nor enforceable against the infringer.

Vietnam

Causing unfair competition, individuals or organizations in breach may be subject to a warning or a fine. Depending on the nature and seriousness of the breach, an individual or organization may be further subject to:

- Withdrawal of business registration certificate; revocation of the right to use a licence or practising certificate;
- Confiscation of exhibits and facilities used to commit the breach of the laws on competition.

The remedies against unfair competition are provided under the Law on Competition 2004, and are as follows:

- Forced restructure of an enterprise that has abused its dominant market position;
- Division or split of an enterprise that has merged or consolidated;
- Compulsory re-sale of that part of an enterprise that has been acquired;
- Public retraction;
- Removal of illegal terms and conditions from a contract or business transaction;
- Compulsory use or re-sale of inventions, utility solutions or industrial designs that have been purchased but not used;
- Compulsory removal of measures that prevent or impede other enterprises from participating in the market or from developing business;
- Compulsory restoration of conditions for technical or technological development that an enterprise has impeded;
- Compulsory removal of disadvantageous conditions imposed on customers;
- Compulsory restoration of contractual conditions that have been changed without any legitimate reason;
- Compulsory restoration of a contract that has been cancelled without any legitimate reason.

Where a party commits a practice in breach causing loss to the interests of the State or to the lawful rights and interests of other individuals or organizations, such party must compensate for such loss in accordance with law.

Are specific unfair practices subject to criminal provisions? If yes, which practices?

Argentina

According to Section 159 of the Criminal Code, unfair practices subject to criminal provisions are fraudulent contrivances or malicious suspicions, or any kind of unfair propaganda, purported to divert to one's own benefit the clientele of a commercial or industrial establishment.

Belgium

Yes. Specific unfair trade practices will be punished with a criminal fine of EUR 26 to EUR 10,000. This will be the case for unfair trade practices like unlawful pricing, labeling, indication of quantities, price promotions, special sales, distance selling, forced purchases regarding undertakings and unwanted communications.

Brazil

Yes, all acts of unfair competition provided for in the Industrial Property Law are subject to criminal prosecution and a penalty of detention from three months to one year, or a fine.

The main examples are publishing false statements, denigration, use of fraudulent means for one's own benefit, imitation or improper use of signs, commercial names, title of establishment or advertising expression of competitors, specific misleading advertising, and revealing trade secrets.

Canada

The specific unfair practices that are considered criminal are found in the Competition Act. These include misleading advertising, deceptive telemarketing, deceptive notice of winning a prize, double ticketing, multi-level marketing, and pyramid selling.

The federal Criminal Code provides that forgery and passing off of a trademark are criminal offences punishable by fine or imprisonment.

Chile

The Unfair Competition Act does not include criminal provisions.

The Intellectual Property Act and the Chilean Criminal Code include criminal provisions regarding mainly copyright infringements and frauds that partially consider elements of the previously described unfair competition practices in Chile.

Colombia

Only the misappropriation of trade secrets may be subject to criminal law.

Costa Rica

When there are crimes that are committed against the consumer, the Antitrust Authority and the National Consumer Commission have legal capacity to transfer the case to the criminal courts. In particular, these include crimes of usury, buying and selling of commodities in order to profit from market fluctuations, and unfair propaganda.

Denmark

Violations of several provisions are punishable by fine, particularly actions that are considered misleading or that relate to minors. In addition, actions regarding industrial espionage, willfully misleading statements or actions that are contrary to enforcement notices issued by the Consumer Ombudsman are punishable by fines.

Finland

A false or misleading expression (i.e., attack on business reputation), comparative advertising in certain situations and use of others' business secrets are subject to criminal provisions under the Criminal Code (39/1889) Chapter 30.

France

The following unfair practices are subject to criminal provisions: false and misleading advertising, resale at loss, concerted practices on pricing; breach of the rules governing "soldes" (i.e., specific sales periods in winter and summer), breach of the rules governing the opening of shops on Sundays, consumer fraud, posting of a false designation-of-origin label, breach of professional regulations, etc.

Germany

Only intentional misleading advertisements creating the impression of a particular offer and the disclosure of trade and industrial secrets are governed by criminal law.

Greece

Only the intentional unfair use of distinctive features (i.e., a distinctive feature of a shop, distinctive title, etc.) and the disclosure of trade and industrial secrets are subject to criminal provisions.

India

The unfair trade practices as covered under the Act are not subject to any criminal provisions.

Indonesia

Almost all violations of Law 8 provisions are subject to criminal sanctions. Violations of Law 8 that are subject to administrative sanctions only are a business's violation of (i) fulfilling the agreed-upon guarantee and/or promises of relevant service and (ii) its obligation to provide spare parts and fulfilling the agreed-upon guarantee and/or promise that the goods can be used for at least one year.

Israel

Yes, most notably to the extent that the Restrictive Trade Practices Law contains criminal sanctions for certain kinds of behaviour.

Italy

In several cases, certain commercial practices are also subject to criminal provisions (e.g., certain forms of pyramid schemes). Moreover, please note that certain unfair practices may encompass conducts that constitute crimes pursuant to the Italian Criminal Code, e.g., obstruction to freedom of industry and trade, unlawful competition with threat or violence, fraud in commerce, infringement of intellectual property rights (e.g., trademarks, patents, trade secrets, copyrights).

Japan

Acts of unfair competition under the Unfair Competition Prohibition Act are generally subject to criminal sanctions. Non-compliance to an order issued by the public agency under the Act against Unjustifiable Premiums and Misleading Representations is also subject to criminal provisions.

Luxembourg

All acts of unfair competition as defined in Articles 14 to 22 of the Unfair Competition Law are subject to criminal sanctions (fines), including:

- Any act of unfair competition that would deprive or attempt to deprive a business's competitors or one of them of part of its customers, or that would undermine/attempt to undermine the competitive capacity of its competitors or one of them by an act contrary to honest practice in trade, industry, craft or professional area, or by an act contrary to a contractual duty;
- Misleading advertising;
- Unlawful comparative advertising;
- Sale at loss;
- Unlawful lotteries, competition games and advertising tombolas.

All unfair commercial practices as defined at Articles 122-1 et seq. of the Consumer Code are subject to criminal sanctions (fines), including:

- Misleading commercial practices (e.g., misleading actions, misleading omissions);
- Aggressive commercial practices.

Netherlands

There are no specific unfair practices subject to criminal provisions.

Norway

Acts that constitute a breach of, inter alia, the prohibitions against misleading or aggressive marketing, unfair marketing towards children and certain acts that violate the principle of good business practice between businesses are subject to criminal provisions.

People's Republic of China

Yes. For certain unfair competition behaviours, such as commercial bribery, sale of fake or inferior commodities, criminal liability shall be assumed to the extent the practice constitutes a crime.

Peru

Until 2008, certain unfair competition acts forbidden under prior unfair competition legislation were deemed criminal offences under the Peruvian Penal Code. These provisions were explicitly abrogated by the Unfair Competition Law. Accordingly, under current Peruvian Law, unfair competition offences may only result in administrative and civil liability.

Infringements to Peruvian IP legislation, however, may result in criminal prosecution.

Philippines

Under the relevant provisions of the IP Code, and independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment and a fine may be imposed on any person who is found guilty of committing unfair competition practices.

The Consumer Act of the Philippines was enacted primarily to protect the interests of consumers, to promote their general welfare and to establish standards of conduct for business and industry. The Act imposes penalties (such as imprisonment and the imposition of a fine) for such behaviour as deceptive, unfair and unconscionable sales practices in both goods and credit transactions.

Poland

The unfair practices subject to criminal sanctions under the Unfair Competition Act are: breach of trade secrets, illegal copying of a product, organization or management of consortium sales, confusing product designation, dissolving the false information. Additionally, criminal proceedings can be filed against unfair competitive activities that are not specified as crimes or offences in the Unfair Competition Act, if the anti-competitive activity satisfies the preconditions of one of the provisions in the Penal Code.

Portugal

Acts of unfair competition are dealt with solely as administrative offences. As such, no specific unfair competition practices are subject to criminal provisions.

Singapore

Certain practices in the Trade Marks Act, Copyright Act and Consumer Protection (Trade Description) Act are subject to criminal provisions.

The latter Act stipulates that any individual who applies or supplies a false trade description in an advertisement or a trade mark may be found guilty of an offence under the Act. If so, he/she may be fined an amount not exceeding SGD 10,000 or jailed for a term not exceeding two years or both, provided that the prosecution of the offence takes place within three years of committing the offence.

South Korea

Yes. In the context of trademarks, the types of act that are subject to criminal penalties under the Act include: (i) passing-off (i.e., the act of using a name, a service mark, a trademark, a product container or product packaging that is similar to another's well-known name, service mark, trademark, product container or product packaging); (ii) misrepresentation as to the source or the origin of the goods; and (iii) use of a flag, an emblem or other insignia belonging to an international organization, a member state of the Paris Convention, or a member state of the World Trade Organization. The applicable criminal penalties in this context include imprisonment of up to three years or a fine of up to KRW 30 million.

Spain

Yes. The disclosure of trade secrets and willfully misleading statements are subject to criminal sanctions. Nevertheless, the criminal prosecution of these practices is not usual.

Sweden

Specific unfair practices are not subject to criminal provisions under the Market Act but are under the Act on the Protection of Trade Secrets.

Switzerland

Most acts of wilful unfair competition are subject to criminal provisions, among them unfair advertising and sales methods, inducement to breach or terminate a contract, active and passive private-sector bribery, unfair exploitation of the achievement of others, and violation of manufacturing or trade secrets.

Taiwan

Please see the response under "Criminal Liabilities" in Question 10 above.

Thailand

The Trade Competition Act and the Consumer Protection Act have criminal provisions relating to penalties against the violator, who, for example, shall be liable to imprisonment for a term not exceeding three years or a fine not exceeding THB six million, or both.

In addition, the Trade Competition Act grants to the Trade Competition Commission the same power as that possessed by administrative or police officials under the Criminal Procedure Code. The Consumer Protection Act also grants the same power to the Consumer Protection Board.

Turkey

Under Article 62 of the Turkish Commercial Code, those who intentionally commit the acts of unfair competition described in the response to Question 10, or who:

- Intentionally provide false or misleading information about their personal situation, products, business products, commercial and other activities to induce customers to prefer their offers and proposals above those of their competitors;
- Entice employees, officers or other workers to reveal their employer's or customer's production or commercial secrets; or
- Have not prevented a punishable act of unfair competition conducted by their employees, workers or representatives, and/or have not restored the effects of the misrepresentation;

will be punished by two years of imprisonment, or will be subject to administrative fines.

If the act of unfair competition is committed by a legal entity, the penalty clauses also apply to the members of management bodies or the shareholders who have acted on behalf of the legal entity. In addition, the security measures may apply to the legal entities that commit acts of unfair competition within the scope of its activities.

United Kingdom[†]

The majority of the misleading and aggressive practices governed by the Consumer Protection from Unfair Trading Regulations are criminal offences. Misleading advertising under the Business Protection from Misleading Marketing Regulations is also a criminal offence.

United States of America (Federal Law)

Yes. Counterfeiting is an example.

United States of America (State Law - Overview)

Typically, unfair competition laws emphasize civil or equitable relief and most enforcement remains civil rather than criminal. There are exceptions, however. For example, California's unfair competition law provides for criminal penalties for untrue or misleading statements made in connection with the sale of goods or services, as does Hawaii. New York law contains criminal provisions for counterfeiting and use of false marks in manufacturing. Approximately half of the states have misdemeanour liability for violations of the unfair competition act. Criminal charges typically require an element of wilful or knowing behaviour.

Often the acts that can form a claim for unfair competition can also form a claim for violations of antitrust laws, many of which carry criminal penalties at both the state and federal levels.

United States of America (California)

False advertising is a business practice subject to criminal prosecution. The Deceptive, False, or Misleading Advertising Statute provides prosecutors the option to pursue criminal charges against violators of the statute. To prove a violation of the statute, a prosecutor must show (1) intent to dispose of property or perform services, and either (2) a misleading or untrue public dissemination or (3) an intent not to sell as advertised.

Uruguay

There are no specific unfair practices subject to criminal provisions.

Vietnam

Vietnamese law generally provides that individuals committing unfair competitive practices may be subject to criminal provisions if there is "criminal indication". The concept of criminal indication is vaguely defined under Vietnam laws, therefore, we have not seen it enforced in practice.

[†] Note that this response is provided on the basis of the law applicable in England and Wales. To some extent, the law and practice is different in Scotland and Northern Ireland; this document does not address those differences.

Does a standard procedure to enforce the claims exist? If yes, please list the steps to be taken and briefly explain them from the discovery of the infringement to a final court decision.

Argentina

There is no standard procedure to enforce claims relating to unfair competition matters. But, as explained in our answer to Question 10, certain actions (e.g., arising from the fair trade law or the consumers' protection law) require filing of a complaint with enforcement agencies.

Belgium

Often a cease-and-desist letter will be sent. If parties do not reach settlement, the claimant may lodge proceedings before the Commercial Court. Often, injunctive relief proceedings are initiated.

Brazil

Regularly, proceedings shall begin with a warning letter and the request for a cease-and-desist declaration subject to a reasonable penalty clause. If the warning is justified, reimbursement of the necessary expenses, especially legal costs, can be demanded. If the infringer is unwilling to stop the illegal behaviour and unwilling to sign a cease-and-desist declaration, the claimant should file a lawsuit at the court of competent jurisdiction. If unquestioned evidence about the infringement can be presented, injunctive relief may be claimed.

Canada

Under the Competition Act, for the prosecution of misleading representations and deceptive marketing practices, the Commissioner of Competition may choose to pursue either the criminal track or the civil track.

Under Part III of the Ontario Consumer Protection Act, the consumer must first provide notice to the other party. If the consumer has delivered such notice and does not receive a satisfactory response, the consumer may commence an action in the Superior Court of Justice.

Chile

Article 9 of the Unfair Competition Act establishes that claims filed in accordance with the Act shall follow the general rules of summary proceedings (*juicio sumario*).

Once the claim is filed and served, the parties shall attend a hearing before the court that shall take place five days after service of process. After the hearing and based upon the merits, the court will either move to resolve the conflict or open an evidence period for eight days.

Immediately after the evidentiary period has elapsed, or after the hearing, if the court decides that there are no facts to be further proven by the parties, the court shall issue a resolution summoning the parties to hear the final judgment. The court then has a term of 10 days to issue its final decision.

If there is serious and accurate evidence of threat or execution of an unfair competition act, the court, upon request, may order the immediate suspension of the referred act, notwithstanding other precautionary measures provided for in the Civil Procedure Code.

Colombia

Proceedings are initiated solely upon request of an affected party by filing a lawsuit before a civil court, or before the Superintendent of Industry and Trade (The SIT is an administrative authority with jurisdictional powers for unfair competition and IP matters).

Once the lawsuit is admitted, the defendant must respond and provide the necessary evidence for defence. Then, the SIT or the civil court schedules a hearing that comprises the following stages: conciliation hearing, evaluation of the admissible evidence, and the rendering of judgement.

A preliminary injunction can be requested at any time during the proceeding, or even before the lawsuit has been lodged by the plaintiff.

Costa Rica

In the case of enforcement of unfair competition clauses between economic agents, the summary civil procedure applies. According to Article 433 and 434 of the Civil Procedural Code, the procedure is as follows: after the statement of claim has been filed, the defendant has five days to oppose. The opposition hearing must be filed within three days, during which the other side may present their counterproposal. After this, a decision will be issued within 10 days from the day after the proof is submitted.

In the case of enforcement of unfair competition by consumers, an administrative procedure applies as indicated in the General Public Administration Law, Law 6227. Within the time given, the accused and his/her representative must refer to the imputed facts, exercise his/her defense, and provide exculpatory evidence. A private oral hearing is announced and proof that is not relevant will be dismissed. The governing body will issue a final decision within 15 days.

Denmark

Most cases begin with a cease-and-desist letter from the affected competitor. If the case concerns imitation of products, the affected competitor may seek to obtain a preliminary injunction before initiating a case on the merits.

If the violation concerns consumers and/or the public interest, the case would normally begin with the Ombudsman receiving a complaint (although he may initiate a case on his own initiative). Following this, the Ombudsman will begin a discovery process by demanding information from the trader.

If the Ombudsman finds that the trader has violated a provision of the Marketing Practices Act, he may demand the cessation of the infringing activities and/or propose a fine. If the trader does not accept the fine, criminal proceedings will begin.

Finland

A single system exists in Finland: the Market Court is the court with competent jurisdiction. An application for an injunction to stop the unfair commercial practice may be filed at any time. The Market Court may also impose a temporary ban, which shall remain in force until the case is finally decided. The Market Court's decision may be appealed to the Supreme Court, if a leave to appeal is granted.

Criminal charges shall be brought before a general court of first instance. The public prosecutor may not bring charges unless the injured party has reported the matter for the bringing of charges.

France

Proceedings may begin with a warning letter whereby the victim of the infringement requests the immediate discontinuation of the illegal behaviour/practice.

However, based on Article 145 of the French Code of Civil Procedure, proceedings may also take the form of non-adversarial proceedings before a Commercial Court, which could give authorization to a bailiff to seize, at the competitor's place of business for instance, additional pieces of evidence of the unfair competition practice.

If the infringer does not stop the illegal behaviour upon request, the claimant may ask for a preliminary injunction before the Commercial Courts under specific circumstances. This allows disputes to be solved rapidly.

Regarding infringements of provisions set forth in the French Consumer Code, it should be noted that as per Article L121-2 of the French Consumer Code:

"The agents of the Directorate-General for Fair Trading, Consumer Affairs and Fraud Prevention, those of the Directorate-General of Food of the Ministry of Agriculture and those of the Department of Metrology of the Ministry of Industry are authorized to record, by means of written statements, misleading commercial practices throughout the national territory. Written statements drawn up pursuant to this Article are sent to the Public Prosecutor."

Germany

Generally, proceedings shall begin with the sending of a warning letter and the request for a cease-and-desist declaration subject to a reasonable penalty clause. If the warning is justified, reimbursement of the necessary expenses, especially legal costs, can be demanded. If the infringer is unwilling to sign a cease-and-desist declaration, the claimant may ask for a preliminary injunction before the civil courts. This allows disputes to be solved rapidly.

Greece

Yes. The injured party has the right to file for injunctions in order to immediately disrupt the infringing behaviour and ensure that the offender will desist from repeating the same behaviour in the future. Thereafter and within one month from the decision on the injunction petition, the injured party must proceed with the filing of an action before the Civil Courts.

India

Yes, there exists a standard procedure to enforce the claims. The steps to be taken from the discovery of the infringement to a final court decision are as follows:

- (a) Identification of the jurisdiction of the appropriate forum where the complaint needs to be filed. A complaint shall be instituted in a District Forum or State Commission within the local limits of the jurisdiction where the opposite party resides or carries on business or has a branch office or personally works for gain. In the case of the National Commission, the jurisdiction is conferred automatically where the amount of damages sought exceeds one crore (or INR 10 million or about USD 156,500 using current conversion rates);
- (b) Once the complaint is admitted by the appropriate forum, it hears the matter at length by both parties and pronounces the final order.

Indonesia

According to Law 8, at the first place, a business owner shall be responsible for providing compensation for the damage, contamination, and/or losses suffered by consumers (this can be in the form of a cash refund, replacement of goods and/or services, or health maintenance), which shall be undertaken within seven days from the date of the transaction. However, the compensation shall not eliminate the possibility of submitting a criminal claim.

A dispute can be settled through the consumer dispute settlement body or a (district) court.

The consumer dispute settlement body has to make its decision regarding the claim maximum within 21 working days from the receipt of the claim, and within seven working days, the business owner has to implement the decision. Otherwise, the consumer dispute settlement body shall deliver its decision to the investigator so it can carry out any necessary investigation.

Israel

No, this would depend on the specific right being relied upon to protect the concept of unfair competition.

Italy

As per the provisions of the Italian Civil Code on “unfair competition” (narrowly construed), enforcement follows the ordinary rules of Italian civil procedure.

As per the provisions of the Consumer Protection Code on “unfair commercial practices”, a specific enforcement procedure – roughly similar to an antitrust public enforcement procedure – is followed before the AGCM, the main steps of which are the following:

- (i) Filing of a notice of the infringement to the AGCM (please note that the AGCM may also act ex officio);
- (ii) Pre-investigation by the AGCM; (please note that the AGCM may decide not to open a formal investigation in case the conduct is de minimis);
- (iii) Notice of the formal opening of an investigation is provided by the AGCM to the interested parties;
- (iv) Investigation by the AGCM; the alleged infringer has the right to participate in the procedure and to file defensive briefs; the AGCM may request information and documents from the alleged infringer (non-compliance is punished with pecuniary sanctions); in case the contested conduct has been carried out in the media, and/or in regulated sectors/industries, the AGCM must request an opinion by the Authority competent for the relevant sector/industry; pending investigation, the AGCM may issue provisional injunctions (non-compliance is punished with pecuniary sanctions);
- (v) Within certain terms, the alleged infringer may present commitments to the AGCM, which may accept them and then close the investigation;
- (vi) Final decision by the AGCM, which – in case the contested conduct is found to be an “unfair commercial practice” – enjoins the infringer from carrying out the relevant conduct, and imposes a pecuniary sanction up to EUR five million.

The decision issued by the AGCM has the nature of an administrative action, subject to judicial review, in first instance, before the Regional Administrative Tribunal (TAR) for the Region of Lazio and, afterwards, before the Council of State.

Japan

There would not be any standard procedure specific for unfair competition claims. General civil procedure rules will apply for civil claims concerning unfair competition. A party will generally send a cease-and-desist letter before filing a complaint.

Luxembourg

A cease-and-desist action is brought as summary proceedings.

A criminal action can be introduced independently from cease-and-desist proceedings. The applicable procedure is the standard criminal procedure. In criminal proceedings the action can be brought in two ways:

1. A complaint may be filed with the public prosecution; or
2. A direct summons served by a court bailiff to the defendant to appear before a criminal court.

In addition, a civil law claim can be brought either in the context of the criminal proceedings as set out above or independently before the civil court. Depending on the nature of the case and on the quality of the parties, the standard civil procedure rules or the commercial procedure rules may apply.

Netherlands

(a) Civil/Administrative procedure:

No standard procedure to enforce the claims exists. The normal civil/administrative procedure is applicable.

(b) Civil procedure; burden of proof:

In a civil procedure the burden of proof is, in principle, on the plaintiff. However, in some cases, the burden of proof is shifted to the defendant, e.g., in case of misleading advertising if the burden of proof on the defendant is not unreasonable. These special rules are not applicable in interlocutory proceedings, although the defendant may nonetheless be expected to prove the correctness of its statements.

The same shift of the burden of proof applies to unfair commercial practices. According to Article 6:193j of the Dutch Civil Code, the consumer just has to claim (not prove) that the information provided by the trader is incorrect or incomplete.

(c) Self-regulation:

The SRC handles all complaints based on the Dutch Advertising Code. All complaints must be submitted via an electronic complaint form (see www.reclamecode.nl) or by post. Consumers can submit a claim free of charge. If the complainant is a company, an administrative fee will be charged. Afterwards, the complaint is assessed on admissibility. Not every admissible complaint is handled by the entire Advertising Code Committee. The chairman of the committee can dismiss a complaint if he/she feels that the committee will not allow the complaint or the complaint should not be handled by the committee, but pursuant to the procedure for cross-border advertising, should be sent on to another EASA member. An appeal can be lodged within 14 days, and in case of urgent cases seven days, with the Board of Appeal of the SRC. After 14 days, any decision by the Advertising Code Committee is irrevocable. In urgent cases the decision is irrevocable after seven days.

Norway

When a complaint has been filed or the Consumer Ombudsman decides to investigate a case on its own initiative, the Consumer Ombudsman will, as a main rule, first initiate negotiations with the business owner to attempt to achieve a negotiated solution. If a negotiated solution is not achieved or a negotiated solution is not required according to the Marketing Act, the Consumer Ombudsman may issue a formal decision that prohibits the marketing practice. Furthermore, the Consumer Ombudsman may also issue a decree/injunction to ensure that the formal decision is not violated.

A compulsory fine may also be imposed if the alleged violator breaches the prohibition. The Consumer Ombudsman may also decide to impose a penalty for material or repetitive neglectful or wilful acts that constitute a breach of the prohibitions in the Marketing Act. For certain breaches of the Marketing Act, fines or imprisonment may be imposed.

A business may file a written complaint to the Committee for the control of Unfair Competition. The charge for filing a complaint is currently NOK 22,000 (approximately EUR 2,750). When the charge is paid, the Committee will ask the defendant for a statement to the complaint, after which the complainant and defendant can give additionally one statement each. The Committee will give its reasoned opinion, which is normally accepted by the parties. If the parties are in opposition to the reasoned opinion, the case must be solved by ordinary court proceedings.

People's Republic of China

There is no particular or unified standard procedure required for enforcing claims under the Anti-Unfair Competition Law. In practice, the procedure could vary depending on the nature of claim. For example, in the case of a civil claim, the plaintiff typically starts out by sending a cease-and-desist type letter to the other party followed by a formal commencement of a civil litigation following the general rules of two-instance trial civil litigation proceedings (i.e., filing of a civil complaint for litigation on the merits and/or for an injunction). The specific procedures include filing a lawsuit and case docketing, pre-trial preparation, hearing, judgment/ruling, etc.

Poland

A standard unfair competition lawsuit starts with a warning letter and the request for a cease-and-desist-declaration. When infringement has to be stopped immediately by obtaining a preliminary injunction, it is not necessary to first send the infringer a warning letter. An application for an injunction to stop the unfair commercial practice may be filed at any time. A court decision on a preliminary injunction may be requested in any civil case that is being reviewed by a court, both prior to the commencement of, as well as during judicial proceedings. Any party or participant may apply for a preliminary injunction, provided that it presents credible reasons for the claim and legal interest. The case is further examined by the court that renders the decision at the first instance.

Portugal

Portugal does not have a standard procedure to enforce unfair competition claims. The claims are subject to the general civil law system.

Philippines

Under the Rules of Procedure for Intellectual Property Rights Cases (the "Rules"), a civil action for unfair competition is commenced by the filing of a verified complaint. After service of summons and upon service and filing of the answer, the parties are given up to 30 days within which to avail themselves of any of the modes of discovery. Thereafter, the case shall be set for pre-trial. The court may render judgment immediately after pre-trial, after submission of position papers, after clarificatory hearings or after trial.

On the other hand, a criminal action for unfair competition is commenced by the filing of an information notice by the public prosecutor after a prior verified complaint is filed by the aggrieved competitor.

Administrative proceedings may likewise be initiated before the relevant government agencies (such as the Bureau of Legal Affairs of the Intellectual Property Office, or the Department of Trade and Industry etc.) by filing a verified complaint. The procedures followed before these government agencies are relatively similar to the procedure discussed above for civil actions.

Peru

Either at the request of an interested third party, or ex-officio, the competent Commission's Technical Secretariat may decide the initiation of fining procedures.

The authority must serve defendants with a formal indictment, specifying the charges under investigation and disclosing all evidence in its possession.

Defendants have 10 business days, extendable for an additional five business days, to respond to the charges.

Upon the expiration of the term to respond, a trial period of no less than 30 and no more than 100 business days will commence for parties to submit additional arguments and evidence. During this period, the authority may request information from the parties or other authorities, as well as other evidence. The Commission must serve defendants a 10-day notice to conclude the trial period.

At the conclusion of the trial period, the Commission may request that the Technical Secretariat issue a final findings report, which must be served to all parties, with its recommendations on the case. Defendants will be granted 10 business days to respond to the report.

At its discretion, the Commission may then call for an oral hearing to listen to final arguments.

After the hearing, parties have 10 business days to file final written arguments, after which the Commission may proceed to issue a decision.

Singapore

CIVIL CLAIM FOR INFRINGEMENT OF AN INTELLECTUAL PROPERTY RIGHT, FOR PASSING OFF, DEFAMATION OR MALICIOUS FALSEHOOD, OR UNDER THE CONSUMER PROTECTION (FAIR TRADING) ACT:

1. Commencement of court proceedings;

A civil action commences when a Writ of Summons, together with a Statement of Claim, is filed as a suit in the court and served on the opposing party. The opposing party must enter an appearance to indicate that he wishes to contest this claim.

2. Pre-trial Processes;

Summons for directions will take place. Directions pertaining to the filing and exchanging of affidavits, the number of witnesses required and the number of days of hearing will be decided at this stage. Also, at this point, parties can take out interlocutory applications such as discovery, application for the amendment of pleadings, application for default judgment and application for summary judgment.

3. Trial and Post-trial Processes;

At trial, each party will present their case to the judge. The judge will decide and give a judgment at the end of the trial. Upon issuing the judgment, the judge will order for damages to be assessed for the winning party.

CRIMINAL ACTION FOR OFFENCES UNDER THE TRADE MARKS ACT, COPYRIGHT ACT AND CONSUMER PROTECTION (TRADE DESCRIPTION AND SAFETY REQUIREMENTS) ACT:

While these are offences, it is common for the rights owners under the Trade Marks Act and Copyright Act to conduct their own investigations, file their own complaints with the Court and obtain the permission from the Public Prosecutor to prosecute the offenders for and on behalf of the State.

COMPLAINTS ARISING FROM THE SINGAPORE CODE OF ADVERTISING PRACTICE:

All advertising complaints should be addressed to the Chairman of the ASAS. The complaint should be in writing and be accompanied by the complainant's contact information. Moreover, a cutting of the press or magazine advertisement or full text of the radio, television or cinema commercial complained of should be provided by the complainant. All complaints will be decided by the council of the ASAS.

South Korea

There is no particular standard procedure required to enforce claims under the Act. In the case of a civil claim, the plaintiff typically starts out by sending a cease-and-desist letter to the other party followed by a formal commencement of a civil litigation in a district court (i.e., filing of a civil complaint for litigation on the merits and/or for an injunction).

In the case of a criminal claim, the matter is first investigated by the police and, upon the police's finding of sufficient grounds for further investigation by the Prosecutors' Office, the matter is then transferred to the Prosecutors' Office. If the suspect is indicted at the conclusion of the prosecution's investigation, the case goes to criminal trial.

Spain

The proceeding is similar to the ordinary proceeding set forth by the Spanish Civil Law Procedure Law:

The procedure is ordinarily commenced with a complaint submitted to the Commercial Courts.

Additionally the Spanish Civil Procedure Act also sets forth that the claimant may ask for interim remedies such as preliminary injunctions.

Sweden

Currently, it is a system consisting of two instances – the Stockholm District Court and the Market Court. In cases where only a prohibitive injunction is sought, the proceedings can start in the Market Court whose decisions cannot be appealed. If the plaintiff asks for other sanctions, for instance damages, the procedure has to start in the Stockholm District Court. It is then possible to appeal to the Market Court.

In cases where a prohibitive injunction has been violated, the matter is brought before the district court where the defendant is established, which will order payment of the fine.

Switzerland

No standard procedure exists.

Taiwan

Most cases have been handled through the administrative law procedure. The standard procedure in practice is that, the Taiwan Fair Trade Commission will investigate and handle, upon complaints or ex officio, any violation of the provisions of the Fair Trade Act that harms the public interest. While conducting investigations under the FTA, the TFTC may notify the parties and any related third party to appear to make statements, and the Commission will make its decision afterwards. Matters involving criminal liabilities will be transferred to the Public Prosecutors Office for review.

It is relatively rare that an injured party files a civil claim or criminal complaint against the infringing party.

Thailand

UNDER THE TRADE COMPETITION ACT:

The person suffering from unfair competition can lodge his/her complaint with the Trade Competition Commission. The TCC will then conduct an investigation or appoint an inquiry sub-committee to investigate the complaint. Thereafter, the inquiry sub-committee will submit its opinion to the TCC before the TCC reports the case to the public prosecutor.

Alternatively, the person suffering from unfair competition can also lodge the case directly with a competent court.

CONSUMER CASE PROCEDURE:

Other than the suffering party, the Consumer Protection Board, an association or a foundation recognized by the Consumer Protection Board under the Consumer Protection Act also has the power to file and proceed with a consumer case on behalf of the consumer by clearly indicating the name and address of the consumer after the suffering party has lodged his/her complaint with the Consumer Protection Board.

Turkey

Although it is not compulsory, in general practice a civil procedure starts with issuance of a notification against the perpetrator of unfair competition requesting the cessation of unfair competition and notifying the perpetrator that legal and criminal proceedings may be initiated against him/her if the perpetrator continues the unlawful acts. If the perpetrator does not cease the unfair competition, initiation of a lawsuit before the relevant Commercial Court of First Instance to prevent the unfair competition and request compensation for damages incurred due to the unfair competition comes next.

In this situation, the victim of the unfair competition may request the court to render a preliminary injunction decision against the perpetrator in order to prevent the acts causing unjust competition.

The second procedure is the filing of a criminal complaint against the perpetrator before the Public Prosecutor's Office in order to force the perpetrator to cease the unlawful acts.

United Kingdom¹

There is no standard procedure across the various legal protections and instruments to enforce claims. Action under the Consumer Protection from Unfair Trading Regulations or the Business Protection from Misleading Marketing Regulations would likely be initiated by a complaint to the relevant regulator.

Where passing-off proceedings are brought, parties are encouraged to send a cease-and-desist letter before commencing any court action but this is not obligatory. When a court action is commenced, the claimant will set out the nature of the complaint in a statement of case and the defendant will ordinarily enter a defence. Then there would be an exchange of fact evidence and possibly disclosure (discovery) before a trial before a single judge, which may be appealed.

United States of America (Federal Law)

Prior to filing a civil complaint, there is no standard or required procedure. However, typically, but certainly not always, a party will send a cease-and-desist type letter before beginning legal proceedings.

Once a lawsuit is filed, a party may move for injunctive relief.

United States of America (State Law - Overview)

Typically, at the state level, unfair competition claims are resolved through litigation (or through arbitration, if the parties have so agreed). While some states have administrative or regulatory bodies to which consumers can direct complaints, typically such complaints are not required before a party can bring a claim directly to the courts for unfair trade practices. New York has one exception to this rule, requiring its Attorney General's Office to notify a party before filing a suit to enforce the false advertising law. Each state has its own rules for pre-trial and trial litigation once a plaintiff has filed a complaint.

United States of America (California)

Unfair competition claims have more relaxed pleading requirements than other claims. There is no requirement to plead with particularity or to allege names of the victims. Standard civil procedure laws govern the discovery and trial phases. Though there is no right to a jury trial in an unfair competition claim, some claims end up in front of juries because of the overlap between unfair competition laws and other statutes.

Uruguay

Uruguay does not have a standard procedure to enforce unfair competition claims. The claims are generally subject to the ordinary procedures.

Vietnam

Under the Law on Competition 2004, the claim against unfair competition is first investigated by the administrative body for competition. During the investigation process, if any criminal indication is found, the claim will be transferred for criminal prosecution.

After the investigation, the claim is either brought to the Competition Council for investigative hearings or issued as a decision of the administrative body for competition. In case of proceeding to the Competition Council, based on the investigative hearing, it will issue a decision on resolution based on a secret ballot vote from all of the Council's members.

In the case of disagreement with a part or all of a decision on resolution of a competition case made by the Council dealing with the case, the parties shall have the right to lodge a complaint with the Competition Council.

Then, if any party concerned disagrees with a decision on resolution of the complaint, such party shall have the right to institute administrative proceedings with respect to a part or the whole of such decision at the People's Court of a province or city under the central authority that has jurisdiction.

¹ Note that this response is provided on the basis of the law applicable in England and Wales. To some extent, the law and practice is different in Scotland and Northern Ireland; this document does not address those differences.

Do claims against unfair competition need to be brought to specific courts or are they subject to the common civil/criminal/administrative law system?

Argentina

Certain actions (e.g., arising from the fair trade law or the consumers' protection law) require filing of a complaint with enforcement agencies (see our answer to Question 10).

As an alternative, if the unfair competition practice falls under Section 159 of the Criminal Code, it is possible to directly file a legal action at the Courts of Law on Criminal Matters.

Relief of damages may be sought at the Civil Courts of Law or Federal Courts of Law, as applicable in each case.

Legal actions for enforcement of constitutional rights to obtain a court order binding the infringing party to stop any ongoing unfair competition practices, must be filed at the courts that will have jurisdiction to hear on the specific unfair competition case.

Belgium

Claims regarding unfair competition are brought before the Commercial Court. Injunctive relief proceedings are brought before the President of the Commercial Court. The courts where the infringements have occurred or the courts where the defendant is established will have jurisdiction.

Brazil

Claims against unfair competition are to be brought to common civil and criminal courts. For specific claims regarding marketing, it is possible to proceed with a claim to the Council of Advertising Self-Regulation.

Canada

Under the civil regime of the Competition Act, certain practices may be brought for review before the Competition Tribunal, the Federal Court or the Superior Court of a province.

Under the criminal regime of the Competition Act, certain practices may be brought before the criminal courts.

If a consumer has the right to commence an action under Ontario's Consumer Protection Act, the consumer may commence the action in the Superior Court of Justice.

Chile

Claims under the Unfair Competition Act are subject to the common civil court system and are brought before the civil court of the domicile of the defendant or the claimant, at the choice of the latter.

Claims under the Competition Act, where the alleged act of unfair competition was executed with the objective of obtaining, maintaining or increasing a dominant position in a relevant market, needs to be brought before the Competition Court, which is a specialized court.

Colombia

Claims against unfair competition may be brought to common civil courts or to the Superintendent of Industry and Trade (the administrative authority with jurisdictional powers for unfair competition and IP matters). The appeal of the decision must be brought to the Circuit Court of Appeals.

Costa Rica

Claims may be brought in civil, administrative, and criminal courts. When it comes to economic agents, claims may be brought via civil courts. In the case of claims by consumers, claims can be brought via the administrative court system, and the administrative court may then transfer claims to the criminal court system.

Denmark

Claims are subject to the common civil and criminal court system and will normally be brought before the Maritime & Commercial Court in Copenhagen (although this is not a requirement).

Finland

Claims against unfair competition are subject to the Market Court with the exception of criminal cases which are subject to general courts.

France

When the claim is raised between commercial competitors or other market participants, commercial courts have exclusive jurisdiction. Jurisdiction lies with the court in the district the defendant has its commercial place of business.

Alternatively, claims brought under Article 1382 of the French Civil Code must be filed with the court in the district where the unfair act was committed. This may refer to the place where the infringer acted as well as to the place where the harm arose.

Regarding infringements of provisions set forth in the French Consumer Code, legal actions are brought before the common civil or criminal courts.

Germany

The Act Against Unfair Competition establishes the exclusive competence of the district courts. Jurisdiction lies with the court in whose district the defendant has its commercial place of business or its independent professional place of business. Alternatively, claims brought before a court under the Act shall be dealt with at the court in whose district the act was committed. This may refer to the place where the infringer acted as well as to the place where the harm arose.

Greece

Claims against unfair competition must be brought before either civil or criminal courts.

More specifically and as regards civil claims, material competence in the first degree is granted to the Commercial Section of the Court of First Instance. In the same manner and as regards the appellate procedure, material competence is granted to the Commercial Section of the Court of Appeals.

Finally, and as regards material competence in criminal offences, the general provisions of Greek criminal law apply.

India

Claims arising under unfair competition are to be brought before the three-tier structure for relief of consumer grievances. At the district level is the District Forum, at the state level is the State Commission and at the highest level is the National Commission. The jurisdiction of these Forum / Consumer Disputes Relief Agencies is subject to the pecuniary limit of the claim made by the complainant. The forums have been given power to pass a cease-and-desist order against the wrongdoer under the Act. The Act also empowers consumers to approach any of the forums on their own without any legal representation. Additionally, consumers can seek remedies under civil laws.

Indonesia

Any related claims can be brought to the consumer dispute settlement body's mediation/arbitration/conciliation mechanism or, for criminal claims, to (district) courts directly.

Israel

As per our response to Question 12 above, this would depend on the specific right being relied upon; any claim will be filed with the competent court or administrative body.

Italy

Apart from the AGCM's power to impose pecuniary sanctions for "unfair commercial practices" pursuant to the Consumer Protection Code, there is no special court in Italy specifically dealing by statute with all unfair competition cases.

Please note, however, that cases of "unfair competition" (narrowly construed) pursuant to the Italian Civil Code generally fall into the special competence of the "Business Law Sections" of the competent Tribunals (i.e. special sections of ordinary Tribunals composed by judges expert in business law matters, including corporate, IP and antitrust law), except in case of conducts "which do not interfere, not even indirectly, with intellectual property rights".

Japan

As to civil claims, general civil procedure rules apply and the cases concerning unfair competition are handled by the district courts having general jurisdiction. In some large cities (e.g., Tokyo and Osaka), the district courts have benches specialized in intellectual property and unfair competition cases and in such district courts, unfair competition cases are assigned to these specialized benches.

Luxembourg

As mentioned above, the President of the Chamber of the District Court sitting in commercial matters is the competent jurisdiction for cease-and-desist proceedings.

Otherwise, claims against unfair competition are subject to the common civil and criminal court system.

Netherlands

(a) Civil procedure:

Claims regarding unfair competition laws are subject to the common civil procedure.

(b) Administrative procedure:

Claims regarding an administrative order subject to a penalty or an administrative fine of the ACM can only be brought before the District Court of Rotterdam. Appeal cases are handled by the Trade and Industry Appeals Tribunal.

(c) Self-regulation:

Claims regarding the Dutch Advertising Code are exclusively handled by the SRC.

Norway

The sanctions system for consumers in the Marketing Act is a "two-legged" system. The Consumer Ombudsman and the Marketing Council represent the administrative system. At the same time, actions against unfair competition may be brought to the common criminal law system.

The Committee for the control of Unfair Competition is an optional dispute-settlement mechanism that is often chosen by businesses. If the negotiable solution is not accepted by the enterprises involved, ordinary court proceedings must be taken.

People's Republic of China

Generally, private claims against unfair competition shall be filed before a competent Intermediate People's Court with general jurisdiction. A district court may also have jurisdiction under certain circumstances upon approval of the Higher People's Court and Supreme People's Court.

Peru

As previously explained, Peru has adopted an administrative court system.

Philippines

Civil actions for unfair competition may be commenced and tried before the Special Commercial Courts where the principal complainant or principal defendant resides, at the election of the complainant. In this connection, the Bureau of Legal Affairs of the Intellectual Property Office exercises original jurisdiction in administrative complaints for violations of laws involving intellectual property rights, including unfair competition.

On the other hand, criminal actions for unfair competition shall be filed in the Special Commercial Court that has jurisdiction over the territory where any of the elements of the offence occurred.

An administrative action for unfair competition may likewise be brought before the relevant government agency exercising jurisdiction over the act subject of the complaint (e.g., the Department of Trade and Industry).

Poland

Civil courts and the Supreme Court examine claims against unfair competition. In unfair competition cases, district courts have exclusive authority in the first instance and courts of appeal in the second instance.

Portugal

As seen in our response to Question 3, unfair competition disputes must be brought before specialised intellectual property tribunals if the unfair commercial practices at hand infringe upon the affected party's (or parties') IP rights.

In all other cases, claimants may bring unfair competition actions in the common civil court system.

Singapore

All civil claims and criminal complaints will be handled by the standard Singapore courts.

South Korea

Unfair competition claims are subject to the common civil and criminal court system.

A typical unfair competition claim will be filed with a district court (i.e., the court of first instance) having proper jurisdiction and will be appealed to a high court, followed by a final appeal before the Korean Supreme Court.

In the case of an injunctive action, the suit may be brought in the district courts.

In the case of a claim for compensatory damages, the suit may also be brought in the district courts.

Spain

In civil proceedings, the competent courts to deal with unfair competition practices are the specialized commercial civil courts, which are located in the capital of each Spanish province.

A court's territorial competence is determined according to where the defendant has its place of business, or else its domicile or residence, or when none of these are located in Spain, the province where the act of unfair competition took place or where it had an effect.

Sweden

Sweden currently has a special court for unfair competition, the Market Court. The Court was established in 1971. However see our response to Question 12 concerning the different courts.

Switzerland

In most cases, civil actions have to be brought before the commercial courts or, if no commercial court exists in a Canton, before the court of appeal.

Criminal complaints are dealt with by the public prosecutor and the courts that are competent for other criminal law matters.

Taiwan

There is no specific court for claims against unfair competition. They are subject to the common civil/criminal/administrative court system.

Thailand

Criminal claims against unfair competition under the Trade Competition Act and the Consumer Protection Act will be subject to the criminal court system and the Thai Criminal Procedure Code.

Civil claims against consumer cases under the Consumer Case Procedure Act will be subject to the civil court (consumer division) system and the Consumer Case Procedure Act.

Turkey

The claims arising from infringement of unfair competition are to be brought to the Commercial Court of First Instance which is in the civil court system. However, in the Turkish law system, there are specialized courts for protection of intellectual property rights. Criminal IP courts are authorized to conduct criminal lawsuits based on infringement of (registered) IP rights. However, civil IP courts are authorized to conduct compensation lawsuits.

United Kingdom[†]

The usual civil or criminal courts and procedure would apply. Passing off actions are handled in the High Court, Chancery Division, and are ordinarily (but not necessarily) heard in London.

United States of America (Federal Law)

Claims under the Lanham Act are brought in courts of general jurisdiction.

United States of America (State Law - Overview)

Most states hear claims for unfair competition in civil courts of general jurisdiction, in either federal or state court, depending on whether the unfair business practice falls most clearly within state or federal law, and whether the parties to a lawsuit are considered citizens of different states, in which case the action can be brought in federal court. If states have separate courts for criminal versus civil suits, then cases in which the government is alleging a criminal violation of the state statute would have to be brought in those courts. In states like California, however, in which the Superior Court serves as a forum for trial for all suits, criminal and civil, there would be no special court in which to bring an unfair competition action.

United States of America (California)

Claims for unfair competition under the UCL and the CLRA are brought in common civil courts, including claims filed by public prosecutors under the UCL on behalf of consumers. Civil plaintiffs sue under The Deceptive, False, or Misleading Advertising Statute in common civil courts. District Attorneys prosecute criminal claims under The Deceptive False, or Misleading Advertising Statute in common criminal courts.

Uruguay

There is no specific court in which claims against unfair competition should be raised. Said claims are subject to the regular civil court system.

Vietnam

Unfair competition claims can be brought to specific bodies, which is either the administrative body for competition or the Competition Council. The head of the administrative body and the members of Competition Council are appointed by the Prime Minister.

If either party disagrees with final decisions of the Competition Council, the case may be brought to the People's Courts.

[†] Note that this response is provided on the basis of the law applicable in England and Wales. To some extent, the law and practice is different in Scotland and Northern Ireland; this document does not address those differences.

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