

Full title of law or regulation

Act on Combating Unfair Competition (*Ustawa o zwalczaniu nieuczciwej konkurencji*) of 16 April 1993 (OJ 2003 No. 153, item. 1503 – consolidated text) Unfair Competition Act - UCA

PO: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19930470211>

EN¹: <http://www.gregsregs.com/downloads/POActCombatingUnfairComp1993EN.pdf>

The English translation provided by the Office of Competition and Consumer Protection (UOKiK) is not the most fluent or up-to-date; we have edited it below

Title of relevant section

Chapter 2

Most important acts which constitute an act of unfair competition (for full list refer to Act)

Articles

- Use of a trade name which may mislead as to the identity of the entrepreneur, in particular, by using a company name, trade name, abbreviation or any other similar symbol which has already been used by another trader (Art. 5)
- Use in advertising of false or misleading geographical indications, directly or indirectly, on the country, region or place of origin (Art. 8)
- False or misleading use of protected geographical indications² and protected designations of origin³ (Art. 9.1) and the use of such marks and names even with the addition of "kind/ form" (*rodzaj*); "type" (*typ*); "method/ way" (*metoda*) or equivalent i.e. like Champagne, or a type of Bordeaux (Art. 9.2)

PDO logo: <http://www.gregsregs.com/downloads/PDOsymbol.pdf>

PGI logo: <http://www.gregsregs.com/downloads/PGIsymbol.pdf>

- Marking products or services in a way which may mislead customers in relation to the origin, quality, quantity, components, manufacturing process, usefulness, possible application, repair, maintenance and another significant features of the products or services, as well as concealing any risks connected with their use (Art. 10.1)
- Imitation:
 - Imitating a finished product by way of technical means of reproduction, to copy an external image of such product where it may mislead customers as to the identity of the producer or product, shall be the act of unfair competition (Art. 13.1)
 - Imitating functional features of a product, in particular its make, structure and form ensuring its usefulness shall not be deemed the act of unfair competition. Where the imitation of functional features of a finished product requires including its characteristic form, which may mislead customers as to the producer or product identity, the imitator is under obligation to adequately mark the product (Art. 13.2)

¹ See note on translation <http://www.g-reggs.com/downloads/POGenUCATranslationNote.pdf>

² A protected geographical indication (PGI) - to receive the PGI status, the entire product must be traditionally and at least partially manufactured (prepared, processed or produced) within the specific region and thus acquire unique properties. 'Geographical indication' is a name which identifies a product (Art. 5.2 EU Regulation No 1151/2012): (a) originating in a specific place, region or country; (b) whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and (c) at least one of the production steps of which take place in the defined geographical area. Food; wine, spirits and aromatised wine are eligible for PGIs. Well-known examples of GIs include Bordeaux (wine), Darjeeling (tea) and Tuscany (olive oil).

³ Protected Designation of Origin (PDO) - to receive the PDO status, the entire product must be traditionally and entirely manufactured (prepared, processed and produced) within the specific region and thus acquire unique properties 'designation of origin' is a name which identifies a product (Art. 5.1 EU Regulation No 1151/2012): (a) originating in a specific place, region or, in exceptional cases, a country; (b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and (c) the production steps of which all take place in the defined geographical area. Food and Wine are eligible for PDO recognition.

Advertising

Advertising agencies or other businesses who have developed the advertising can be adjudged to have committed the acts of unfair competition listed below, as per Art.17)

- Articles
- Acts of unfair competition are in particular: unfair or prohibited advertising⁴ (Art. 3.2);
 - Acts which constitute unfair competition in the field of advertising (Art. 16.1):
 1. Advertising contrary to provisions of the law, good practices or offending human dignity⁵
 2. Advertising misleading⁶ the customer and may thereby influence his/her decision to purchase a product or service
 3. Advertising appealing to emotions of customers by provoking fear, exploiting/ taking advantage of superstitions or the credulity of children
 4. Statement encouraging the purchase of products or services by creating the impression of being impartial/ neutral information⁷
 5. Advertising significantly interfering with privacy, in particular the persistent pressuring of customers in public places, sending unsolicited products at the customers' expense, or abusing the use of technical means of communication
 - Comparative Advertising: An advertisement which enables the consumer to identify, directly or indirectly, a competitor or a competitor's goods or services, hereinafter referred to as "comparative advertising", constitutes an act of unfair competition where it is contrary to good practices / good customs⁸ (also translated as principles of morality/ good morals). Comparative advertising shall not be contrary to good practices provided that it meets all of the following conditions (Art. 16.3):
 1. it is not misleading advertising referred to in Art. 16.1.2 (above)⁹
 2. it compares products or services meeting the same needs or intended for the same purpose, in a fair and verifiable way on the basis of objective criteria;
 3. it objectively compares one or more material (essential), characteristic, verifiable and typical features of those goods and services, which may include price;
 4. it does not lead to confusion in the market place between the advertiser and a competitor nor between their goods or services, trademarks, trade names or other distinguishing marks,
 5. it does not discredit the goods, services, activities, trademarks, company designations (i.e. trade names), or other distinguishing marks, as well as the circumstances of a competitor;
 6. in relation to goods with a protected designation of origin or a protected geographical indication, it always relates to products with the same designation; (*note*: always refer to goods from the same country of origin, where such information appears on the goods)
 7. it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of the competitor or of a protected geographical
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⁴ Note: It is an act of unfair competition to advertise a product, the advertising of which is generally prohibited, such as alcohol (excluding beer), or tobacco.

⁵ Such advertising may consist of using words or pictures which are considered to be offensive or obscene, as well as showing poverty, humiliation, or suffering. It may also consist in using religious symbols in a way that may offend religious feelings

⁶ When assessing misleading advertising all of its elements should be taken into account, in particular those related to quantity, quality, components, method of manufacture (or manufacturing technique), usefulness (fitness for purpose), possible use (applicability), repair or maintenance of the advertised products, as well as the customers' actions/ behaviour (Art. 16.2 UCA)

⁷ Hidden advertising occurs when the addressee is under the false impression that a particular message is not an advertisement, but is an impartial, objective message concerning the advertised goods or services. The most common examples of hidden advertising are: product placement or hidden advertising contained within books or press articles. (Native advertising)

⁸ The introduction of this additional condition of being contrary to good practice goes beyond what was stated in the Directive

⁹ Misleading advertising provisions under Arts 5 and 6 of Act of 23 August Combating Unfair Commercial Practices should also be observed

indication or protected designation of origin of competing products;

8. it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark, protected geographical indication or protected designation of origin, or other distinguishing mark.
- Comparative advertising in connection with a special offer should, depending on its terms, clearly and unequivocally indicate the date on which the offer expires, or contain information that the offer is valid while stocks last or until the service is no longer rendered. And where the special offer is not yet available, the advertisement should also indicate the date from which the special price or other specific terms of the offer will be available (Art. 16.4)
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