



Spain – Law on Unfair Competition



Full title	Law 3/1991 of 10th January on Unfair Competition. Entry into force 31/01/1991. (BOE n.10, 11/01/1991)
Relevant Amendments	<p>Law 29/2009, of 30 December, amending the law relating to unfair competition and advertising to improve the protection of consumers and users. Entry into force on 01/01/2010.</p> <p>Amends: Articles 1 to 8 inclusive, 10, and 11. Re-drafts Chapters III and IV. Article 18 is transferred to Chapter II of the Law 3/1991 (Unfair Competition Law). New Chapter V is added</p> <p>http://boe.es/diario_boe/txt.php?id=BOE-A-2009-21162# analisis</p> <p>- Law 3/2014 of 27th March, enacting the revised text of the General Law for Consumer and User Protection and other complementary laws, approved by Royal Legislative Decree 1/2007 of 16th November. Entry into force: 29/03/2014</p> <p>Amends Art 5 (1f)</p> <p>http://boe.es/buscar/doc.php?id=BOE-A-2014-3329</p>
Title of relevant sections	<p>Chapter II: Acts of Unfair Competition</p> <p>Chapter III: Commercial Practices involving consumers and users</p> <p>CHAPTER II – Acts of Unfair Competition</p>
Article 1	<p>As amended by Law 29/2009:</p> <p>The object of this Act is the protection of competition for the benefit of all those who participate in the market and, to this end it prohibits acts of unfair competition, including unlawful advertising in the terms laid down in the General Advertising Act.</p>
Article 4	<p>General Clause</p> <p>1. Any behaviour that objectively fails to abide by the requirements of good faith shall be deemed unfair.</p> <p>In relations with consumers and users, entrepreneurs or professionals shall be deemed to be in breach of the requirements of good faith where their conduct is in breach of professional diligence, the latter meaning the standard of special skill and care which an entrepreneur may reasonably be expected to exercise towards consumers, commensurate with honest market practice, and significantly distorts or could significantly distort the economic behaviour of the average consumer or of the average member of the target group of the practice in question if the latter is a commercial practice targeting a particular group of consumers.</p>

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For the purposes of this Act, economic behaviour of consumers or users shall mean any decision taken by the latter to act or refrain from acting having regard to:

- a) The selection of an offer or offeror.
- b) The engagement of a good or service and, if relevant, the way in which and under what conditions it is engaged.
- c) Payment of the price, total or partial, or any other form of payment.
- d) The conservation of the good or service.
- e) The exercise of contractual rights having regard to goods and services.

Also, for the purposes of this Act, significantly distorting the economic behaviour of the average consumer means using a commercial practice to appreciably impair consumers' capacity to adopt an informed decision thus causing them to make a decision on their economic behaviour which they otherwise would not have made.

2. In assessing behaviours which target consumers, the yardstick shall be the average consumer.

3. Commercial practices that, while targeting consumers or users in general, are only liable to significantly distort, in a way which the entrepreneur or professional can reasonably foresee, the economic behaviour of a clearly identifiable group of consumers or users who are especially vulnerable to these practices or to the good or service to which they refer, due to a disability, to a weakened capacity for understanding, to their age or to their gullibility, shall be evaluated from the perspective of the average member of such a group. This is without prejudice to the common and legitimate advertising practice of making exaggerated statements or statements that are not meant to be taken literally.

Article 5

Misleading Acts

1. Any conduct containing false information or information that although true, by virtue of its content or presentation, leads or could lead its recipients to an error in judgement and is liable to alter their economic behaviour is considered misleading and hence unfair, provided that it has an impact on one of the following aspects:

- a) The existence or nature of the good or service.
 - b) The main characteristics of the good or service, such as its availability, benefits, risks, execution, composition, accessories, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and essential features of tests or checks carried out on the good or service.
 - c) After-sales customer service and complaint handling.
 - d) The extent of the entrepreneur's or professional's undertakings, the motives for the commercial practice and the nature of the commercial transaction or contract and any statement or symbol in relation to direct or indirect sponsorship or approval of the entrepreneur or professional or the good or service.
 - e) The price or the manner in which the price is calculated, or the existence of a specific price advantage.
 - f) The need for a service, part, replacement or repair.
 - g) The nature, attributes and rights of the entrepreneur or professional or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and
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ownership of industrial, commercial or intellectual property rights or his awards and distinctions.

h) The consumer's statutory or contractual rights or the risks he may face.

2. When the entrepreneur or professional indicates in a commercial practice that he is bound to a code of conduct, failure to adhere to the commitments assumed in that code is considered unfair, provided that the commitment is firm (*not aspirational*) and can be verified and, in its factual context, this conduct is liable to significantly distort the economic behaviour of its target audience.

Article 6

Acts of confusion

Conduct which is capable of creating confusion with the business, services or establishment of another is deemed to be unfair.

The likelihood of association on the part of consumers in respect of the origin of services is sufficient in order to underpin the unfairness of a practice.

Article 7

Misleading Omissions

1. The omission or concealment of information necessary for the recipient to make or be able to make a prior informed decision on his economic behaviour is considered unfair. It is likewise unfair if the information provided is unclear, unintelligible, ambiguous, is not offered at the right time or the commercial purpose of that practice is not revealed when it is not evident from the context.

2. The factual context of acts, taking account of all of their characteristics and circumstances and the limitations of the media employed, shall be considered in determining the misleading nature of the acts referred to in the preceding paragraph.

In assessing the existence of an omission of information when the media used imposes space or time limitations, such limitations shall be taken into account along with all the steps taken by the entrepreneur or professional to convey the necessary information through other channels

Article 8

Aggressive Practices

1. Any conduct which by virtue of its characteristics and circumstances is likely to significantly impair the recipient's freedom of choice or conduct with regard to the good or service by means of harassment, coercion, including the use of physical force, or undue influence, and thereby affects or could affect their economic behaviour, shall be regarded as unfair.

In this connection, undue influence shall mean the use of a position of authority over the target to exert pressure, even in the absence of physical force or the threat of physical force.

2. In determining whether a behaviour involves harassment, coercion or undue influence, account shall be taken of:

a) Its timing, location, nature or persistence.

b) The use of threatening or abusive language or behaviour.

c) The exploitation by the entrepreneur or professional of any specific misfortune or circumstance, of such gravity as to impair the judgement of the target, of which the entrepreneur or professional is aware, in order to influence the decision with regard to the good or service.

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	<p>d) Any onerous or disproportionate non-contractual barriers imposed by the entrepreneur or professional when the other party wishes to exercise legal or contractual rights, including any manner of terminating a contract or switching to another product or supplier.</p> <p>e) The conveyance of a threat to take any action that cannot legally be taken.</p>
Article 9	<p>Acts of Denigration</p> <p>It is considered unfair, the making or dissemination of statements regarding the activity, services, establishment or market relations of a third party that are designed to damage their credit in the market, unless they are accurate, true or relevant.</p> <p>In particular, statements aimed at nationality, beliefs, ideology, privacy or whatever other strictly personal circumstances of the affected, will not be deemed relevant.</p>
Article 10	<p>Acts of Comparison</p> <p>Public comparison, including comparative advertising by means of an explicit or implicit reference to a competitor, is allowed if the following requirements are met:</p> <p>a) The goods or services compared are intended for the same purpose or meet the same needs.</p> <p>b) An objective comparison is made between one or more material, relevant, verifiable and representative features of those goods and services, which may include price.</p> <p>c) In the case of products protected by a designation of origin or a geographical indication, specific denomination or guaranteed traditional speciality, the comparison may only be made with products of the same denomination.</p> <p>d) Goods or services may not be presented as imitations or replicas of goods or services bearing a protected trade mark or trade name.</p> <p>e) The comparison may not infringe the provisions of Articles 5, 7, 9, 12 or 20 regarding misleading and denigrating acts and exploitation of another's reputation</p>
Article 11	<p>Acts of Imitation</p> <p>1. Imitation of the business or professional services and initiatives of others is freely allowed unless these are protected by an exclusive right granted by law.</p> <p>2. However, the imitation of services of a third party shall be deemed unfair if it is likely to lead consumers to associate the imitation with the third party's service or entails undue utilisation of another's reputation or effort.</p> <p>A practice shall not be considered unfair if the said risks of association or of the use of another's reputation are unavoidable.</p> <p>3. The systematic imitation of a competitor's business or professional services and initiatives shall likewise be deemed unfair when such a strategy is directly intended to prevent or hinder his establishment in the market and exceeds what could in the given circumstances be conceived as a natural market response.</p>
Article 12	<p>Taking advantage of the reputation of others</p> <p>It will be considered unfair, the misuse, for one's own benefit or that of others, of the advantages of industrial, commercial or professional reputation acquired by others in the market.</p>

	In particular, the use of distinguishing signs of others or declarations of origin accompanied by false indication of the true origin of the product or expressions such as "models", "system", "type", "class" and similar is deemed unfair.
Article 17	<p>Sale at a loss</p> <p>1) Price-setting is free (permitted), unless otherwise provided by laws and regulations.</p> <p>2) However, a sale made below cost or below the price of acquisition will be deemed unfair in the following cases:</p> <ol style="list-style-type: none"> 1. When it is likely to mislead consumers on the level of prices of other products and services of the same establishment. 2. When it has the effect of discrediting the image of another product or establishment, 3. When it forms part of strategy to eliminate a competitor or group of competitors from the market.
Article 18	<p>Unlawful Advertising</p> <p>Advertising considered unlawful under the General Advertising Act shall be deemed unfair (this Act is shown separately in Links Section F and is available here)</p>
CHAPTER III – Commercial Practices involving consumers and users	
Article 19	<p>Unfair Commercial Practices affecting consumers</p> <p>1. Without prejudice to the terms of Article 19 and 20 of the consolidated text of the General Consumer and User Protection Act and other supplementary laws, only practices identified in this Chapter and in Articles 4, 5, 7 and 8 of this Act shall be considered unfair commercial practices to consumers and users.</p> <p>2. The commercial practices regulated in Articles 21 to 31, both inclusive, are unfair commercial practices to consumers in all cases and under all circumstances.</p>
Article 20	<p>Misleading Practices causing confusion among consumers</p> <p>Commercial practices affecting consumers and users, including comparative advertising shall be deemed unfair if, in their factual context and taking account of all their features and circumstances, they may create confusion, including the risk of association, with any goods or services, registered trademarks, trade names or other distinctive marks of a competitor, provided that they are liable to affect the economic behaviour of consumers and users.</p>
Article 21	<p>Misleading practices concerning codes of conduct or other quality marks</p> <p>1. Commercial practices falsely claiming the following shall be deemed misleading and hence unfair:</p> <ol style="list-style-type: none"> a) That the entrepreneur or professional is a signatory of a code of conduct. b) That a code of conduct has the endorsement of a public organisation or any other type of accreditation. c) That an entrepreneur or professional, the latter's commercial practices or a good or service has been approved, endorsed or authorised by a public or private body or making

such a claim but failing to comply with the terms of the approval, endorsement or authorisation.

2. The display of a trust mark, quality mark or equivalent without having obtained the necessary authorisation is also misleading and hence unfair in all cases.

Article 22

Bait advertising and misleading promotional practices

The following shall be considered misleading and hence unfair:

1. Making an invitation to purchase goods or services at a specified price without disclosing any reasonable grounds the entrepreneur or professional may have for believing that he will not be able to offer the said good or service or equivalent ones at that offered price for long enough and in quantities that are reasonable given the type of good or service, the scale of advertising and the price offered.

2. Making a commercial offer of goods or services at a certain price then subsequently, in order to promote a different good or service, refusing to display the good or service offered, refusing to take orders or requests for its supply or to deliver it within a reasonable period of time, displaying a defective sample of the good or service promoted or discrediting it.

3. Commercial practices involving closing-down sales when the entrepreneur or professional is not in fact in the circumstances described in Article 30(1) of the Retail Trade Act, Law 7/1996 of 15 January 1996 or when, under any other circumstances, the entrepreneur or professional falsely claims to be about to close down or move business activities elsewhere.

4. Commercial practices whereby a prize is offered, automatically or through a competition or draw but the prizes described or others of equivalent quality and value are not awarded.

5. Description of a good or service as "free", "a gift", "at no expense" or using any similar formula if the consumer or user has to make a payment for anything other than the inevitable cost of the response to the commercial practice and the collection of the product or payment for its delivery.

6. Creating the false impression, including by means of aggressive practices, that the consumer or user has won, will win or will be awarded a prize or any other similar advantage if he carries out some specific act when the truth is that:

a) There is no prize or similar advantage.

b) Or the action that the consumer or user is invited to take in order to obtain the prize or similar advantage is subject to an obligation to make some payment or incur some expense.

Article 23

Misleading practices relating to the nature and properties of goods or services, their availability and after-sales services.

The following shall be deemed misleading and hence unfair:

1. Falsely claiming or using some other means to create the impression that a good or service can be legally placed on the market.

2. Claiming that the goods or services can help in winning prizes in games of chance.

3. Falsely claiming that a good or service can cure diseases, dysfunctions or malformations.

	<p>4. Falsely claiming that the good or service will only be available during a very limited period of time or that it will only be available under certain conditions during a very limited period of time for the purpose of inducing the consumer or user to make a hasty decision and hence prevent him from having the chance or adequate time to make an informed choice.</p> <p>5. Undertaking to provide a post-sales service to consumers or users without clearly warning them beforehand that this service is provided in a language other than the one used in the commercial operation.</p> <p>6. Creating the false impression that the post-sales service for the good or service under promotion is available in a Member State other than the one where its supply was engaged.</p>
Article 24	<p>Pyramid sales practices.</p> <p>Creating, directing or promoting a pyramid sales scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers or users into the scheme rather than from the sale or supply of products is considered misleading and hence unfair in all circumstances.</p>
Article 25	<p>Misleading practices creating confusion.</p> <p>Promotion of a good or service similar to one marketed by another entrepreneur or professional to deliberately dupe the consumer or user into believing that the good or service is provided by that entrepreneur or professional when this is not the case shall be deemed misleading and hence unfair.</p>
Article 26	<p>Covert commercial practices.</p> <p>Payment by entrepreneurs or professionals to include promotional communications of goods or services as information in the media without clearly specifying in the content or by means of images and sounds clearly indicating to consumers or users that this is an advertisement, shall be considered misleading and hence unfair.</p>
Article 27	<p>Other misleading practices.</p> <p>Also considered misleading and hence unfair are practices that:</p> <ol style="list-style-type: none">1. Present as a distinctive feature of the entrepreneur or professional's offer rights to which consumers or users are entitled by law.2. Make materially inaccurate or false claims concerning the nature and extent of the risk to the personal security of the consumer and user or his family if the consumer does not purchase the product.3. Pass on inaccurate or false information on market conditions or on the possibility of finding the good or service with the intention of inducing the consumer or user to acquire it in conditions less favourable than normal market conditions.4. Include in marketing material an invoice or similar payment document which gives the consumer or user the impression that he has agreed to acquire the marketed good or service without having asked for it.5. Falsely claim or create the impression that the entrepreneur or professional is not acting for purposes relating to his business or professional activity or falsely present him as a consumer or user.

Article 28	<p>Aggressive practices using coercion</p> <p>Commercial practices leading consumers or users to believe that they cannot leave the entrepreneur or professional's establishment or the place of business where commercial practices are undertaken until they have made a purchase shall be deemed aggressive and hence unfair, unless the said act constitutes a criminal offence.</p>
Article 29	<p>Aggressive practices using harassment.</p> <p>1. Personal visits to the consumer or user's home, ignoring the latter's request that the entrepreneur or professional leave and not return, shall be considered aggressive and hence unfair.</p> <p>2. Making unsolicited and reiterated proposals by telephone, fax, e-mail or by other remote media, except in circumstances and to the extent legally justified to comply with a contractual obligation, shall likewise be deemed unfair.</p> <p>In these circumstances, the entrepreneur or professional must use systems that enable the consumer to voice his opposition to receiving reiterated commercial proposals from the said entrepreneur or professional.</p> <p>To enable the consumer or user to exercise his right to voice opposition to receiving unwanted commercial proposals, when these are made over the telephone the calls must be made from an identifiable telephone number.</p> <p>The foregoing is without prejudice to the provisions laid down in regulations currently in force on personal data protection, information society services, telecommunications and distance contracting with consumers or users, including the distance contracting of financial services.</p>
Article 30	<p>Aggressive practices and minors.</p> <p>Inclusion in an advertisement of a direct exhortation to children to purchase goods or use services or to persuade their parents or other adults to acquire the advertised goods or services shall be deemed aggressive and hence unfair.</p>
Article 31	<p>Other aggressive practices.</p> <p>The following shall be considered aggressive and hence unfair:</p> <p>1. Requiring a consumer who wishes to claim on an insurance policy, be he the policy holder, beneficiary or injured third party, to produce documents which cannot reasonably be considered necessary to determine whether the claim was valid or the amount of damage sustained as the case may be, or failing systematically to respond to pertinent correspondence in order to dissuade a consumer from exercising his rights.</p> <p>2. Demanding immediate or deferred payment for or the return or safekeeping of goods or services supplied by the trader but not solicited by the consumer or user, except where the good or service is a substitute supplied in conformity with applicable laws on distance contracts with consumers and users.</p> <p>3. Explicitly informing the consumer or user that if he does not buy the good or service, the entrepreneur or professional's employment or livelihood will be in jeopardy.</p>
