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## Spain – Law on Unfair Competition 3/1991



**Full title** Law 3/1991 of 10th January on Unfair Competition. Entry into force 31/01/1991. (BOE n.10, 11/01/1991) (*Ley de Competencia Desleal*)

**Relevant Amendments**

- Law 29/2009<sup>1</sup>, 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.
- Law 3/2014<sup>2</sup> of 27<sup>th</sup> 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 16<sup>th</sup> November. Entry into force: 29/03/2014

**Title of relevant sections**

Chapter I: General Provisions  
 Chapter II: Acts of Unfair Competition  
 Chapter III: Commercial Practices involving consumers and users  
 Chapter IV: Actions arising from Unfair Competition  
 Chapter V: Codes of Conduct

## CHAPTER I – General Provisions

**Article 1** Purpose

The purpose of this Act is the protection of competition in the interests 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 (law 34/1988).<sup>3</sup>

**Article 2** Objective Scope

1. Practices provided for in this Law shall be considered acts of unfair competition provided they are carried out in the marketplace and for competition purposes.
2. A competition purpose is presumed when, due to the circumstances in which it is carried out, it proves to be objectively suitable to promote or ensure the dissemination in the marketplace of one's own services, or those of a 3<sup>rd</sup> party.
3. The Act shall apply to any act of unfair competition committed before, during or after a commercial transaction or contract, regardless of whether the latter is finally entered into or not.<sup>4</sup>

<sup>1</sup> Amends: Articles 1 to 8 inclusive, 10, 11, 18. 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 (Codes of Conduct) [http://boe.es/diario\\_boe/txt.php?id=BOE-A-2009-21162# analisis](http://boe.es/diario_boe/txt.php?id=BOE-A-2009-21162# analisis)

<sup>2</sup> Amends Art 5 (1f) <http://boe.es/buscar/doc.php?id=BOE-A-2014-3329>

<sup>3</sup> Amended by art. 1.1 of Law 29/2009

<sup>4</sup> Para. 3 added by art. 1.2 of Law 29/2009.

URL of source: <http://www.boe.es/buscar/act.php?id=BOE-A-1991-628>

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**Article 3****Subjective Scope**

1. The Act shall apply to entrepreneurs, professionals and to any other natural or legal persons engaging in the market.<sup>5</sup>
  2. The application of the Act shall not be made subject to (conditional upon) the existence of a competitive relationship between the active subject and passive subject of the act of unfair competition.
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**CHAPTER II - Acts of Unfair Competition**

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**Article 4****General Clause<sup>6</sup>**

1. Any behaviour / practice that objectively fails to abide by the requirements of good faith shall be deemed unfair.

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.

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 procurement of a good or service and, if relevant, the way in which and under what conditions it is procured
- c) Payment of the price, total or partial, or any other form of payment.
- d) The maintenance of the good or service.
- e) The exercise of contractual rights in relation 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 targeting consumers or users in general, which are liable to significantly distort only 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, in a way which the entrepreneur or professional can reasonably foresee, shall be evaluated from the perspective of the average member of

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<sup>5</sup> Amended by art. 1.3 of Law 29/2009

<sup>6</sup> Amended by art. 1.4 of Law 29/2009

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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.

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#### Article 5

##### Misleading Acts<sup>7</sup>

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 (or unfair on grounds of being misleading), provided that it has an impact on one of the following elements:

- 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 commitments, 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<sup>8</sup>.
- 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 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.

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#### 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/ risk of association by consumers with respect to the origin of services is sufficient to underpin/ justify the unfairness of a practice.

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<sup>7</sup> Amended by art. 1.5 of Law 29/2009

<sup>8</sup> Section 1.f) is amended by final provision 1 of Law 3/2014

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**Article 7****Misleading Omissions<sup>9</sup>**

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

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**Article 8****Aggressive Practices<sup>10</sup>**

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.
- 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.
- e) The conveyance of a threat to take any action that cannot legally be taken.

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**Article 9****Acts of Denigration**

It is considered unfair, the making or dissemination of statements about the activity, services, establishment or commercial relations of a third party that are designed to damage their credit in the market, unless they are exact/ accurate, true or relevant.

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<sup>9</sup> Amended by art. 1.6 of Law 29/2009

<sup>10</sup> Amended by art. 1.7 of Law 29/2009

URL of source: <http://www.boe.es/buscar/act.php?id=BOE-A-1991-628>

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In particular, statements concerning the nationality, beliefs or ideology, private life or any other strictly personal circumstances of the person concerned, are not considered to be relevant.

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#### Article 10

##### Acts of Comparison<sup>11</sup>

Public comparison, including comparative advertising by means of an explicit or implicit reference to a competitor, is allowed if the following requirements are met:

- a) The goods or services compared must have the same purpose or meet the same needs.
  - 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.
  - 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 designation.
  - d) Goods or services may not be presented as imitations or replicas of goods or services bearing a protected trade mark or trade name.
  - 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.
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#### Article 11

##### Acts of Imitation<sup>12</sup>

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.

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.

A practice shall not be considered unfair if the said risks of association or of the use of another's reputation are unavoidable.

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 its establishment in the market and exceeds what could in the given circumstances be conceived as a natural market response.

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#### Article 12

##### Exploitation of/ taking advantage of the reputation of others

It will be considered unfair to misappropriate (lit. take unfair advantage), for the benefit of oneself or a third party, the advantages attaching to the industrial, commercial or professional reputation acquired by another party in the marketplace.

In particular, the use of distinguishing signs of others (i.e. *3rd party trademarks*) or false designations of origin accompanied by an indication of the true origin of the product or expressions such as "models" (modelos), "system" (sistema), "type" (tipo), "class" (clase) and similar is deemed unfair.

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<sup>11</sup> Amended by art. 1.8 of Law 29/2009

<sup>12</sup> Amended by art. 1.9 of Law 29/2009

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*Article 13 - 16 (not translated)* Headings of Articles 13-16 for reference purposes: Art. 13: Violation of Secrets<sup>13</sup>; Art. 14: Inducement to breach of contract<sup>14</sup>; Art. 15: Violation of rules<sup>15</sup>; Art. 16: Economic Discrimination and Dependency

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**Article 17** Sale at a loss

1) Price-setting is free (permitted), unless otherwise provided by laws and regulations.

2) However, a sale made below cost or below the price of acquisition will be deemed unfair in the following cases:

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.

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**Article 18** Unlawful Advertising<sup>16</sup>

Advertising considered unlawful under the General Advertising Act shall be deemed unfair.<sup>17</sup>

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CHAPTER III – Commercial Practices involving consumers and users<sup>18</sup>

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**Article 19** Unfair Commercial Practices affecting consumers

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.

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<sup>13</sup> Art. 13:1. *The acts of disclosure or exploitation of trade secrets, without authorization from its owner, of industrial secrets or any other kind of business secrets which has been obtained legitimately but with the duty of confidentiality, or those to which access has been obtained illegitimately by means provided for in the following paragraph or under Article 14;*

*2. The acquisition of the secrets by means of espionage or similar procedures is likewise considered unfair;*

*3. The persecution of violations of secrets contemplated in the previous sections shall not require the presence of the requirements set in Article 2. However, it is required that the violation has been made with the purpose of obtaining a benefit for oneself or for a third party, or in order to harm the owner of the trade secret*

<sup>14</sup> *Under article 14 it is also deemed unfair: a) to induce employees, suppliers, clients and other obligated parties to breach basic contractual duties they have entered into with competitors; and b) to induce into a normal termination of a contract or to take advantage for one's own benefit or that of a third party of another person's contractual breach when, being known, its purpose includes that of divulging or exploiting a trade secret, accompanied by circumstances such as deception, the intention to eliminate a competitor from the market or the like.*

<sup>15</sup> *Art. 15(1): It is considered unfair to prevail in the market through a competitive advantage acquired by breach of the laws. The advantage must be significant. Art. 15(2): It will also be considered as act of unfair competition, the basic breach of the rules that govern competition activities.*

<sup>16</sup> Amended by art. 1.10 of Law 29/2009

<sup>17</sup> Spanish link: <http://www.boe.es/buscar/act.php?id=BOE-A-1988-26156>

<sup>18</sup> Arts. 19-31 added by art. 1.11 of Law 29/2009

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2. The commercial practices regulated in Articles 21 - 31 inclusive, are unfair commercial practices to consumers in all cases and under all circumstances.

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#### Article 20

Misleading Practices causing confusion among consumers

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.

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#### Article 21

Misleading practices concerning codes of conduct or other quality marks

1. Commercial practices falsely claiming the following shall be deemed misleading and hence unfair:

- 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.

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#### Article 22

Bait advertising (*lit.* lure practices) 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
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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.

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#### 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.

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.

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.

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.

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#### Article 24

Pyramid sales practices.

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.

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#### Article 25

Misleading practices creating confusion.

Promotion of a good or service similar to one marketed by another entrepreneur or professional to deliberately dupe/ mislead 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.

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#### Article 26

Covert commercial practices.

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

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by means of images and sounds clearly identifiable to consumers or users that this is an advertisement, shall be considered misleading and hence unfair.

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#### Article 27

Other misleading practices.

Also considered misleading and hence unfair are practices that:

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.
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#### Article 28

Aggressive practices using coercion

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.

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#### Article 29

Aggressive practices using harassment.

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.
2. Making unsolicited and repeated proposals/ offers by telephone, fax, e-mail or by other means of distance communications, except in circumstances and to the extent legally justified to comply with a contractual obligation, shall likewise be deemed unfair.

In these communications, the entrepreneur or professional must use systems that enable the consumer to register his opposition/ objection to receiving commercial proposals/ offers from said entrepreneur or professional.

So that the consumer or user can exercise their right to express their opposition/ objection to receiving unwanted/ unsolicited commercial proposals, when these are made over the telephone the calls must be made from an identifiable telephone number.

This is without prejudice to what is established in current regulations on personal data protection, information society services, telecommunications and distance contracting with consumers or users, including the distance contracting of financial services.

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#### Article 30

Aggressive practices and minors.

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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.

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#### Article 31

Other aggressive practices.

The following shall be considered aggressive and hence unfair:

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.
  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.
  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.
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#### CHAPTER IV – Actions arising from unfair competition<sup>19</sup>

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#### Article 32

Actions

1. The following actions may be taken against acts of unfair competition, including unlawful advertising:
    1. Declaratory action for bad faith.
    2. Injunction against the unfair conduct or prohibition of its continued practice. An injunction may also be brought to forestall the practice before it occurs.
    3. Action to counter the effect produced by the unfair practice.
    4. Action to rectify misleading, incorrect or false information.
    5. Action to compensate damages sustained though unfair practice in the event of fraud or fault on the part of the agent.
    6. Action against unjust enrichment, which shall only apply when the unfair practice prejudices a legal position protected by an exclusive right or some other of similar economic content.
  2. In favourable rulings regarding the actions envisaged in the foregoing subsections 1 to 4 the court may, at the defendant's cost, order the complete or partial publication of the judgment or, if the repercussions of the infraction are liable to be enduring, of a rectifying statement.
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#### Article 33

Active Legal Capacity

1. Any natural or legal person taking part in the market whose economic interests are directly injured or threatened by unfair practice is entitled to take the action envisaged in Article 32(1), numbers 1 to 5.
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<sup>19</sup> Added by art. 1.11 of Law 29/2009

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In the case of unlawful advertising, any natural or legal person affected and, in general anyone with a subjective right or legitimate interest, is entitled to take the action envisaged in Article 32(1), numbers 1 to 5.

Legal action for compensation of damages sustained from unfair practice may likewise be taken by those so authorised in accordance with the provisions of Article 11(2) of the Civil Procedure Act, Law 1/2000<sup>20</sup> of 7 January 2000. Action against unjust enrichment may only be taken by the holder of the violated legal position.

2. The actions provided for in Article 32(1), numbers 1 to 4 may also be taken by associations, professional corporations or representatives of economic interests when the interests of their members are affected.

3. The following are actively entitled to take the action envisaged in Article 32(1), numbers 1 to 4 in defence of the general, collective or diffuse interests of consumers and users:

- a) The National Institute of Consumer Affairs and its counterparts in the Autonomous Communities and Local Governments with competence in the protection of consumers and users;
- b) Consumer and user associations meeting the requirements laid down in the consolidated text of the General Consumer and User Protection Act or, as the case may be, in regional legislation on consumer and user protection matters.
- c) Organisations from other European Community Member States constituted for the protection of the collective and the diffuse interests of consumers and users and authorised by virtue of their inclusion in the list published for that purpose in the Official Journal of the European Communities.

4. The Public Prosecutor may order injunctions in defence of the general, collective or diffuse interests of consumers and users.

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#### Article 34

##### Passive Legal Capacity

1. The actions envisaged in Article 32 may be brought against any person participating in or ordering the unfair practice in question or who has cooperated in its performance. However, in the case of unjust enrichment, action may only be taken against the beneficiary of the enrichment.

2. If the unfair practice is performed by workers or other collaborators in the discharge of their contractual duties and obligations, the actions envisaged in Article 32(1), numbers 1 to 4 must be taken against the main party. Civil Law provisions shall prevail as regards compensation for damages and unjust enrichment.

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#### Article 35

##### Time Bar

The actions against unfair competition laid down in Article 32 lapse one year after the person entitled to take action discovered who was responsible for the act of unfair competition and, in any case, three years as from the time that such conduct ceased. The time bar for legal action in defence of the general, collective or diffuse interests of

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<sup>20</sup> Ley N° 1/2000, de 7 de enero de 2000, de Enjuiciamiento Civil - <https://www.boe.es/buscar/act.php?id=BOE-A-2000-323> Article 11: Standing for the defence of the rights and interests of consumers and users; 11.2: *When those damaged by an event are a group of consumers or users whose components are perfectly determined or may be easily determined, the standing to apply for the protection of these collective interests corresponds to the associations of consumers and users, to the entities legally constituted whose purpose is the defence or protection of these, and the groups affected.*

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consumers and users is governed by the terms of Article 56 of the consolidated text of the General Consumer and User Protection Act and other supplementary laws.

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**Article 36****Judicial Investigation**

1. Anyone intending to file suit for unfair competition may ask the court to initiate a judicial investigation to verify facts which are objectively indispensable in preparing the hearing.
2. Such investigation shall take the form laid down in Article 129 to 132 of the Patent Act, Law 11/1986<sup>21</sup> of 20 March 1986 and may be extended to all of the internal workings of the company.

*Note: Patent Act (Law 11/1986) has been repealed and replaced by new Patent Act (Law 24/2015) – in force: 01/04/2017. Chapter II (Enquiries to substantiate facts) – Arts 129-132 of Law 11/1986 can now be found in Arts 123-126 of Law 24/2015.*

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**CHAPTER V – Codes of Conduct<sup>22</sup>**

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**Article 37****Promotion of Codes of Conduct**

1. Trade, professional and consumer corporations, associations or organisations may draw up codes of conduct on business-to-consumer trade practices for voluntary adhesion by entrepreneurs or professionals, with a view to raising the level of consumer protection and guaranteeing the participation of consumer organisations in their drafting.
  2. Codes of conduct shall respect the protection of competition regulations and shall be sufficiently publicised to bring them to the attention of target groups.
  3. Public authorities shall promote the participation of business and professional organisations in the drafting of codes of conduct for the same purpose at Community level.
  4. Self-regulation systems shall be provided with independent control bodies to ensure that the signatory companies effectively comply with their commitments. Their codes of conduct may include, inter alia, prior individual or collective self-check measures on advertising content. They must set up effective extra-judicial settlement systems which meet the requirements laid down in the Community regulation and as such must be communicated to the European Commission as provided in the Council Resolution of 25 May 2000 on a Community-wide network of national bodies for the extra-judicial settlement of consumer disputes or any other equivalent provision.
  5. Recourse to code-of-conduct control bodies shall in no case preclude the institution of legal actions as provided for in Article 32.
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**Article 38****Action with regard to Codes of Conduct**

1. Legal action in the form of injunctions and rectifications provided for in Article 32(1) numbers 1, 2 and 4 may be taken in response to codes of conduct that recommend, foster or encourage unfair or unlawful conduct.
  2. Before taking the action provided for in the preceding paragraph against persons responsible for codes of conduct meeting the requirements laid down in Article 37(4), the person responsible for the said code must be required to abandon or rectify the unfair
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<sup>21</sup> Ley 11/1986, de 20 de marzo, de Patentes – repealed with effect from 1st April 2017 – by Law 24/2015 of 24<sup>th</sup> June – here: <https://www.boe.es/buscar/act.php?id=BOE-A-2015-8328#ddunica>

<sup>22</sup> Chapter V – Arts 37-39 added by art. 1.12 of Law 29/2009

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recommendation and to undertake to refrain from making it if it has not already been done.

This request must be made in such a way as to leave a record of its content and date of reception.

The person responsible for the code of conduct shall be under obligation to issue a statement within 15 days as from the presentation of the request and during that time the party that initiated the preliminary measure may not initiate legal proceedings.

If the complainant has not received notice of the decision or this is unsatisfactory or has not been complied with in the allotted time, legal proceedings may be initiated.

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#### Article 39

Preliminary actions taken against entrepreneurs and professionals who are signatories of codes of conduct

1. When the action is grounded in the causes envisaged in Article 5(2), before taking the actions provided for in Article 32(1) numbers 2 and 4, persons publicly adhering to the code of conduct shall be urged, through the code of conduct control body, to cease to engage in or rectify the act or trade practice and to undertake to refrain from it in future if it has not yet engaged therein.

The control body shall be under obligation to issue a statement within 15 days as from the presentation of the request and during that time the party that initiated the preliminary proceeding measure may not initiate legal proceedings.

If the complainant has not received notice of the decision or this is unsatisfactory or has not been complied with in the allotted time, legal proceedings may be initiated.

2. In all other cases of legal action intended to terminate or rectify unfair conduct by persons who publicly adhere to codes of conduct meeting the requirements laid down in Article 37(4), the preliminary action before the control body provided for in the preceding paragraph shall be discretionary.

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#### Single Provision

#### Additional

Definition of Advertising: For the purposes of this law, advertising means the activity defined in article 2 of Law 34/1988, of November 11, General of Advertising.<sup>23</sup>

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<sup>23</sup> Added by art. 1.13 of Law 29/2009