

# Poland – Unfair Commercial Practices Act aka the Act on Counteracting Unfair Commercial Practices

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Full title: Act of 23rd August on Counteracting Unfair Commercial Practices, 2007.  
(Official Journal: 2007, No. 171, item 1206); Entry into force: 20/09/2007.

This Act transposes into national Law Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

This version includes the amendments from the [Act of December 1, 2022](#) amending the Act on consumer rights and certain other acts (PO), effective January 1, 2023. In this context, we include the clauses related to the 'Omnibus' Directive [2019/2161](#) and show the amends in italicised text.

All translations are unofficial and non-binding.

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## Chapter I. General Provisions

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Article 1 This Act defines unfair commercial practices in commercial and professional activity and the principles for combating such practices in the interest of consumers and in the public interest.

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Article 2 For the purposes of this Act the following definitions shall apply:

1. 'Trader (*lit.* entrepreneur)' means natural persons, legal persons and organisational bodies without legal personality which conduct business or professional activities, even if such activities are not structured and continuous, and persons acting on their behalf or for their benefit;
2. 'Consumer' means consumer within the meaning of the Civil Code of 23 April 1964
3. 'Product' means any good or service, including immovable property (real estate), *digital services, digital content* and civil-law rights and obligations;
4. 'Commercial practice' means any act, omission, course of conduct, representation or commercial communication, in particular advertising and marketing, by a trader, directly connected with the promotion or purchase of a product by consumers;
5. 'Code of conduct / good practice' means a set of rules of conduct, in particular ethical and professional standards, of traders who undertook to be bound by them in relation to one or more commercial practices;
6. 'Invitation to purchase a product' means commercial information indicating the characteristics and price of the product in a manner appropriate to the medium used to communicate with consumers, which directly influences or is likely to influence the consumer's transactional decision;
7. 'Transactional decision' means any decision taken by a consumer concerning

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whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product or to exercise a contractual right in relation to the product, whether the consumer decides to act or to refrain from acting;

8. 'The average consumer' means a consumer who is reasonably well informed and observant and circumspect; this assessment is made taking into account social, cultural and linguistic factors and whether the consumer in question belongs to a particular group of consumers. This group should be understood as a clearly identifiable group of consumers, which is particularly receptive to the influence of a commercial practice or the product to which the commercial practice applies, due to particular characteristics such as age or physical or mental disability.
9. 'Member State' means a Member State of the European Union or a Member State of the European Free Trade Agreement (EFTA), which is a party to the agreement on the European Economic Area.
10. 'Syndicated scheme' means business activities where the assets accumulated in the group, which was created to finance the purchase of the product for group members, are managed with consumer participation.
11. '*Ranking*' means granting a certain visibility to products or the importance accorded to search results by traders who provide the online search function in the form in which it is presented, organised or conveyed, regardless of the technological means deployed.
12. '*Online trading platform*' means an online trading platform within the meaning of art. 2 point 8 of the Act of 30 May 2014 on consumer rights (2020 Journal of Laws, item 287, item 2105 of 2021 and items 2337 and 2581 of 2022).

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## Chapter II. Unfair Commercial Practices

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Article 3	The use of unfair commercial practices is prohibited.
Article 4	<ol style="list-style-type: none"> <li>1. A commercial practice by a trader in respect of consumers is unfair if it is contrary to good practice and materially distorts, or is likely to distort, the market behaviour of the average consumer before a transaction involving the product is concluded, while it is being concluded or after it is concluded.</li> <li>2. In particular, a commercial practice shall be regarded as unfair whenever it is misleading or aggressive and whenever a code of conduct is used that is contrary to law. These practices shall not be assessed in the light of the conditions laid down in Article 4 (1)</li> <li>3. Business activities carried out in the form of a syndicated scheme or the organisation of a group with consumer participation for the purpose of financing purchases within a syndicated framework shall be deemed to constitute unfair commercial practice. These practices shall not be assessed in the light of the conditions laid down in Article 4 (1).</li> </ol>
Article 5	<ol style="list-style-type: none"> <li>1. A commercial practice shall be regarded as misleading if it causes or is likely to cause the average consumer to take a transactional decision that he/ she would not have taken otherwise</li> <li>2. In particular, the following practices may be misleading:             <ol style="list-style-type: none"> <li>1) Disseminating untrue information;</li> </ol> </li> </ol>

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- 2) Disseminating true information in a way that may mislead;
  - 3) An action related to the introduction of a product on the market that may be misleading as regards the products or their packaging, trademarks, trade names or other markings that distinguish the trader or his/ her products, in particular comparative advertising within the meaning of Article 16 (3) of the Act of 16 April 1993 on Combating Unfair Competition.
  - 4) Failure to comply with a code of conduct, which was voluntarily signed by the trader, if the trader informs, as part of his/ her commercial practice, that he/ she is bound by the code of conduct.
  - 5) *Any marketing of a good, in at least one Member State, as being identical to a good marketed in other Member States, while that good has significantly different composition or characteristics, unless justified by legitimate and objective factors.*
3. In particular, misleading practices may concern issues such as:
- 1) The existence, nature or availability of the product;
  - 2) The characteristics of the product, such as its geographical or commercial origin, quantity, quality, manufacturing process, composition/ components, date of manufacture, fitness for purpose, capabilities and expected results of its use, additional equipment, tests and the results of tests or checks carried out on the product, licences, awards or honours obtained by the product, and the risks and benefits associated with the product;
  - 3) Obligations of the trader in connection with the product, including service and complaint procedures, delivery, necessary services, parts, replacement or repair;
  - 4) Consumer rights, in particular the right to have the product repaired or replaced with a new one or the right to a price reduction or to withdraw from the contract;
  - 5) The price or the manner in which the price is calculated, or the existence of a specific price advantage;
  - 6) The nature of the sale, the reasons why the trader applied commercial practices, declarations or symbols in relation to direct or indirect sponsorship, information on the economic situation or legal status of the trader or of its representative, including its name(s) and assets, qualifications, status, licences held, membership or relationships, intellectual and industrial property rights and awards or honours.
4. When assessing whether a market practice constitutes a misleading action, all its features as well as the circumstances accompanying the product launch, including overall presentation, should be taken into account.

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**Article 6**

1. A commercial practice will be regarded as misleading by omission if it omits material information that the average consumer needs to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he/ she would not have taken otherwise.
  2. In case of doubt the material information referred to in Article 6(1) is deemed to be information that a trader applying a commercial practice is required to give consumers on the basis of separate provisions.
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3. In particular, the following practices may be regarded as misleading omission:
  - 1) Concealing material information on the product or failing to provide such information in a clear, unambiguous or timely manner;
  - 2) Failing to disclose the commercial purpose of the practice if this is not clearly apparent from the circumstances and if this causes or may cause the average consumer to take a contractual decision that he/ she otherwise would not have taken.
4. In the case of an invitation to purchase a product, material information within the meaning of Article 6 (1) shall include, in particular:
  - 1) The main characteristics of the product, to an extent appropriate to the medium used to communicate with consumers and the product;
  - 2) Forename, surname (corporate name) and address of the trader (registered office) and of the trader on whose behalf it is acting;
  - 3) The price inclusive of taxes, or, where due to the nature of the product the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, information to the effect that such additional charges may be payable;
  - 4) The arrangements for payment, delivery, performance and the complaint handling policy;
  - 5) Information on the right to withdraw from or annul the contract, if such a right is enshrined in the Act or in the contract;
  - 6) *Information on whether a third party offering products on an online marketplace is a trader, on the basis of a declaration of that third party submitted to the online marketplace provider as defined in Art. 2 point 9 of the Act of 30 May 2014 on consumer rights;*
  - 7) *Information on whether and how the trader ensures that published reviews are from consumers who have used or purchased a given product, in the case of a trader who provides access to consumer reviews of products;*
  - 8) *General information made available in a specific section of the online interface that is directly and easily accessible from the page where search results are presented, on the main parameters determining the ranking of products presented to the consumer as a result of the search query and the relative importance of those parameters compared to other parameters - in those cases where consumers are given the option to search for products offered by different traders or consumers and regardless of where the transaction is ultimately concluded.*
5. When assessing whether a commercial practice is misleading by omission all its features and circumstances related to the product launch, including its overall presentation, should be taken into account.
6. Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted.
7. *The provision of sec. 4 point 8 does not apply to providers of online search engines as defined in Art. 2 point 6 of Regulation (EU) 2019/1150 of the European*

*Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (Official Journal EU L 186 of 11/07/2019, p. 57).*

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**Article 7**

The following misleading commercial practices constitute unfair commercial practices in all circumstances:

- 1) Provision of information by a trader to the effect that he/ she has undertaken to respect a code of good practice, if this is not true;
- 2) Using a certificate, quality mark or equivalent without being authorised to do so;
- 3) Claiming that a code of good practice has an endorsement from a public or other body which it does not have;
- 4) Claiming that:
  - a. The trader has been authorised by a public authority or private entity
  - b. The commercial practices or product have been endorsed, approved or otherwise authorised by a public authority or private entity - when it does not meet the necessary conditions to receive such endorsement, approval or other authorisation;
- 5) Bait advertising, which involves making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that (s) he will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered;
- 6) Bait and switch advertising, which involves making an invitation to purchase products at a specified price, and then refusing to show the advertised item to consumers or refusing to take orders for the product or to deliver it within a reasonable time, or demonstrating a defective sample, with the intention of promoting a different product;
- 7) Stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity to take an informed choice;
- 8) Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the Member State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction;
- 9) Stating or otherwise creating the impression that a product can legally be sold when it cannot;
- 10) Presenting rights given to consumers in law as a distinctive feature of the trader's offer;
- 11) Surreptitious advertising, which involves using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer; *11a) providing search results without clearly disclosing paid advertising or payment made specifically to rank products higher in search results - in response*

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- to a consumer's online search;*
- 12) Presenting incorrect information concerning the nature and extent of the risk to the personal security of the consumer or his/her family if the consumer does not purchase the product;
  - 13) Promoting a product similar to a product made by another 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;
  - 14) Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive material benefits that are derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products;
  - 15) Claiming that the trader is about to cease trading or move premises when (s) he is not;
  - 16) Claiming that purchasing the product can facilitate winning in games of chance;
  - 17) Claiming that a product is able to cure illnesses, dysfunction or malformations when it is not;
  - 18) Passing on incorrect information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than market conditions;
  - 19) Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent;
  - 20) Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the direct costs of responding to the commercial practice and collecting or paying for delivery of the item;
  - 21) Including in marketing material an invoice or similar document suggesting an obligation to pay which gives the consumer the impression that he/ she has already ordered the marketed product when he/ she has not;
  - 22) Claiming or creating the impression that the trader is not acting for purposes relating to his/her business or profession, or representing oneself as a consumer when this is not the case;
  - 23) Creating the false impression that after-sales service in relation to a product is available in a Member State other than the one in which the product is sold.
  - 24) *Reselling of tickets to consumers for cultural or sporting events, if the trader acquired them by using automated means to circumvent technical measures or exceed technical limits imposed by the original seller in order to circumvent restrictions on the number of tickets that a person can buy, or any other rules applicable to the purchase of tickets;*
  - 25) *A claim by a trader that provides access to consumer reviews of products that those reviews were submitted by consumers who have actually used or purchased the product, without that trader having taken reasonable and proportionate steps to verify that those reviews originated from those consumers;*
  - 26) *Submitting or commissioning another person to post untrue consumer reviews or endorsements, or misrepresenting consumer reviews or endorsements in order to promote products.*

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**Article 8**

1. A commercial practice shall be regarded as aggressive if unacceptable pressure significantly impairs or is likely to impair the average consumer's freedom of choice or conduct with regard to the product and thereby causes, or is likely to cause, him or her to take a transactional decision that (s) he
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would not have taken otherwise.

2. Unacceptable pressure shall be deemed to be any form of exploitation of a position of power in relation to the consumer, in particular the use or threat of use of physical or mental force in a way which significantly limits the average consumer's ability to take an informed transactional decision.
3. When assessing whether a commercial practice is aggressive, all of its elements and the circumstances of the product launch should be taken into account, and in particular:
  - 1) The time, place, nature or nuisance value of the practice;
  - 2) Deliberate exploitation by the trader of force majeure affecting a consumer or of other circumstances of such gravity as to impair the consumer's ability to take an informed transactional decision;
  - 3) Any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader;
  - 4) Any threat to take any action that cannot legally be taken or the use of abusive language or behaviour.

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#### Article 9

The following aggressive commercial practices shall constitute unfair commercial practices in all circumstances:

- 1) Creating the impression that the consumer cannot leave the premises without concluding a contract;
- 2) Conducting visits to the consumer's home, even if (s) he is not permanently resident there, ignoring the consumer's request to leave or not to return, except, in circumstances and to the extent justified under the law, to enforce a contractual obligation;
- 3) Making persistent and unwanted (not resulting from/ caused by the consumer's action or omission) solicitations by telephone, fax, email or other remote media to persuade consumers to purchase goods, except, in circumstances and to the extent justified under the law, to enforce a contractual obligation;
- 4) Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant to the validity of the claim, or failing to respond to pertinent correspondence, in order to dissuade a consumer from exercising his/her rights under the insurance policy;
- 5) Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them;
- 6) Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited/ ordered by the consumer.
- 7) Informing a consumer that if (s) he does not buy the product, the trader's job or livelihood will be in jeopardy;
- 8) Creating the impression that the consumer has already won, will win unconditionally, or will win on taking a particular course of action, a prize or other equivalent benefit, when in fact claiming the prize or other equivalent

benefit is subject to the consumer paying money or incurring other costs.

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## Article 10

1. Business activities carried out in the form of a syndicated scheme shall be deemed to constitute unfair commercial practice.
  2. The organisation of a group with consumer participation for the purpose of financing purchases within a syndicated framework shall also be deemed to constitute unfair commercial practice.
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## Article 11

1. The application of a code of good practice containing unlawful provisions shall be deemed to constitute unfair commercial practice.
  2. The owner of a code of good practice containing unlawful provisions shall be deemed to have carried out an unfair commercial practice.
  3. In cases of doubt, any entity, in particular a trader or group of traders, which is responsible for preparing and introducing and/ or monitoring compliance with a code of good practice, shall be regarded as a code owner.
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