

International Team



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National Law

Amendments to the Spanish Unfair Competition Act

The Unfair Competition Act has been amended by the law 29/2009 which implements Directives 2005/29 EC and 2006/114 EC into Spanish national Law.

Among the most relevant changes, it is worth noting the broader scope of the law, since it will be from now on also applicable to unfair business-to-consumer commercial practices before, during and after a commercial transaction, regardless the transaction finally takes place or not.

The main clause has been broadened and classifies as unfair commercial practices those which could distort the economic behavior of the average consumer. The average consumer is for the first time, referred to in a regulation. This consumer is the standard to determine whether or not commercial practices are unfair. However the law also considers the possibility to determine unfair commercial practices taking into account the behavior of

an average consumer of clearly identifiable group of consumers who are particularly vulnerable. The territory clause has been deleted in order to harmonize the national law with the community principles governing the community market. The legal framework regulating misleading practices, misleading omissions, aggressive practices and misleading advertising has been broadened in order to include all the practices which can be qualified as misleading in a sole law. Chapter nº III has

been included to regulate unfair commercial practices concerning the nature and features of the goods and services, their availability and after-sales services, aggressive practices using harassment and/or coercion regarding minors. The deadline for filing an unfair competition action has also been amended, starting the term or "dies a quo" to file the same, after the unfair competition practice has finished.

New commercial practices considered as misleading:

- ⇒ Practices which may distort the economic behavior of consumer (telephone call spam).
- ⇒ Public comparison of the commercial activity of a third party referring to not similar, relevant neither comparable aspects.
- ⇒ Omitting information to consumers
- ⇒ Transmitting unclear unintelligible or ambiguous information
- ⇒ Inducing consumers to take immediate decisions

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2009 a good year result

2009 has been a very difficult year for many fields of activity due to the global economic crisis which has also affected the Intellectual Property. However we have reached to close this year with a significant increase of work. During 2009 we have kept on investing in quality, focusing our efforts in two departments such as Patent and Copyright thanks to which we have been able to overcome the economic crisis and recruit five more professionals to the firm. The Patent department has reached to diversify our client portfolio forcing us to move forward in the chemical and biotechnology areas. These efforts and continued work have been rewarded since Abril Abogados has been included once again in the International rankings being the 25th European firm in CTM application numbers.

Spanish Case Law

Links to P2P sites are legal in Spain.

The Mercantile Court of Barcelona has rejected the action filed by the SGAE (Spanish Society of Authors, Composers and Publishers) against a web site offering links to P2P. According to the Court's decision downloading files do not entail any distribution, reproduction or any public communication. Therefore it has been stated that P2P do not infringe any copyrights.



New regulation for Cookies

A new regulation for the use of cookies has been passed by the European Parliament. From now on, the informed consent of users will be necessary for installing cookies. According to this new regulation, the use of cookies will be allowed, provided they have fair purposes, the users being clearly informed about those purposes and they could reject installation of cookies. Besides, users will have to be able to express their consent through those tools included in browsers or any other applications.



Authorization for arranging draws

The Royal Decree 41/2010 has been recently published and modifies the current Statute of Spanish Lotteries and Bets Organism (SLBO), with the aim of reducing administrative burdens. In this sense, the administrative authorization issued by SLBO for arranging, holding and carrying out promotional draws, has been removed. The sole limitation is free audience participation and avoiding any additional fee. In any case, the arrangement of draw and the payment of fees must be still communicated to SLBO.

**Copyright Commission
Paloma Arribas del Hoyo**

Spanish Copyright main laws are proposed to be amended by the controversial project of the Sustainable Economy Law.



This new law would allow a Judge to close down any web page which is found to be infringing the copyright law. The Judge could only act on the basis of a formal complaint filed by the Copyright Commission to remove illicit material or close a website within four days. The Ministry of Culture has confirmed that end users will not be affected since their internet access will not be closed as in France. The aim of this new law is to pursue both internet websites allowing direct downloads and p2p file sharing programs.

Community Case Law

The Court of Justice of European Union recognizes the distinctiveness of Audi's slogan

The CJ annuls the decision issued by the CFI that hold that the slogan "Vorsprung durch Technik" (advance through technology) was devoid of any distinctive character as the relevant public perceives the mark as a promotional slogan. According to the CJ the Article 7 RCM has been misapplied. Even if it were to be supposed that the slogan conveys an objective message, this fact would not support the conclusion that the mark applied for is devoid of any inherently distinctive character. Despite it's simple, such a message, it cannot be categorized as ordinary and without any further analysis excluding the possibility that the mark will be capable to indicate to the consumer the commercial origin of the goods concerned.



Customs Authorities

Diabolo II Operation

A joint operation, codenamed DIABOLO II, conducted by customs authorities from 13 Asian countries and 27 EU Member States has led to the seizure of more than 65 million counterfeit cigarettes and nearly 400.000 other counterfeit items such as shoes, toys, cameras etc. of over 20 different Trade Marks. The excellent success of this operation was the result of the effective work involving the OLAF (European Anti-Fraud Office) with the support of EUROPOL and INTERPOL. The operation also resulted in further international investigations into criminal activities, reporting that 89 individuals or companies involved in criminal organizations were identified. Although the results and experiences of Diabolo II will be discussed at further forums, it has been demonstrated the importance of working in cooperation involving joint customs officials in order to obtain an effective response to the problem of piracy.



Intellectual Property

Monopoly of the Collective Management Entities

On 19 January, the Spanish Antitrust Authority (CNC) released its report on Collective Management of Copyrights, which suggests a comprehensive review of the Copyright Law to amend the monopoly position of the collective management entities resulting in the establishment of inequitable and/or discriminatory rates. The CNC proposes a more favourable model for the competition by reinforcing the choice of rights holders and users, abolishing the mandatory collective management, the collective management entities administrative authorization system and the requirement that they are non-profit-making entities.

Community Patents

The European and Community Patents Court (ECP)

Under the Swedish presidency the industry ministers of the EU have reached an unanimous agreement containing new findings regarding the European and Community Patents Court (ECPC). It has finally been decided the ECPC will be competent for dealing with validity and infringement European and Community patents. However this agreement does not solve the issue concerning the language of the proceedings, which up to the only accepted languages are English, French and German.

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